SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11457-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

LUTFUR RAHMAN Respondent

Before:

Mr A. N. Spooner (in the chair)
Mr J. Evans
Mr M. R. Hallam

Date of Hearing: 18 - 20 December 2017

Appearances

Edward Levey of Fountain Court Chambers, Fountain Court Temple, London EC4Y 9DH (Instructed by Jonathan Goodwin, solicitor advocate of Jonathan Goodwin Solicitor Advocate Ltd), for the Applicant.

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent made by the Applicant were set out in a Rule 5 Statement dated 15 December 2015. The allegations were that:-

1.1 By a Judgment of an Election Court dated 23 April 2015, he was found personally guilty of:

a) an illegal practice, contrary to s.106 of the Representation of the People Act 1983 ("the 1983 Act");

b) a corrupt practice, contrary to s.113 of the 1983 Act;

and thereby he failed to:

1.1.1 uphold the rule of law and the proper administration of justice, in breach of Principle 1 of the SRA Principles 2011 ("the Principles");

1.1.2 act with integrity, in breach of Principle 2 of the Principles;

1.1.3 behave in a way that maintains the trust the public places in him and in the provision of legal services, in breach of Principle 6 of the 2011 Principles.

1.2 Withdrawn prior to the substantive hearing.

1.3 His evidence to the Election Court attracted adverse criticism from the Court and thereby he failed to:

1.3.1 uphold the rule of law and the proper administration of justice, in breach of Principle 1 of the Principles;

1.3.2 act with integrity, in breach of Principle 2 of the Principles;

1.3.3 behave in a way that maintains the trust the public places in him and the provision of legal services in breach of Principle 6 of the Principles.

2. Dishonesty was alleged in relation to allegation 1.1. Proof of dishonesty was not an essential ingredient for proof of the allegation.

Documents

3. The Tribunal considered all the documents in the case which included:

Applicant

- Application and Rule 5(2) Statement dated 15 December 2015 with exhibit "JRG1"
- Press Release of 23 April 2014
- Witness Statement of Mrs D Cohen dated 15.11.17 with exhibit "DC1"
- Miscellaneous press articles
- Extract from Hansard dated 18 April 2016

- Certified translation of the wedding video
- Applicant's Statements of Costs at issue and dated 17 July 2017, 11 December 2017 and 20 December 2017
- Applicant's Authorities bundle
- Skeleton Argument on behalf of the SRA dated 11 December 2017
- Redacted Rule 5 Statement setting out the allegations that remained at the substantive hearing
- Correspondence from the Applicant to the Respondent dated 4 September 2017 and 21 November 2017

Respondent

- The Respondent's Answer dated 9 May 2016
- The Respondent's Amended Answer (undated)
- The Respondent's Addendum Amended Answer (undated)
- Letter dated letter dated 25 June 2015 from HMA solicitors in response to the SRA's letter of 11 June 2015
- Correspondence with the Metropolitan Police Service
- Application Notice in respect of Judicial Review Application dated 10 August 2016 and Amendment to Statement of Grounds of Judicial Review dated 8 August 2016 together with Statement of Claimant and other related documents
- Note to the Tribunal re progress of Judicial Review (undated) and supporting documentation dated 14 September 2016
- Addendum note re progress of Judicial Review (undated)
- Five folders of documentation
- Letter from the Respondent dated 15 December 2017
- Application for an Order dated 17 December 2017

Preliminary Matter One – Respondent's Application for an adjournment

4. On 15 December 2017 the Respondent wrote to the Tribunal seeking an adjournment. He was advised to make an application for an order which was received on 17 December 2017. He appended his letter of 15 December 2017 to that application in support.

The Respondent stated that:

> "Notwithstanding significant efforts by me I have been unable find a solicitor and/or barrister willing to act for me on 18th of December 2017. The primary problem is one of funding. Given the technical, complex nature of the hearing and the documentation involved, the cost of representation is substantial.
>
> I have been out of work since the 23rd of April 2015, without any source of income and despite my strenuous efforts for donations and assistance from my extended family and friends I have been unable to raise funds to instruct lawyers. I have also unsuccessfully tried my best to instruct a lawyer who would be willing to assist and represent me at the hearing on a pro-bona bases.

I do of course have the option of representing myself but my area of expertise is not in disciplinary law and by acting in person I will not do justice to my case. Given I too must give evidence, representing myself is not an option.

in (sic) view of these circumstances, I find myself without representation and totally ill-equipped to deal with the hearing on 18th December 2017. In these circumstances it would not be appropriate for me to attend given how one sided the hearing will be. The SRA will be represented and I would have no representation. Whilst the Tribunal can try and balance the competing interests I am concerned that the disadvantage would be such that I could not have a fair hearing.

I strongly deny the allegations against me which arising purely out of Commissioner Mawrey judgement made on the 23rd of April 2015. I have set out a Reply to the SRA and I continue to contest Commissioner Mawrey judgement by way of Judicial Review proceedings. I have appealed to the Court of Appeal against the refusal to grant permission to Judicial Review and I am awaiting a hearing date from the Court of Appeal. A leading QC and ITN solicitors have been retained to represent me before the Court of Appeal. They have been retained on a conditional fee basis.

Given my personal financial difficulties and inability to find a lawyer, the seriousness of the SRA allegations, and the potential impact to my legal career, I request the Solicitors Disciplinary Tribunal to kindly consider adjourning the final hearing until the conclusion of the Judicial Review proceedings and/or until I have exhausted the appeal process.

To date I am not practising as a solicitor nor am I holding myself out as one and therefore the SRA are not infringed in anyway.

If contrary to these submissions, the SDT proceed with the matter and findings are made against me in my absence, this is likely to have a serious implication on my ability to practise as a solicitor and/or secure a job in the legal field in the future.

Law has always been my profession and I have always intended to return to this noble field. I have always held myself out with dignity, professionalism and during my practise as a solicitor I have conducted myself with respect with clients and with the profession. The duties I had discharged as a Mayor was of a political nature. I did not in anyway hold myself out as a solicitor when I discharged my political functions. I once again request the SDT to seriously consider giving me another opportunity in the future in contesting the SRA allegations by adjourning the matter."

The Applicant's Position

5. The Applicant opposed the application for an adjournment. The Divisional Court had dismissed the application to amend the Judicial Review proceedings and the only remaining live issue in those proceedings was spiritual influence which did not form part of these proceedings. There was no evidence to support the Respondent's

assertion that he had appealed the decision refusing him permission to amend the grounds for Judicial Review. The decision which he purportedly sought to challenge had been made six months ago, so if he was making that challenge there should be documentary evidence to support that appeal. In any event Mr Levey did not believe that the Court of Appeal had the jurisdiction to consider such an appeal.

6. The Respondent had previously successfully sought to adjourn the proceedings on the basis of the pending Judicial Review proceedings but the position was now different. His application for leave to amend those proceedings had been refused. The Applicant had amended the Rule 5 Statement meaning that the two sets of proceedings did not deal with the same matters.

7. The Respondent had been a family law specialist in practice. He was familiar with court procedure and respondents regularly represented themselves before the Tribunal. These proceedings had started over two years ago and the Respondent had obstructed the process and sought to delay the proceedings. He had sought an adjournment of a case management hearing in July based on the ill-health of a family member. That application had been unsuccessful. The application for an adjournment of this hearing had been made on the Friday immediately before the start of a four day hearing. The issues raised in that application would have been known to the Respondent for some time. He had not provided supporting evidence or a witness statement accompanied by a statement of truth. The Respondent had made a decision not to attend, he had voluntarily absented himself. He had not complied with the SDT Policy and Practice Note on Adjournments.

The Tribunal's Decision

8. The Tribunal considered its Policy/Practice Note on Adjournments dated 4 October 2002 which stated:

> "4) The following reasons will NOT generally be regarded as providing justification for an adjournment;
>
> a) The Existence of Other Proceedings. The existence or possibility of criminal proceedings unless the criminal proceedings relate to the same or substantially the same underlying facts as form the basis of the proceedings before the Tribunal AND there is a genuine risk that the proceedings before the Tribunal may 'muddy the waters of justice' so far as concerns the criminal proceedings. Proceedings which are not imminent will not usually meet this criterion. Civil proceedings are even less likely to do so.
>
> b) Lack of Readiness. The lack of readiness on the part of either Applicant or Respondent or any claimed inconvenience or clash of engagements whether professional or personal.
>
> c) Ill-health. The claimed medical condition of the Applicant or Respondent unless this is supported by a reasoned opinion of an appropriate medical adviser. A doctor's certificate issued for social security and statutory sick pay purposes only or other certificate merely indicating that the person is unable to attend for work is unlikely to be sufficient.

d) Inability to Secure Representation. The inability of the Respondent for financial or other reasons to secure the services of a representative at the hearing or financial reasons for the non-attendance of the Respondent."

9. The Respondent had been a family solicitor. Whilst he may prefer not to represent himself respondents often represented themselves before the Tribunal, including giving evidence and making their submissions. It was possible for the Respondent to have a fair hearing and represent himself. This was not the first time an application for an adjournment had been made. The application had been made at the very last minute. The reasons given for seeking an adjournment were specifically set out as reasons why an adjournment would not generally be given.

10. The Judicial Review proceedings as they now stood did not concern the same matters as the regulatory proceedings; the only overlap was that both arose out of the Judgment of the Election Court. Spiritual Influence was not part of these proceedings. The assertion that the decision not to prosecute meant that he had been acquitted and that the Election Court's conclusions were wrong had not found favour with the High Court and the Respondent did not have permission to pursue the Judicial Review on this basis. On 21 June 2017 Lloyd Jones LJ and Supperstone J refused the Respondent's application to amend his grounds for Judicial Review. In July the Respondent had asked the Tribunal to adjourn for an additional period of six weeks by which time there would be a clear understanding of the status of the Judicial Review proceedings. Almost five months had passed since then and no additional information or evidence had been provided to the Tribunal except the assertion that the refusal was being challenged. It would not 'muddy the waters of justice' for the disciplinary proceedings to proceed.

11. The Tribunal could see no reason why the application for an adjournment should be granted. The Respondent would have known what the position was three or four weeks ago, certainly in respect of the "appeal". He had ample opportunity to provide evidence in respect of the challenge he said he was making in respect of the refusal to grant him leave to amend the grounds for Judicial Review. There was no detail in respect of the application despite the fact that the Respondent said he had solicitors and counsel acting for him in those proceedings.

12. The Respondent's application for an adjournment was refused.

Preliminary Matter Two – Applicant's Application to proceed in the Respondent's absence

The Applicant's Position

13. Mr Levey relied on the submissions he had made above in respect of his opposition to the Respondent's application for an adjournment. In addition he referred the Tribunal to the case of General Medical Council v. Adeogba [2016] EWCA Civ 162 which set out the factors that the Tribunal needed to consider when deciding whether or not to proceed in absence.

14. It was in the public interest for the proceedings to go ahead. It was also in the Applicant's interests. If the hearing did not proceed additional costs would be incurred and there was nothing to suggest that if the hearing was adjourned to enable the Respondent to attend that he would actually attend. The Respondent was aware of the hearing, he knew that his application for an adjournment may not be successful but he had chosen not to attend. The Tribunal knew what the Respondent's position was in respect of the allegations and should proceed to hear the case.

The Respondent's Position

15. The Tribunal assumed that the Respondent opposed the application to proceed in his absence but his position was not known.

The Tribunal's Decision

16. The Tribunal carefully considered the submissions that the Respondent had made in support of his application for an adjournment as well as the submissions made by Mr Levey in respect of both the application for an adjournment and the application to proceed in absence.

17. The Tribunal referred to the case of Adeogba and each of the factors that it needed to consider when deciding whether or not to proceed in the absence of the Respondent and paragraphs 18, 19, 20 and 23 in particular:

> "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.

23. Thus, the first question which must be addressed in any case such as these is whether all reasonable efforts have been taken to serve the practitioner with notice. That must be considered against the background of the requirement on the part of the practitioner to provide an address for the purposes of registration along with the methods used by the practitioner to communicate with the GMC and the relevant tribunal during the investigative and interlocutory phases of the case. Assuming that the Panel is satisfied about notice, discretion whether or not to proceed must then be exercised having regard to all the circumstances of which the Panel is aware with fairness to the practitioner being a prime consideration but fairness to the GMC and the interests of the public also taken into account; the criteria for criminal cases must be considered in the context of the different circumstances and different responsibilities of both the GMC and the practitioner."

18. The Tribunal was concerned that there had already been significant delays in these proceedings and it was in the public interest for them to be concluded. Whilst the Respondent was not practising as a solicitor he had indicated that at some point he intended to return to the profession. It was important that these proceedings were concluded as soon as possible so that if the Respondent was exonerated he was able to resume his professional practice if he chose to do so.

19. The Tribunal found that the Respondent had voluntarily absented himself. The Tribunal would proceed to hear the matter in the Respondent's absence. The Tribunal decided that the Respondent should be informed of its decisions to refuse the adjournment application and proceed in his absence so that he could attend if he wished to do so. The hearing would be stood over until 1.30 pm that day to afford the Respondent this opportunity.

20. In the intervening period the Applicant was asked to provide a redacted Rule 5 Statement which showed the remaining allegations and the specific facts relied on in respect of those allegations. Allegations had been amended and withdrawn since the original Rule 5 was lodged and such a document would assist the Tribunal.

21. Once the Tribunal had announced its decision Mr Levey invited the Tribunal to hear Mrs Cohen's evidence before rising to give the Respondent an opportunity to attend on the basis that Mrs Cohen was already at the Tribunal and could be recalled for cross-examination should the Respondent attend. The Tribunal declined to proceed on that basis. The Applicant should call its witness once the hearing commenced.

The status of the draft Rule 7 Statement

22. In respect of allegation 1.3, namely that the Respondent lied to the Election Court, the Applicant previously sought permission to allege that the Respondent's conduct was dishonest (it being the SRA's position that one cannot tell lies on oath without acting dishonestly). The Applicant sought to make that additional allegation by way of a Rule 7 Statement. Permission to make that allegation was refused at a case management hearing on 20 July 2017.

23. Whilst the Applicant had not been permitted to make an additional allegation of dishonesty, it nevertheless sought to rely on the draft Rule 7 Statement as containing further and better particulars of the allegation that the Respondent gave untruthful evidence to the Election Court. A copy of the draft Rule 7 Statement was originally provided to the Respondent's then Solicitors on 6 June 2017. On 4 September 2017 Mr Goodwin had written to the Respondent to inform him that the Applicant would:

> "....rely on the facts and matters set out in the draft Rule 7 Statement in support of the existing allegation that you acted without integrity in respect of the evidence which you gave to the Election Court.
>
> In that regard, therefore, you should treat the draft Rule 7 Statement as setting out the way in which the SRA intends to put its case at the substantive hearing in relation to the existing allegation 1.3."

24. Mr Levey submitted that the Applicant should not be in a worse position or prejudiced as to how it put its case because of the Respondent's decision to voluntarily absent himself. There had to be procedural fairness. The matters contained in the Rule 7 Statement were evidenced by the documents exhibited to the Rule 5 Statement. The Applicant should not be estopped from making reference to these matters because they were not specifically pleaded in the Rule 5 Statement. It had never been the Applicant's case that it relied on the Election Court Judgment alone. There were two hundred pages of transcription of the Respondent's evidence to the Election Court before the Tribunal.

25. On 20 July 2017 the Tribunal had directed that "The Applicant and the Respondent have permission to file and serve any additional documents and/or updating witness statement by 4.00 p.m. on 20 November 2017." The Applicant had filed the witness statement of Mrs Cohen and various miscellaneous documents. The Respondent had not produced any further statements or documentation. The Tribunal was satisfied that this material had been properly filed and served and that it was appropriate for the Tribunal to consider these documents.

26. However, in respect of the draft Rule 7 Statement the Tribunal had refused the Applicant permission to bring the allegations contained therein and it was not appropriate for the Tribunal to consider the contents of that document. The Applicant appeared to be trying to make the allegations by "the backdoor". Whilst it was a matter for Mr Levey as to how he put his case it was not appropriate to rely on the contents of the draft Rule 7 document itself.

27. The Tribunal disregarded the draft Rule 7 document and any submissions that were based solely on its contents in reaching its findings. Specifically, consideration of the question of dishonesty was limited to the matters pleaded in support of allegation 1.1 and not in relation to allegation 1.3. Additionally in considering allegation 1.3 the Tribunal only considered the incident involving Mrs Cohen and the wedding (being the "Jagrotto" event at the Water Lily on 11 May 2014) and not the "Jagrotto" event at the Water Lily on 4 May 2014 which was not specifically referred to in the Rule 5 Statement, albeit it was referred to in the Respondent's first witness statement in the Election Court proceedings and the transcript of his evidence to the Election Court which were both before the Tribunal.

The Tribunal's communications with the Respondent during the course of the hearing

28. At 10.57 am on 18 December 2017 the clerk to the case emailed the Respondent:

> "The Tribunal has this morning considered your application to adjourn the substantive hearing. The Tribunal considered its Policy and Practice Note on Adjournments. That application has been refused. The Tribunal noted that the application had been made at a very late stage and was not supported by a witness statement nor was it supported by any documentation in relation to the application to appeal the decision in respect of the Judicial Review proceedings.
>
> The SRA applied to proceed in your absence and that application was granted.
>
> In order to afford you the opportunity to attend, in light of the Tribunal's decision, the substantive hearing will commence at 1.30 pm today."

29. At 16.48 on 19 December 2017 the clerk to the case emailed the Respondent informing him of the findings and stated:

> "The Tribunal will reconvene at 9.30 tomorrow morning to consider mitigation, sanction and costs. If you wish to make any submissions in respect of mitigation, sanction or costs you can do so in person by attending the hearing tomorrow or by submitting written submissions for the Tribunal to consider. These should be received by 9.30 tomorrow."

30. No response was received to either email.

Factual Background

31. The Respondent was born in September 1965 and admitted to the Roll of Solicitors on 15 April 1997. At the time of the hearing his name remained on the Roll of Solicitors. The Respondent was re-elected Mayor of the London Borough of Tower Hamlets on 22 May 2014. On 10 June 2014 a Petition was served seeking to have the election set aside on a number of grounds, principally the alleged commission by the Respondent, or his agents, of corrupt and illegal practices, contrary to the 1983 Act. On 29 July 2014, Commissioner Richard Mawrey QC was appointed to try the Petition. The hearing of the Petition occupied the Election Court from 2 February 2015 to 13 March 2015.

32. The Election Court was satisfied and certified that in the election for the Mayor of the London Borough of Tower Hamlets on 22 May 2014 that the Respondent was personally guilty of (a) an illegal practice contrary to s.106 of the 1983 Act; and (b) a corrupt practice contrary to s.113 of the 1983 Act. The Election Court was also satisfied to the relevant standard of proof and certified that in the election for the Mayor of the London Borough of Tower Hamlets held on 22 May 2014 that there were corrupt and illegal practices for the purpose of promoting or procuring the election of the Respondent at that election and those corrupt or illegal practices so extensively prevailed that they may reasonably be supposed to have affected the result of such election.

33. In addition to the specific findings of guilt in respect of the Respondent personally, the Election Court also said, amongst other things, "In view of its findings as to the personal responsibility of Mr Rahman and his agents, the question of whether there was also general corruption under S.164 of the 1983 Act may seem academic but, for the sake of completeness, it is confirmed that the court is satisfied that general corruption did take place and met the criteria of that section". The Election Court declared the election of the Respondent as Mayor of the London Borough of Tower Hamlets to have been avoided by such corrupt or illegal practices pursuant to s.159 (1) of the 1983 Act and also to have been avoided on the ground of general corruption pursuant to s.164 (1) (a) of the 1983 Act.

34. In addition to a declaration that the Respondent should be incapable of being elected to fill the vacancy for the office of the Mayor of the London Borough of Tower Hamlets, the Respondent being a solicitor of the Senior Courts, required the Election Court, pursuant to s.162 (1) of the 1983 Act, to bring the judgment to the attention of the SRA which it did. S.162(2)(b) provides that, where a solicitor has been found guilty of any corrupt practice in relation to an election, the relevant tribunal "may deal with him as if the corrupt practice were misconduct by him in his profession".

35. The Respondent gave evidence on oath to the Election Court and was subject to cross examination. The Respondent's evidence and the manner in which he gave his evidence, attracted adverse criticism from the Election Court. The Election Court Judgment set out the law and procedure relating to the Election Court in some detail. In summary, the process is:

a) the Election Court determines that the candidate has, by himself or his agents, been guilty of corrupt or illegal practices – s.145 of the 1983 Act;

b) the Election Court reports that finding – s.158;

c) that finding renders the election void – s.159.

<u>The offences for which the Respondent was found personally guilty</u>

a) <u>s.106 of the 1983 Act – making false statements about a candidate</u>

(1) A person who, or any director of anybody or association corporate which-

(a) before or during an election,

(b) for the purpose of affecting the return of any candidate at the election,

makes or publishes any false statement of fact in relation to the candidate's personal character or conduct shall be guilty of an illegal practice, unless he can show that he had reasonable grounds for believing, and did believe, the statement to be true.

(2) A candidate shall not be liable nor shall his election be avoided for any illegal practice under subsection (1) above committed by his agent other than his election agent unless-

(a) it can be shown that the candidate or his election agent has authorised or consented to the committing of the illegal practice by the other agent or has paid for the circulation of the false statement constituting the illegal practice; or

(b) an election court find and report that the election of the candidate was procured or materially assisted in consequences of the making or publishing of such false statements.

(3) A person making or publishing any false statement of fact as mentioned above may be restrained by interim or perpetual injunction by the High Court or the county court from any repetition of that false statement or a false statement of a similar character in relation to the candidate and, for the purpose of granting an interim injunction, prima facie proof of the falsity of the statement shall be sufficient.

(4) .....

(5) .....

(6) A candidate shall not be liable, nor shall his election be avoided, for an illegal practice under subsection (5) above committed by his agent other than his election agent".

b) s.113 of the 1983 Act - Bribery

(1) A person shall be guilty of a corrupt practice if he is guilty of bribery.

(2) A person shall be guilty of bribery if he, directly or indirectly, by himself or by any other person on his behalf-

(a) gives any money or procures any office to or for any voter or to or for any other person on behalf of any voter or to or for any other person in order to induce any voter to vote or refrain from voting, or

(b) corruptly does any such act as mentioned above on account of any voter having voted or refrained from voting, or

(c) makes any such gift or procurement as mentioned above to or for any person in order to induce that person to procure, or endeavour to procure, the return of any person at an election or the vote of any voter,

Or if upon or in consequence of any such gift or procurement as mentioned above he procures or engages, promises or endeavours to procure the return of any person at an election or the vote of any voter.
For the purposes of this subsection –

(i) references to giving money include references to giving, lending, agreeing to give or lend, offering, promising or promising to procure or endeavour to procure any money or valuable consideration; and

(ii) references to procuring any office include references to giving, procuring, agreeing to give or procure, offering, promising, or promising to procure or to endeavour to procure any office, place or employment and

(iii) .....

(3) .....

(4) .....

(5) A voter shall be guilty of bribery if before or during an election he directly or indirectly by himself or by any other person on his behalf receives, agrees, or contracts for any money, gift, loan or valuable consideration, office, place or employment for himself or for any other person for voting or agreeing to vote or for refraining or agreeing to refrain from voting.

(6) .....

(7) In this section the expression "voter" includes any person who has or claims to have a right to vote".

36. By letter dated 11 June 2015 the Applicant wrote to the Respondent enclosing a copy of the Election Court Judgment and seeking his explanation. By letter dated 25 June 2015, HMA solicitors, who at that time were acting on behalf of the Respondent, replied. On 3 August 2015 a duly authorised officer of the Applicant decided to refer the conduct of the Respondent to the Tribunal.

Witnesses

37. The only witness who gave oral evidence in addition to her written evidence was Mrs Cohen.

38. The Tribunal found her to be a credible witness. Her oral evidence highlighted the negative impact of what had happened on her.

39. The Respondent had filed and served an Answer and an Amended Answer. The Tribunal considered the contents of both these documents carefully as there was nothing before it to suggest that the Answer had been withdrawn. The five bundles of

documents that the Respondent had produced to the Tribunal were documents that had been before the Election Court. They were not documents that the Election Court had not seen.

40. 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.

Findings of Fact and Law

41. 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.

The Status of the Election Court Judgment

The Applicant's Case

42. The Applicant invited the Tribunal to attach considerable weight to the findings of the Election Court. The Respondent had set out a number of factors which the Tribunal had to consider when deciding what weight to give to the Judgment and the Applicant agreed that these were the right considerations. Mr Levey submitted that under the Tribunal's rules, the Judgment was not conclusive of the facts found by the Commissioner (Rule 15(4) of the Solicitors Disciplinary Proceedings Rules 2007 ("SDPR")). He invited the Tribunal to reach its own conclusion in relation to the critical question of whether there has been professional misconduct.

43. Mr Levey referred the Tribunal to the judgment in R (on the application of Woolas) v The Parliamentary Election Court [2010] EWHC 3169 (Admin) which held that any appeal by way of Judicial Review was limited to points of law and not findings of fact. The Respondent had permission to proceed with a Judicial Review in respect of spiritual influence only. This was a discrete point of law and did not undermine the findings of fact relevant to the allegations in these proceedings.

44. Mr Levey relied on Afolabi v. Solicitors Regulation Authority [2011] EWHC 2122 (Admin), citing Lord Lane in In Re A Solicitor [1991] QB 69. In his submission in deciding the weight to be attached to the Judgment, the Tribunal would need to consider factors such as the evidence considered by the Election Court, the fairness of those proceedings, and the standard of proof adopted by the Election Court. The Tribunal would also need to consider the explanations put forward by the Respondent for not accepting the findings of the Election Court, including the Respondent's wholly unsubstantiated allegations (made in these proceedings) that the Commissioner was biased against him. In deciding whether or not to accept the Commissioner's findings, the Tribunal would need to distinguish between what the Respondent asserted and what he was able to establish by way of evidence.

45. The Tribunal had to consider the extent to which points the Respondent made in these proceedings are points which were fully aired, and adjudicated upon, by the Election Court. If there were any points raised in these proceedings which were not raised before the Election Court, the Tribunal would have to consider the explanations given by the Respondent as to why those matters were not raised.

46. Although not technically binding, the Applicant's case was that the probative value of the Judgment was overwhelming such that the findings of the Commissioner could and should be accepted in full unless there was clear and cogent evidence to rebut any of them. In the Applicant's submission, the Respondent had adduced no evidence which came even close to satisfying that test.

47. As to the weight to be afforded to the Judgment, the Applicant drew particular attention to a number of points. The matters which formed the subject matter of these proceedings were investigated in immense detail by the Election Court. The trial lasted approximately seven weeks. The volume of documentary evidence was vast and the Commissioner heard evidence from numerous witnesses (the transcript of the oral evidence, according to the Respondent, runs to 4,224 pages). The Respondent had every opportunity to put forward his case in the Election Court proceedings. There were detailed pleadings served and he knew exactly the case he had to meet. He served four witness statements in response to the claim and adduced evidence from countless other witnesses. The Respondent was represented throughout by a legal team which included leading and junior counsel. The Respondent gave oral evidence over four days. The Commissioner had the considerable advantage of seeing him being cross examined and assessing his credibility and demeanour.

48. The Commissioner had over fifty years of experience as an advocate. He was called to the Bar in 1964 (having been appointed the Eldon Law Scholar in 1964), and he was appointed Queen's Counsel in 1986. He was appointed as a Deputy High Court Judge in 1995 and was the country's senior and most experienced Election Commissioner. The Commissioner applied the criminal standard of proof on all of the issues which are relevant to these proceedings. The Commissioner adopted a combined adversarial and inquisitorial approach which meant that he was more interventionist than would normally be the case in civil proceedings. The Judgment itself was a hugely impressive document. It was lengthy, detailed and meticulous. It was quite obvious that the Judgment was the product of an enormous amount of time and effort, and a careful and balanced consideration of all of the evidence. In its 200 pages and 686 paragraphs, each of the factual and legal issues was carefully analysed. To borrow an expression used in the Judgment (used to describe the Petitioners' counsel), one might fairly describe the Judgment as a "complete tour de force".

49. Mr Levey further relied on the case of Choudry v Office for the Supervision of Solicitors [2001] EWHC Admin 633 in which the High Court had considered the propriety of the decision of the Tribunal to admit a Court of Appeal Judgment of proceedings in which Mr Choudry had been found to be dishonest. It was held that the decision to admit that Judgment was correct and that "the judgment of the Court of Appeal was prima facie proof of facts which, if established, constituted an overwhelming case against the appellant in relation to the complaint brought against him." Mr Choudry had sought to appeal that decision but was refused permission to do so (Choudry v the Law Society of England and Wales [2001] EWCA Civ 1665).

50. The Applicant invited the Tribunal on the Election Court evidence (both the Judgment and the underlying documents) to find the allegations of professional misconduct proved to the requisite standard. Through his conduct, the Respondent had done enormous damage to the reputation of the profession. Not only had he been found guilty of the most serious offences of election fraud, but he was a prominent figure whose misconduct has been a matter of considerable public interest. The Tribunal would need to consider whether the presumption of guilt was rebutted by anything that the Respondent had said or produced. The Respondent had played a full part in the Election Court proceedings and his case in those proceedings had been fully put. He had had every opportunity to put his case in these proceedings and had filed an Answer and an Amended Answer. The Applicant's position was that nothing in those documents undermined the conclusions that the Election Court had reached.

The Respondent's Case

51. The Applicant stated in its Rule 5 statement: "The EC [Election Court] made clear that it was settled law that the EC must apply the criminal standard of proof, namely proof beyond reasonable doubt to the charges of corrupt or illegal practices". It was not accepted that this was settled law, in any event this was not an issue which needed to be decided before the Tribunal, the primary issue was that one of the reasons the Respondent did not accept the Judgment of the Election Court was because it failed to apply the criminal standard of proof properly. It was submitted a proper application of the standard of proof would have led to the inescapable conclusion that the facts were not proved against the Respondent. The evidence considered by the Election Court and produced by the petitioner included inadmissible hearsay, witness statements tendered by anonymous witnesses and documents derived from sources which were unclear and unreliable.

52. The approach of the Applicant and the fact that it relied entirely on the decision of another court meant that in these proceedings, the Tribunal would need to consider Rule 15 of SDPR "Previous Findings of Record". Rule 15 (1) – (4) state:

> "(1) In any proceedings before the Tribunal which relate to the decision of another court or tribunal, the following rules shall apply if it is proved that the decision relates to the relevant party to the application.
>
> (2) A conviction for a criminal offence may be proved by the production of a certified copy of the certificate of conviction relating to the offence and proof of a conviction shall constitute evidence that the person in question was guilty of the offence. The findings of fact upon which that conviction was based shall be admissible as conclusive proof of those facts save in exceptional circumstances.
>
> (3) The finding of and penalty imposed by any tribunal in or outside England and Wales exercising a professional disciplinary jurisdiction may be proved by producing a certified copy of the order, finding or note of penalty in question and the findings of fact upon which the finding in question was based shall be admissible as proof but not conclusive proof of the facts in question.

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

53. It was submitted for these reasons, Rule 15 (4) SDPR makes it clear that the Tribunal was not and should not be bound by a previous decision from a civil jurisdiction. It was submitted that the question of whether a previous civil judgment should be admitted and/or the question as to what extent it assists in proving the allegations should be determined by:

- Fairness of those proceedings
- Quality of evidence relied on against the respondent
- Any evidence beyond the judgment which corroborates the findings
- Any evidence beyond the judgment which undermines the findings
- Where (d) applies the reliability of this evidence
- The extent to which the respondent is able to challenge the decision

54. In these circumstances the Respondent invited the Tribunal to consider the allegations afresh. For the avoidance of doubt, the Respondent did not accept any part of the Election Court's findings, for the reasons cited above.

The Tribunal's Decision

55. The Tribunal would apply Rule 15(4) of the SDPR and treat the Election Court Judgment as proof but not conclusive proof of the findings of facts upon which that Judgment was based. At a previous hearing the Applicant accepted that this was the correct approach and then counsel for the Respondent had also accepted that this was the correct approach. The parties' positions did not seem to have altered. The Tribunal was aware that the Respondent did not accept any part of the Election Court's findings.

56. The Tribunal determined that it was a matter for it, in reaching its findings' to evaluate all of the evidence before it and to decide how much weight to give to the Election Court Judgment.

57. The Judgment was that of a civil court and as such it was proof but not conclusive proof. The Tribunal considered the facts independently on the basis of all of the evidence before it including the Respondent's Answer, Amended Answer and witness statements in the Election Court proceedings. The Tribunal in reaching its conclusions searched the materials before it for any evidence that undermined the Election Court's findings. Where the Respondent's evidence contradicted the Election Court's conclusions the Tribunal examined the quality of the evidence and decided which evidence it preferred. The Tribunal considered the conflict between Mrs Cohen's evidence and the Respondent's evidence and made its own assessment that it preferred Mrs Cohen's evidence and that it concurred with the Election Court's conclusions in respect of the fact that Mrs Cohen was a truthful witness.

58. The Respondent had denied the allegations in these proceedings. There was a lack of specificity as to why the allegations were denied, instead there was a wholesale rejection of the Election Court's findings and an allegation that that Court was prejudiced against him. There was no evidence to support that allegation. The Commissioner was exceedingly experienced, his Judgment was thorough and careful and he had not found all the matters alleged against the Respondent in the Election Court proceedings proved.

59. The Judicial Review proceedings had taken their course. There was no reason for the Tribunal to reduce the weight it placed on the Election Court Judgment due to the existence of the proceedings on the one unrelated ground of spiritual influence. The decision as to whether or not there had been criminal activity was a different consideration and test to whether or not the Respondent had committed professional misconduct.

60. The Tribunal afforded the Election Court Judgment considerable weight, its author was an officer of the court and extremely experienced. He had been meticulous in his approach. However, the Tribunal did not simply accept its findings and undertook its own full and unbiased examination of all of the evidence before it. As set out below, the Tribunal did not accept all of the factual assertions against the Respondent in these proceedings. On some points where the evidence had been sufficient for the Election Court purposes it was not sufficient for the Tribunal to make a finding.

61. **Allegation 1.1 - By a Judgment of an Election Court dated 23 April 2015, he was found personally guilty of:**

a) an illegal practice, contrary to s.106 of the Representation of the People Act 1983 ("the 1983 Act");

b) a corrupt practice, contrary to s.113 of the 1983 Act;

and thereby he failed to:

1.1.1 uphold the rule of law and the proper administration of justice, in breach of Principle 1 of the SRA Principles 2011 ("the Principles");

1.1.2 act with integrity, in breach of Principle 2 of the Principles;

1.1.3 behave in a way that maintains the trust the public places in him and in the provision of legal services, in breach of Principle 6 of the 2011 Principles.

The Applicant's Case

61.1 The Election Court said, amongst other things, the following:

> "Consequently the claim that Mr Biggs was a racist was always false and, put in that stark form, Mr Rahman knew it was false. For what it is worth, the Court has grave doubts as to whether even Mr Choudhury ever really believed Mr Biggs was a racist. He made exaggerated and ever more absurd allegations

in the witness-box and his astonishing outburst in the Council Chamber in the "black cardigans" episode equally shows him to be lacking in self control. The Court has no doubt, however, that, in compiling the press release of 23 April 2014 Mr Choudhury knew exactly what he was doing and what he was doing was deliberately concocting a wholly dishonest case for proclaiming Mr Biggs a racist, based on a distortion of a nineteen year old document" (Paragraph 449, page 137).

"The Court is satisfied, therefore, to the requisite standard that the press release of 23 April 2014 contained false statements concerning the personal character and conduct of Mr Biggs and that Mr Rahman did not have a genuine belief in the truth of those statements and neither he nor Mr Choudhury had any reasonable grounds for belief in their truth" (paragraph 450, page 137).

"Consequently, even if Mr Penny's (Leading Counsel for the Respondent in the Election Court proceedings) arguments as to the effect of s.118 A of the 1983 Act were to be correct and the court were restricted to statements made on or after 14 April 2014, both the press release of 15 April and the press release of 23 April 2014, whether viewed in isolation from what went before or even in isolation from each other, were both breaches of s 106 of the 1983 Act. On this aspect, therefore, the Petitioner's case succeeds". (Paragraph 451, page 137)

61.2 It was important for the Tribunal to understand how the Respondent and Mr Choudhury (who was the Respondent's Election Agent) operated. The Election Court stated:

"In describing Mr Choudhury as Mr Rahman's right-hand man, perhaps the slang term 'hatchet man' would be more appropriate. The modus operandi of the two men would be that Mr Rahman would retain a statesmanlike posture, making sure that he always said the right thing – particularly in castigating electoral malpractice – while what might be called the 'dirty work' was done by Mr Choudhury. This was especially apparent in the campaign against Mr Biggs which will be discussed below, in which, on the surface at least, Mr Choudhury would be responsible for the attempted character-assassination of Mr Biggs while Mr Rahman claimed to have had no input into – indeed, on occasion, not even to have read – the press release put out in his name." (Paragraph 251, page 82).

61.3 The contents of the press release dated 23 April 2014 was set out in the Election Court Judgment. The Election Court summarised the contents of the press release and that which it was intended to convey, namely:

a) John Biggs was a racist;

b) his colleagues in the Labour Party had known he was a racist for 20 years;

c) he was denounced as a racist in a "Labour Party memorandum" 20 years ago;

d) he was expressly called a racist by a prominent member of the Labour Party, now an Oxford Professor;

e) he was involved in producing an "inflammatory" (in the context, meaning "racist") leaflet.

61.4 The Election Court went on to say:

> "At this point, the question has to be posed; Is Mr Biggs a racist in the way that any ordinary person would understand the term? I need waste little time on this. Mr Biggs's political record speaks for itself and I have had the advantage of seeing Mr Biggs give evidence under testing cross-examination.
>
> At the end of the day, not even Mr Rahman's counsel was prepared to argue that Mr Biggs was a racist. The highest he was able to put it was that, from time to time, Mr Biggs makes remarks which his political opponents claim are "racially insensitive". And Mr Rahman himself was not prepared to call his opponent a racist. One may trawl through Mr Rahman's lengthy witness statements but nowhere will one find a statement remotely approaching an expression of belief that Mr Biggs is a racist. When faced in the witness-box with a straight question from the court as to whether he considered Mr Biggs a racist, Mr Rahman, as was his wont, evaded the question and commenced a lengthy discourse on the subject of Mr Biggs's unfortunate remarks.
>
> In short, neither Mr Rahman nor his counsel was prepared to say "John Biggs is a racist".
>
> Consequently the claim that Mr Biggs was a racist was always false, and, put in that stark form, Mr Rahman knew it was false". (Paragraphs 446 – 449, pages 136 – 137).

61.5 If the Tribunal concluded that Mr Biggs was a racist then the allegation would fall away as what was said would have in fact been true. However, there was no evidence that he was a racist.

61.6 The Election Court considered two aspects in the case of bribery:

a) the substantial grants made by the Council to organisations representing or serving the Bangladeshi or other Muslim communities;

b) the use of Council money to pay a Bengali language television channel and its chief political correspondent to promote the Respondent's campaign.

61.7 The Election Court found as follows:

> "What has been proved may be summarised as follows:
>
> a) the administration of grants was firmly in the personal hands of Mr Rahman, assisted by his two cronies, Councillors Asad and Choudhury;

b) in administering the grant policy, Mr Rahman acted in total disregard of the Council's officers, its members and, almost certainly the law;

c) grants were increased, substantially and unjustifiably, from the amounts recommended by officers who had properly carried out the Council's investigation and assessment procedure;

d) large grants were made to organisations who were totally ineligible or who failed to meet the threshold for eligibility;

e) grants were made to organisations that had not applied for them;

f) the careful attempts of PwC to marry up grants to ascertainable levels of deprivation and need in the Borough had resulted in the conclusion that it was impossible to do so; grants were not based on need;

g) the lion's share of grants went to organisations that were run by and/for the Bangladeshi community;

h) the main thrust of Mr Rahman's political campaigning both as leader of the Council and late as Mayor was to target the Bangladeshi Community and to convince that community that loyalty to the community meant loyalty to him;

i) even within the Bangladeshi Community grants were targeted at the wards where support for Mr Rahman and his candidates were strongest whilst wards where their chances of success were slim lost out".

61.8 The Election Court found:

> "A man in control of a fund of money, not his own, who corruptly uses his control to make payments from the funds for the purposes of inducing people to vote for him is, in the judgement of the court, within the opening words of S.113(2) and thus guilty of bribery" (paragraph 499, page 152).
>
> "It follows that the Court is satisfied that the conduct of Mr Rahman and his agents Mr Asad and Mr Choudhury in making grants does amount to the corrupt practice of bribery under s.113 of the 1983 Act". (Paragraph 500, page 152).

61.9 In her witness statement dated 15 November 2017 Mrs Cohen explained that she was from October 2009 - September 2014, Service Head Commissioning and Strategy (later Service Head for Commissioning and Health) at the London Borough of Tower Hamlets. She had made two witness statements dated 18 January 2015 and 1 February 2015 in the Election Court proceedings and had given oral evidence in those proceedings. One of her functions at the council was overseeing the grants programmes in Adults and the commissioning of social care services from third party suppliers/providers.

61.10 Mrs Cohen gave evidence to the Election Court regarding two particular incidents. The first occurred in 2013 when the Respondent was involved in reducing proposed grants to useful programmes (such as grants to the Alzheimer's Society) in order to free substantial funds for organisations which were either illegible for grants or eligible only for modest grants based on pre-set grant allocation criteria. Initially council officers had made recommendations. Councillors Choudhury and Asad had asked Mrs Cohen for the document containing the recommendations saying that they needed to show it to the Respondent. One week later Councillors Choudhury and Asad came back to Mrs Cohen and dictated the grant decisions to her. The officers' recommendations and the basis for them were not merely ignored but reversed. Mrs Cohen's evidence was that whilst the grant decisions were dictated to her by the Councillors it was her understanding that the Respondent had made the decisions.

61.11 The second incident was in December 2013 when the Respondent asked to see all organisations that had been short listed at pre-qualification questionnaire stage of the retender of domiciliary care contracts. At the meeting in December 2013 the Respondent handed Mrs Cohen a list with crosses marked against those whom he had decided to exclude. There was a grants spreadsheet that showed the crosses written by the Mayor. There were also handwritten and typed contemporaneous notes in respect of Mrs Cohen's meeting with her line manager following the meeting with the Respondent. This recorded that the Respondent's actions had been totally inappropriate and outside of procurement. The note recorded that Mrs Cohen had found the meeting really difficult and had felt quite shaky. She had found it impossible to challenge what the Respondent was asking her to do in front of two other councillors.

61.12 In relation to the allegation of bribery and the media the Election Court said:

> "Mr Rahman caused the Council to pay public money by way of fees for broadcasts which were ostensibly about the Borough and its administration but which were in fact personal political broadcasts on behalf of Mr Rahman, promoting him to the Bengali speaking electorate of Tower Hamlets. In the context that Mr Rahman fully intended to stand for re-election when his first term of office expired, the broadcast cannot be regarded as other than intended to promote his political career. Furthermore, despite earlier adverse rulings from Ofcom, both Mr Rahman and the television companies persisted in publicising Mr Rahman and earned further adverse rulings from Ofcom when they did.
>
> Channel S seems to have been a particular favour of Mr Rahman and it is noticeable that it was paid more than its 4 rival channels.
>
> Does this meet the criteria of S.113 of the 1983 Act? It involves a payment made "indirectly" "by or on behalf of", Mr Rahman to "another person" in order for that person to induce voters to vote for Mr Rahman. It was undoubtedly corrupt in the sense that Mr Rahman knew that it was wrong for him to spend public money in this way and he persisted even after the initial Ofcom ruling.

In the circumstances, the Court must find that, in relation to payments to the media, Mr Rahman was guilty of bribery" (paragraphs 504 – 507, page 154)

61.13 It was well known that the Respondent was a solicitor as well as a politician. If the Tribunal found the factual basis of the allegation proved then it had to bear in mind the damage to the reputation of the profession because of the fact that it was public knowledge that the Respondent was a solicitor.

61.14 The consequences to an individual of being found guilty by himself or his agents of corrupt or illegal practices were serious. The election would be declared void. Pursuant to s.160 of the 1983 Act an individual would be incapable of: (a) being registered as an elector for any national or local election; (b) being elected to the House of Commons; and (c) holding any elective office (including being a Mayor or Councillor). Disqualification lasted in the case of corrupt practices for five years and in the case of illegal practices for three years.

61.15 The Election Court made clear that it was settled law that the Election Court must apply the criminal standard of proof, namely proof beyond reasonable doubt to the charges of corrupt or illegal practices. The Judgement explained that the general rule in election cases was that in respect of corrupt or illegal practices, a candidate was responsible for the actions of his agents, even if those actions are committed without his knowledge and consent, or, indeed, contrary to his express instructions.

61.16 Mr Levey referred the Tribunal to the decision of Lloyd Jones LJ and Supperstone J dated 21 June 2017. This recorded that the decision that there was insufficient evidence of a criminal offence was not one that had been made by the Director of Public Prosecutions. This was a decision that had been made by the Metropolitan Police Service itself. It had not considered twenty seven files of evidence that had been before the Election Court when making that decision. In March 2017 the Crown Prosecution Service and Metropolitan Police Service had agreed to undertake a further joint assessment of the files. There was no information as to the outcome.

The Respondent's Case

61.17 The allegation was denied. The Respondent had been elected as executive mayor of Tower Hamlets in 2010. He had stood as an independent candidate. In 2014 he created his own political party, Tower Hamlets First and stood for re-election. He was re-elected.

61.18 The allegations against the Respondent, as set out at paragraphs 1.1 and 1.3 of the Applicant's statement were based entirely on the civil judgment of Commissioner Mawrey QC dated 23 April 2015. The Judgment was delivered in the Election Court from which there was no statutory right of appeal. The Applicant made the point that a determination by an Election Court was final, however that was because there was no right of appeal. The Judgment like all judgments could be reviewed in the event there was evidence that the proceedings were procedurally flawed, unfair and /or the decisions made were unreasonable and/or irrational. The Respondent had been making attempts to have the decision of the Election Court

judicially reviewed. He had previously sought to have this matter adjourned pending the conclusion of the Judicial Review proceedings.

61.19 It was the Respondent's case that the decision of the Election Court, notwithstanding it was a certified judgment was flawed, unreliable, applied irrational reasoning, failed to take into account all relevant factors and failed to apply the law properly. The finding of the Judgment, specifically in relation to the Respondent's own personal conduct was not accepted. Although the Commissioner purported to apply the criminal standard of proof to the allegations, it was submitted, on a proper assessment of the evidence the findings were not proved beyond doubt. A proper application of the criminal standard of proof would have led to the conclusion that the allegations were not proved against the Respondent.

61.20 In support of this proposition, the Respondent relied on the subsequent review of the Judgment and the evidence considered in the Election Court by the Director of Public Prosecutions (DPP), following which, a decision was made that there was insufficient evidence to conclude the Respondent had in fact committed any criminal offences. A key factor in pursuing a criminal investigation is whether or not there is sufficient evidence, namely evidence that will satisfy a Tribunal so that it was sure, that a criminal offence had been committed.

61.21 The Tribunal was invited to consider two letters from the Metropolitan Police dated 22 March and 26 April 2016. It is submitted that on the basis of these letters, the Tribunal could make the following conclusions:

- having regard to the findings of the Election Court, the police conducted an assessment and review of the issues considered by the Election Court for the purposes of determining whether the Respondent did in fact commit any criminal offence;

- a Special Police Enquiry Team was convened to conduct the Review;

- as part of the assessment and review the police consulted with the DPP; (d) S.181 of the 1983 Act imposes the following duty on the DPP: "Where information is given to the Director of Public Prosecutions that any offence under this Act has been committed, it is his duty to make such inquiries and institute such prosecutions as the circumstances of the case appear to him to require".

- Following the assessment and review, the DPP concluded that the there was insufficient evidence that crimes had been committed and specifically that any election fraud or electoral malpractice had occurred.

- The Respondent has never been suspected of committing any criminal offence.

61.22 In determining whether offences have been committed the DPP had to apply the Crown Prosecution Service Public Interest Test. Paragraph 4.4-4.6 of that test concern the evidential criteria and state:

"4.4 Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.

4.5 The finding that there is a realistic prospect of conviction is based on the prosecutor's objective assessment of the evidence, including the impact of any defence, and any other information that the suspect has put forward or on which he or she might rely. It means that an objective, impartial and reasonable jury or bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a different test from the one that the criminal courts themselves must apply. A court may only convict if it is sure that the defendant is guilty.

4.6 When deciding whether there is sufficient evidence to prosecute, prosecutors should ask themselves the following:

Can the evidence be used in court?

Prosecutors should consider whether there is any question over the admissibility of certain evidence. In doing so, prosecutors should assess:

a. the likelihood of that evidence being held as inadmissible by the court;

b. the importance of that evidence in relation to the evidence as a whole.

Is the evidence reliable?

Prosecutors should consider whether there are any reasons to question the reliability of the evidence, including its accuracy or integrity.

Is the evidence credible?

Prosecutors should consider whether there are any reasons to doubt the credibility of the evidence"

61.23 It was telling that the code requires the DPP to apply the civil standard of proof in assessing the question of whether a conviction is realistic, in addition the factors taken into account concern reliability of the evidence; admissibility of the evidence; and criminal rules of procedure. The significance of the assessment and review and the findings reached could not be stressed enough in the context of these proceedings. The fact that there was insufficient evidence to suggest the Respondent has committed any criminal offences fundamentally undermined the decision of the Election Court

and seriously undermined the reliability of the allegations pursued by the Applicant before the Tribunal.

61.24 The Respondent submitted that there were procedural errors in the conduct of the Election Court trial that were so extreme as to indicate prejudice on the part of the Election Court.

61.25 The Respondent denied he engaged in illegal and/or corrupt practices. The finding of illegal practice was based on an allegation that the Respondent published a false statement, about a rival mayoral candidate, Mr Biggs, namely that Mr Biggs was a racist. The statement was contained in press releases dated 15 April and 23 April 2014. The Respondent did not make and/or publish these statements, the statements in the press release were created by Mr Choudhary, and the Respondent was unaware of the precise contents of the statement until they were published. At no time did the Respondent suggest Mr Biggs was a racist in the proceedings before the Election Court, this was never the Respondent's case. At most the Respondent accepted he suggested Mr Biggs had made racially insensitive remarks, but beyond this was there was no reliable evidence adduced to suggest the Respondent himself made and/or published a statement to this effect. The determination by the Election Court that the Respondent himself wished to run a campaign by branding Mr Biggs a racist was not based on any specific evidence but rather speculation based on the Election Court's interpretation of events leading up to the campaign. Mr Biggs was not a mayoral candidate until April 2014 and so events pre-dating this date had little relevance on the question of whether the Respondent made and/or published statements suggesting Mr Biggs was a racist at a time when Mr Biggs was a mayoral candidate.

61.26 The relevant press releases issued on behalf of the Respondent's political party were prepared, designed and published by the party's treasurer, Mr Alibhor Choudhary. The Respondent took no part in the publication of these statements and the Respondent was not aware of the statements until they were published. At the time of the election campaign, Mr Choudhary was conferred a significant degree of discretion to run the campaign and as is normal with most political campaigns, the party leader would not have been aware and /or contacted about all stages and developments in the campaign.

61.27 In his original Answer the Respondent explained that the allegation centred on a press release referring to Mr Biggs' longstanding reputation as a racist and that despite evidence in support of the Respondent's assertion that Mr Biggs was passed over as the alternative Labour candidate because of this reputation the Election Court failed to deal with this evidence and instead wrongly and untruthfully said that the whole matter was based on a twenty year old document retrieved from archives. This demonstrated the Election Court's bias against the Respondent.

61.28 In accordance with s. 106 (2) of the 1983 Act, the Respondent stated: (a) he did not authorise or consent to the illegal practice; (b) he did not fund this particular illegal practice; and (c) his election was not procured or materially assisted by these publications. The reality was that Mr Choudhary was responsible for making those publications and the Respondent's guilt was based on his mere association with Mr Choudhary. The Respondent maintained that Mr Biggs did make racially

insensitive comments, but at no time did the Respondent himself make any statement and/or authorise the publication of any statement suggesting Mr Biggs was racist, contrary to s.106 of the 1983 Act. That Act did not make solicitors professionally responsible for the conduct of people beyond their control.

61.29 The Respondent denied he committed any corrupt practices. At no time did the Respondent directly or indirectly offer any bribe in furtherance of his election campaign. The allegation and subsequent finding on this aspect of the case concerns the distribution of grants. The primary allegation was that by enabling the council to fund luncheon clubs for the old and infirm at mosques in the borough, the Respondent was bribing voters. The Respondent said that the context was that the council funded similar luncheon clubs run by religious and secular organisations. In reaching its findings the EC had erred in law and been biased against the Respondent. It was denied the Respondent distributed grants to further his election campaign and induce voters to vote for him.

61.30 All distribution of grants was carried out on a lawful and proper basis reflecting the genuine needs of the community. The grants were distributed following a decision-making process involving the Corporate Grants Board, which was not a board on which the Respondent sat. While the Respondent accepted he ultimately approved decisions to award a grant this was after due process had been followed. Councillor Miah and Councillor Choudhary held positions on the board and undertook the initial decision making concerning projects worthy of grants. This process did not involve the Respondent and there was no question of the Respondent using his position to carry out corrupt practices.

61.31 At no time did the Respondent directly and/or indirectly enter into any corrupt transaction.

61.32 The distribution of the grants was processed through the council and transmitted by the council for community needs. There was no evidence to suggest the grant distributions had anything to do with the personal election campaign of the Respondent. The grants were distributed to many worthy causes. Further, while it is accepted the Respondent was responsible for making some grant allocation decisions, this responsibility was shared, although the Respondent accepted that as executive mayor he had the last word. The Respondent himself had no part of the scrutiny process; this was Councillor Choudhary and Councillor Miah's domain. The Respondent merely accepted the board's decision. There was no reliable evidence to suggest the grant allocations undertaken by the Respondent was conduct amounting to corrupt practices.

61.33 In relation to the grant allocation to media organisations, this too was allocated for worthy causes and promoting community relations. Payments to media services had nothing whatsoever to do with the inducement of votes and there was no reliable evidence to suggest that this was the case. The decision of the Election Court was based on speculation, particularly in respect of Mr Jubair, who did not give evidence before the Election Court and notwithstanding the absence of his evidence, unsafe conclusions were drawn about the Respondent's relationship with Mr Jubair. It was submitted that the factual matrix of this allegation did not support a finding of fact contrary to s. 113 of the 1983 Act. The payments to the Bengali language TV station

for alleged political support and to the journalist did not come within s.113 of the 1983 Act and this was further evidence of bias on behalf of the Election Court.

The Tribunal's Findings

61.34 In reaching its findings the Tribunal limited its consideration to the personal actions of the Respondent. It did not consider the actions of others so it disregarded the meeting at which the two Councillors told Mrs Cohen that the crosses had been dictated by the Respondent. The Tribunal was sure that this was what Mrs Cohen had been told but could not be sure that the Respondent had actually dictated those crosses.

61.35 The Tribunal did not consider any allegation of racism in respect of Mr Biggs until the date on which he became an electoral candidate, namely 14 April 2014. This limited the evidence in this respect to the two press releases dated 15 and 23 April 2014. The former contained a quote from the Respondent, the second a quote from Councillor Choudhury. The Respondent's position was that he had not approved these press releases and that he had not had anything to do with them. The Election Court had found the Respondent personally guilty of an illegal practice contrary to s.106 of the 1983 Act. Under the 1983 Act the Respondent was personally liable for the acts of his election agent. The Election Court was best placed to assimilate and evaluate all of the evidence in this regard. The Tribunal, however, had to consider whether it was satisfied that the Respondent was personally guilty of the illegal practice in this regard. It was inconceivable that the Respondent had not known about the contents of the press releases. However, even if he had not, once they were published he did absolutely nothing to disassociate himself from them or to retract their contents and apologise. He had not expressed any regret or remorse at the time in respect of what had been said. There was an irresistible inference that the Respondent knew of the contents of the press releases and was in agreement with their production. It was inconceivable he would have given a quote for the first without knowing the contents of the press release itself.

61.36 The Respondent had not been prepared to say that Mr Biggs was a racist in the proceedings before the Election Court. There was no evidence before the Tribunal that Mr Biggs was a racist. The Election Court had not found him to be a racist. The content of the press releases was false and the Respondent knew the content to be false. As such he was personally guilty of an illegal practice under s.106 of the Act. He did not have a genuine belief in what was said. The factual matrix underpinning allegation 1.1 (a) was proved beyond reasonable doubt.

61.37 In respect of the allegation 1.1 (b) and corruption, this allegation was two-fold. Firstly it related to the grants and secondly to the Respondent's use of public money for his own political promotion. The Election Court had not found the two Councillors, Choudhury and Asad to be credible. It was more likely than not that when they told Mrs Cohen that the crosses placed on the sheet were the Respondent's, they were telling the truth but the Tribunal could not be sure that these had been made by the Respondent – the evidence that they had been, came from two unreliable sources. However, on the evidence of Mrs Cohen the Tribunal was sure that the crosses on the sheet from her meeting with the Respondent were the Respondent's crosses and that in allocating funds in this manner the Respondent had been guilty of a corrupt

practice. Both the Election Court and the Tribunal had found Mrs Cohen to be a credible and truthful witness and the Election Court had found the Respondent, whom it had heard substantial evidence from, to be untruthful. The Respondent had ultimately been the sole controller of the grant funds and had allocated these for his personal benefit.

61.38 There was no evidence that Mr Jubair had undertaken any work on behalf of the London Borough of Tower Hamlets despite the council's funds being used to make payment to him. The publicity promoted the Respondent personally and not the borough. This was a misuse of public monies for the personal promotion of the Respondent for the furtherance of his political ambitions. The Respondent had denied the allegation and did not accept the Election Court's findings. His denials lacked specificity and he had not produced any evidence to show that the Election Court's conclusions had been wrong. The factual matrix underpinning allegation 1.1 (b) was proved beyond reasonable doubt.

61.39 Having concluded that the Respondent had been personally guilty of illegal and corrupt practices under the 1983 Act the Tribunal considered whether or not he had breached Principles 1, 2 and 6 as alleged. If a solicitor engaged in corrupt and illegal practices they could not be said to be upholding the rule of law and the proper administration of justice. Principle 1 had been breached. The Respondent had not behaved in a way that maintained the trust that the public placed in him and in the provision of legal services. There had been significant reference in the press to the fact that the Respondent was a solicitor and this was not the behaviour the public would expect of a solicitor or of a public servant. Principle 6 had been breached.

61.40 The Tribunal considered whether or not the Respondent had acted with integrity. In doing so the Tribunal considered the definition of integrity in Hoodless and Blackwell v FSA [2003] FSMT 007 and the decision in Scott v Solicitors Regulation Authority [2016] EWHC 1256 (Admin). In that case Sharp LJ endorsed what Davis LJ had said in SRA v Chan and ors [2015] EWHC 2659 namely:

> "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."

61.41 The Tribunal was an expert Tribunal and, by reference to the facts found proved in respect of allegation 1.1, the Tribunal was sure that the Respondent had not acted with integrity. No solicitor of integrity could be found by any court to have engaged in corrupt and illegal practices. Principle 2 had been breached.

61.42 Allegation 1.1 was proved in full, beyond reasonable doubt.

62. **Allegation 1.3 - His evidence to the Election Court attracted adverse criticism from the Court and thereby he failed to:**

1.3.1 uphold the rule of law and the proper administration of justice, in breach of Principle 1 of the Principles;

1.3.2 act with integrity, in breach of Principle 2 of the Principles;

1.3.3 behave in a way that maintains the trust the public places in him and the provision of legal services in breach of Principle 6 of the Principles.

The Applicant's Case

62.1 The Respondent gave evidence for four days to the Election Court. A transcript of the Respondent's evidence was before the Tribunal. The Tribunal could make a finding that the Respondent did give evidence as described by the Commissioner. The Election Court was critical of the Respondent's evidence and said, amongst other things:

> "Although faced with searching, hostile and, it must be said, occasionally mildly offensive questioning, Mr Rahman was unfailingly courteous and polite. With regret, that is the only positive thing that can be said about his evidence" (paragraph 294, page 96).
>
> Faced with a straight question, he proved himself almost pathologically incapable of giving a straight answer. He was also extremely discursive so that his non-answer to the question would often ramble on until interrupted by a repetition of the question or, occasionally, an attempt (normally unavailing) for the court to obtain an answer by re-phrasing the question. Mr Hoar's complaint that the length of his cross-examination was due to the failure of Mr Rahman to answer questions was by no means unjustified (paragraph 296, pages 96 – 97).
>
> In short, Mr Rahman was evasive and discursive to a very high degree (paragraph 297, page 97).
>
> Sadly, it must also be said that he was not truthful. In one or two crucial matters he was caught out in what were quite blatant lies. They will be instanced at the appropriate point in the judgement (paragraph 298, page 97).
>
> On matters that were uncontroversial (largely matters of past history) I saw no reason not to accept his account as being substantially correct. On any matter that was controversial, however, I felt obliged to treat his evidence with considerable caution and, in most instances, where his evidence conflicted with that of other witnesses, I preferred their testimony to his. (Paragraph 299, page 97).
>
> Again, and with regret, it must be said that his grip on reality was not always 100%. This judgement has already instanced his long-running fantasy that tomorrow would bring an invitation to re-join the Labour Party. His evidence as a whole displayed a tendency to close his mind to any version of the facts that did not accord with his world-view. (Paragraph 300, page 97).
>
> Though it genuinely pains me to say so, I did not find Mr Rahman to be a reliable witness". (Paragraph 301, page 97).

62.2 The Election Court found in certain instances that the Respondent had not been truthful. In relation to the issue of the payment of grants, the Election Court referred to evidence of Mrs Cohen who, at the relevant time, was a senior officer of Tower Hamlets Council. One of her functions at the time was overseeing the grants programmes in her field. Mrs Cohen was called by the Petitioners to give evidence before the Election Court and she also gave evidence before the Tribunal.

62.3 The Election Court found, amongst other things:

> "What is important is the evidence of Messrs Rahman, Asad and Choudhury who denied that the meeting had ever taken place and asserted that the contemporaneous documents, including the list with the "Xs" were false and concocted. These allegations were put to Ms Cohen in cross examination by Mr Penny, with increasing desperation, as it became obvious that Ms Cohen was a totally honest witness. (Paragraph 477, page 146).
>
> In order to justify the attack on her, it was suggested, both in cross examination and in the evidence of Mr Rahman and Mr Choudhury, that Ms Cohen was lying because she bore the administration a grudge either for not promoting her or, though the evidence on this was very confused, for criticising her for delays in signing contracts.
>
> Having heard the evidence of Ms Cohen, Mr Rahman, Mr Asad and Mr Choudhury on these instances, I had not the slightest doubt that Ms Cohen was telling the court the truth and that the three men were quite deliberately lying" (paragraph 478 – 479, page 146).

62.4 The Election Court went on to say:

> "The importance of her evidence, however, goes beyond the narrow issues of the two incidents described. Faced with evidence about incidents which might, on one view, be peripheral to the central case, the men involved could have attempted to explain them away or to adopt Mr Penny's line of questioning the importance or relevance of the incidents. They did not choose to go down this route.
>
> Instead, they chose to lie and lie blatantly and to instruct counsel to make wholly gratuitous allegations of perjury and forgery against a blameless civil servant (paragraph 482, pages 147).
>
> Given that, on these and other issues, the court has been asked to accept the evidence of Mr Rahman and Mr Choudhury as being truthful, it is not without significance that they have been caught out in obvious and ultimately, unnecessary falsehoods" (paragraph 483, page 147).

62.5 Mrs Cohen's evidence to the Tribunal was that at the hearing before the Election Court, the Respondent denied that the meeting about the Domiciliary Care contracts had ever taken place and suggested that the contemporaneous documents including the list of domiciliary organisations with his annotations (the crosses against

specific organisations), were false and concocted. Those allegations were put to Mrs Cohen in cross-examination by leading counsel instructed by the Respondent. It was suggested to her in cross examination that she was lying about the grants meeting and the domiciliary care meeting, and that the latter had not even taken place, and that she was lying on oath when she gave evidence about these two matters. It was suggested to Mrs Cohen in cross examination that she was lying because she bore a grudge against the administration which she said was categorically not the case. Her alleged reasons for lying (which she denied) were that she was politically motivated or because there had been criticisms of her due to delays in signing contracts (which she said had been due to the Mayor not her). In Mrs Cohen's view the way in which this had been done was in breach of procurement legislation and unlawful.

62.6 Mrs Cohen found the experience of being cross examined in a public hearing on the basis that she was a liar extremely upsetting and extremely stressful. Through his counsel, the Respondent made wholly gratuitous allegations that she was lying to the Election Court. Mrs Cohen's evidence was that she was an honest person and that she was extremely shaken up by the entire experience, which she found humiliating and a challenge to her professional integrity. The evidence she gave to the Election Court was true in all respects to the best of her knowledge and belief. As the Respondent well knew the events which she described in her evidence to the Election Court did take place, and the Election Court subsequently made findings to that effect in its Judgment.

62.7 As regards the allegation that the Respondent lied to the Election Court, the Applicant did not only rely on the findings Judgment of the Election Court; the Applicant submitted that Mrs Cohen's evidence demonstrated, entirely independently of the Judgment, that the Respondent lied to the Election Court.

62.8 In relation to another incident, concerning the Respondent's attendance at a wedding and that which occurred at the event, the Election Court found the account given by the Respondent and another witness was sabotaged by the fact that at weddings, people take videos. A video turned up showing the speeches and a translation was provided. This showed a very different series of events than that depicted by the Respondent in his evidence to the Election Court. He had denied that he had used the occasion to influence electors to vote for him and had said that to do so would have been highly insulting to the bride and groom. The video showed that he had made a lengthy speech during which he had encouraged people to vote for him.

62.9 Overall, the Election Court did not find the Respondent to be a reliable witness. Given the adverse criticism of the Election Court as to his evidence, the Respondent failed to:

a) uphold the rule of law and the proper administration of justice;
b) act with integrity;
c) behave in a way that maintains the trust the practice places in him and the provision of legal services.

62.10 The allegation was that the Respondent acted without integrity in relation to his untruthful evidence. This was a very serious matter. Acting without integrity had often led to a solicitor being struck off even where there was no finding of dishonesty,

for example in Bolton v Law Society [1994] 1 WLR 1286 and Emeana v Law Society [2013] EWHC 2130 (Admin).

The Respondent's Case

62.11 The allegation was denied.

62.12 The Respondent accepted that his evidence attracted adverse criticism however it was denied the Respondent's evidence was dishonest. The Commissioner's view of the Respondent's evidence was wrong, unfair and unjustified. The Respondent at all times and in good faith answered questions honestly in what were on occasions very difficult and hostile circumstances.

62.13 In making the observations he had, the Commissioner relied on unsafe inferences and conclusions he had drawn from the evidence. This was consistent with the Commissioner's failure to properly apply the criminal standard of proof, which if applied properly would have exonerated the Respondent. The Commissioner's judgment displayed a clear disliking for the Respondent and also demonstrated the Commissioner's failure to consider other innocent reasons why apparent inconsistencies in the evidence may have arisen. The Commissioner failed to consider the other possible reasons and thereby characterised the Respondent as an unreliable witness when it was not proper and/or fair to do so.

The Tribunal's Findings

62.14 Allegation 1.3 was that the Respondent's evidence to the Election Court attracted adverse criticism from the Court. The Respondent himself had accepted that his evidence had attracted adverse criticism. The Commissioner's findings in respect of the Respondent's evidence were stark, strong and widely reported.

62.15 The allegation as pleaded in the Rule 5 Statement was based on the Respondent's evidence in relation to the grants and Mrs Cohen and his conduct at a wedding.

62.16 The Tribunal had had the advantage of hearing from Mrs Cohen. It preferred her account of the meeting with the Respondent to his account. The Tribunal considered Mrs Cohen was a reliable and credible witness and concurred with the Commissioner's conclusions in respect of these events. The allegations of impropriety that the Respondent had made against her in the Election Court proceedings had clearly had a very significant impact on her. To pursue such allegations against a professional person who was simply doing their job had rightly attracted significant adverse criticism from the Election Court. The Respondent's position had shifted once he became aware of the contemporaneous notes that Mrs Cohen had produced. To knowingly accuse Mrs Cohen of lying when he knew she was telling the truth - because they had both been at the meeting when he had entered the crosses on the sheet - did not uphold the rule of law and the proper administration of justice, in breach of Principle 1 of the Principles.

62.17 Nor was this behaviour that maintained the trust that the public placed in the Respondent and the provision of legal services. It was irrelevant that the conduct was not in the course of the Respondent's practice as a solicitor. It was well-known that he

was a solicitor and he had high standards expected of him as a solicitor. His behaviour could only have significantly undermined and damaged the trust that the public placed in him and in the provision of legal services. He had acted in breach of Principle 6. He had also failed to act with integrity in breach of Principle 2. No solicitor of integrity would conduct himself in a manner that attracted such adverse criticism from a court.

62.18 There had been a dispute about what had and had not been said at the wedding. The video of the wedding was conclusive proof that the Respondent had used the wedding for political purposes. It was not clear why he had lied about having done so but he had lied about this and this had attracted adverse criticism from the Election Court. In lying to a court as to what he had and had not said at the wedding the Respondent had not upheld the rule of law and the proper administration of justice. He was an officer of the court. The public would not expect a solicitor to lie to the court. No solicitor acting with integrity would have done so. The Respondent had breached Principles 1, 2, and 6.

62.19 The Tribunal had carefully, independently and dispassionately looked at the Election Court Judgment. The Respondent's actions had attracted adverse criticism from that Court and there was no evidence before the Tribunal that could begin to justify what the Respondent had done and to counter the Election Court's powerful criticism of him. Allegation 1.3 was proved, beyond reasonable doubt.

63. **Dishonesty**

The Applicant's Case

63.1 The Applicant alleged that the Respondent was dishonest in respect of allegation 1.1. Dishonesty was pleaded in the Rule 5 Statement on the basis that the Respondent's actions were dishonest according to the combined test laid down in Twinsectra Ltd v Yardley and Others (2012) UKHL12 which required that a person had acted dishonestly by the ordinary standards of reasonable and honest people and that he realised that by those standards he was acting dishonestly. The allegation was based on the fact that the Respondent was found personally guilty of corrupt and illegal practices and that the Election Court had applied the criminal standard of proof in relation to those charges.

63.2 By the time of the hearing the decision of the Supreme Court decision in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 had been handed down and the test for dishonesty test in regulatory proceedings was:

> "When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that

the defendant must appreciate that what he has done is, by those standards, dishonest."

63.3 The Applicant submitted that this was the test to be applied by the Tribunal in considering the allegation of dishonesty. In a letter to the Respondent dated 21 November 2017 Mr Goodwin had advised the Respondent that the Applicant would be inviting the Tribunal to apply the test in Ivey; that his conduct was dishonest by the ordinary standards of reasonable and honest people and stated that "the circumstances of the case show that you realised by those standards you were acting dishonestly but proof of such realisation is not necessary to prove dishonesty."

63.4 Mr Levey submitted that knowingly making a false statement had to be dishonest. The Election Court had found that the Respondent had made a false statement and that he knew it was false as he had no genuine belief that it was true. Making a false allegation that someone was a racist in a press release was one of the most serious allegations that could be made. Making that allegation knowing it was not true had to be dishonest.

The Respondent's Case

63.5 The allegation was denied.

The Tribunal's Findings

63.6 The Tribunal reminded itself that there was no allegation of dishonesty in respect of allegation 1.3. The allegation of dishonesty was in respect of allegation 1.1 alone. Allegation 1.1 was that by a Judgment of an Election Court dated 23 April 2015, the Respondent was found personally guilty of an illegal practice, contrary to s.106 of the 1983 Act and a corrupt practice, contrary to s.113 of the 1983 Act and that this was a breach of Principles 1, 2 and 6. This allegation had been found proved.

63.7 The Tribunal had evidence before it that the Election Court had found the Respondent personally guilty of an illegal practice and a corrupt practice. The question that the Tribunal had to ask itself was in respect of the conduct giving rise to the illegal and corrupt practice was the Respondent's conduct dishonest applying the test for dishonesty as set out in Ivey.

63.8 The first question was what was the Respondent's actual state of knowledge or belief as to the facts? The allegation of dishonesty related to the assertion that Mr Biggs was a racist and bribery. The Respondent in his evidence to the Election Court and Tribunal did not state that Mr Biggs was a racist. The press release of 23 April 2014 did. The Tribunal concluded that the Respondent did not genuinely believe that Mr Biggs was a racist.

63.9 The Respondent as elected Mayor since 2010 would have known there was a proper process for the allocation of grants and restrictions on the use of council funds for media purposes. The Respondent could not genuinely have believed that he could decide which organisations should be awarded grants by choosing which organisation to enter a cross next to on a list. He had not followed proper process. The allocation of

grants was to give him an advantage in the run up to the Mayoral election to ensure that he was re-elected.

63.10 The Respondent could not genuinely have believed that public money could properly be used for his own political promotion. The publicity promoted the Respondent personally and not the borough. It had been paid for using council funds. The Tribunal was sure that the Respondent knew what he was doing and that he should not have done it. Corrupt practices were inherently dishonest.

63.11 The Tribunal had to ask itself whether in light of the Respondent's actual state of mind as to knowledge or belief as to facts was his conduct was honest or dishonest by the standards of ordinary decent people. The Respondent had personally undertaken corrupt and illegal practices for his own advantage knowing that what he said was not true and that he was not following proper process. This was the complete opposite of the honest behaviours that ordinary decent people would expect. Given the Respondent held public office at the time ordinary decent people would, in the Tribunal's view, have had even higher expectations of the Respondent. In light of the conclusions that the Tribunal had reached as to the Respondent's state of mind and knowledge the Tribunal concluded that this conduct was dishonest by the standards of ordinary decent people.

63.12 Allegation 2 was proved, beyond reasonable doubt.

Previous Disciplinary Matters

64. There were no previous disciplinary matters.

Mitigation

65. In his letter of 15 December 2017 the Respondent stated:

> "However if the SDT proceeds in my absence and findings are made against me but before any sanctions are made I would be grateful if the Bench would kindly consider the fact that Commissioner Mawrey suspended me from holding any public office for a period of five years from the 23rd of April 2015 until the 23rd April 2020. After 23rd of April 2020 therefore technically I could stand for any public office including for the office of Mayor. I would request therefore that if findings and sanctions are made against me in my absence such sanctions do not exceed the sanctions imposed by Commissioner Mawrey. As I have said previously I am still contesting the Commissioner Mawrey judgement by way of appeal/JR in the Court of Appeal. I have a good chance of success."

Sanction

66. The Tribunal referred to its Guidance Note on Sanction (Fifth Edition - December 2016) when considering sanction.

67. The Respondent's culpability for his misconduct was at the highest level. He had been motivated by power and status. His actions were planned and he had acted in breach of a position of trust. It appeared to the Tribunal that the Respondent had positioned himself for his own benefit and to protect his interests and secure his power base. He had direct control of and responsibility for the circumstances giving rise to the misconduct. He was an experienced solicitor having been admitted in 1997. He had caused significant harm by his misconduct to Mrs Cohen and all those involved in the Election Court proceedings.

68. The Respondent had been found guilty by the Election Court of corrupt and illegal practices. He had been barred from holding public office. It was well known that the Respondent was a solicitor. This would have had a significant detrimental impact on the reputation of the profession and how the public perceived the profession. His conduct was a complete departure from the standards expected of a solicitor. Mrs Cohen had been directly affected by his misconduct; she had been accused of perjury but found by the Election Court to be honest. She had been a local government officer doing her job. Mr Biggs had been falsely accused of racism. The extent of the harm caused by the Respondent's misconduct had stained the character of the profession and dented the faith that the public, and in particular those in Tower Hamlets, placed in the profession. The harm was both intended and might reasonably have been foreseen to be caused by the Respondent's misconduct. The harm caused by the Respondent's misconduct was orchestrated and deliberate. It was at the highest level.

69. Dishonesty had been alleged and proved. The misconduct was deliberate, calculated and repeated. It had continued over a period of time. Whilst Mrs Cohen was not a vulnerable person she was an employee of the local authority of which the Respondent was Mayor. His behaviour meant that she had had to "whistle blow" and it was clear from her evidence that the Respondent's actions had had a significant impact on her. The Respondent had been elected to represent the residents of Tower Hamlets. He had let members of that community down by his actions. His misconduct was in material breach of his obligations to protect the public and the reputation of the profession. These were all aggravating factors.

70. There were no mitigating factors. In contesting the allegations before the Tribunal the Respondent had neither demonstrated a shred of insight nor remorse into his actions. He had unnecessarily lengthened the regulatory proceedings. He had obfuscated and prevaricated. The fact that the misconduct had arisen in the context of the Respondent's political career rather than his practice as a solicitor was irrelevant.

71. In determining the seriousness of the misconduct the Tribunal concluded that the Respondent's actions were reprehensible, orchestrated, deliberate and dishonest. His misconduct struck at the heart of the democratic system of elected governance. His misconduct could best be described as grievous wrongdoing.

72. The Tribunal considered the range of sanctions available to it, commencing with No Order. Given the seriousness of the misconduct and the need to protect the public and the reputation of the profession it was clear that No Order, Reprimand, Fine and Restriction Order were insufficient sanction. Likewise, a suspension, whether fixed

term or indefinite, would not provide sufficient protection to the public or the reputation of the profession.

73. A finding of dishonesty will almost invariably lead to striking off, save in exceptional circumstances. The Tribunal determined that the seriousness of the misconduct was at the highest level, such that a lesser sanction was inappropriate. The only sanction that could protect the public and the reputation of the profession was for the Respondent to be struck off. Before finalising sanction the Tribunal considered whether there were any exceptional circumstances that meant that sanction should be reduced. The fact that the Respondent had already been barred from holding public office for a period of time as a result of the Election Court proceedings was irrelevant to the appropriate sanction in these proceedings. The two were entirely separate. There were no exceptional circumstances and the appropriate sanction was for the Respondent's name to be struck off the Roll of Solicitors.

Costs

74. The Applicant applied for its costs. At the Tribunal's request the Applicant had produced a composite costs schedule on 20 December 2017. This combined the costs schedules dated 17 July 2017 and 11 December 2017. The amount claimed had been reduced from £107,906.40 to £99,422.40. Mr Levey informed the Tribunal that this reduction reflected the fact that the hearing had lasted two and a half days not four and that the costs of the July 2017 hearing in respect of the Applicant's unsuccessful application for leave to file a Rule 7 Statement had been deducted.

75. The Respondent had been given the opportunity to adduce financial information and make submissions. He had been directed to do so on at least two occasions (namely 22 September 2016 and 23 July 2017). His bankruptcy had been discharged in November 2016. Although the Respondent had not been served with the costs schedule dated 20 December 2017 he had been served with the previous schedules and the figure claimed had been reduced.

76. Mr Levey submitted that it was perfectly proper for him to claim two brief fees, one for the abortive March 2017 substantive hearing and one for this hearing. The brief for this hearing had in fact reduced from the March figure as his level of preparation had been less. If he had not been instructed Mr Goodwin's fees would have been increased as he would have had to prepare for the hearing. Their hourly rates were the same. The fact that there had been adjournments had increased the overall costs.

77. The Tribunal decided to assess the costs that the Respondent should pay. The Division were very familiar with these proceedings and were best placed to assess the level of costs. The Application had been properly brought and it was appropriate that the Respondent pay the Applicant's costs.

78. The Respondent had not applied to adjourn the proceedings until 15 December 2017. The Applicant had had to prepare for a fully contested hearing. Given that the Respondent had made no admissions the Applicant had had to prove its case, including calling witness evidence.

79. Mr Levey had claimed brief fees for the adjourned March 2017 substantive hearing and this hearing, albeit the second brief fee was reduced. The Tribunal considered that the brief fees claimed should be reduced. Mr Levey would have been able to undertake other work in March 2017 and his level of preparation for this hearing would have been considerably less given his previous preparation accepting the time that had lapsed and the fact it was a document heavy case. The Tribunal reduced Mr Levey's fees from £29,255.00 plus VAT to £22,000.00 plus VAT.

80. The Applicant's fees had undeniably been increased by the way in which the Respondent had conducted the matter, including producing five lever arch files full of documents electronically and in no particular order for the Applicant to file at the Tribunal. Mr Goodwin was a very experienced advocate before the Tribunal and had conducted most of the case management hearings himself. The Tribunal accepted that this was a high profile case and that the Applicant had chosen to instruct counsel. However, it was not convinced that Mr Goodwin had needed to be present throughout the final hearing. The Tribunal also considered that the fifty nine hours for perusal was insufficiently particularised and should be reduced to reflect proportionality. The costs claimed by Mr Goodwin were reduced from £53,597.00 plus VAT to £50,000.00 plus VAT. This gave a total costs figure in the sum of £86,400.00 being £72,000.00 plus VAT.

81. The Tribunal proceeded to consider whether the sum awarded should be reduced in light of the Respondent's means. The Tribunal noted that the Respondent had not produced any evidence in respect of his means. He was a discharged bankrupt but that was the only information the Tribunal had about his financial circumstances. He had not complied with the Tribunal's orders in this regard and nor had he responded to the invitation to make submissions as to mitigation, sanction and costs that had been offered to him when he was informed of the Tribunal's findings. There was no application before the Tribunal for costs not to be enforced without leave of the Tribunal and there was no evidence to suggest that the Tribunal should make such an order of its own violation. In the absence of evidence that the Respondent was impecunious, the appropriate order was that he pay the costs of and incidental to this application and enquiry fixed in the sum of £86,400.00.

Statement of Full Order

82. The Tribunal Ordered that the Respondent, LUTFUR RAHMAN, 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 £86,400.00.

Dated this 18th day of January 2018
On behalf of the Tribunal

A. N. Spooner
Chairman