SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11510-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

PHILIP JOSEPH SHINER — Respondent

Before:

Miss N. Lucking (in the chair)
Mr L. N. Gilford
Mr S. Howe

Date of Hearing: 23 January – 2 February 2017

Appearances

Andrew Tabachnik, barrister of 39 Essex Chambers, 81 Chancery Lane, London WC2A 1DD, instructed by John Charles Gould, solicitor of Russell-Cooke Solicitors, 2 Putney Hill, London, SW15 6AB, for the Applicant

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The Allegations against the Respondent were as follows:

Unsolicited direct approaches to potential clients arising out of the Battle of Danny Boy

1.1 [As amended] The Respondent encouraged and authorised the making of unsolicited direct approaches to potential clients arising out of the Battle of Danny Boy, through the agency of Mazin Younis, and [Client 10], which he adopted when client instructions were forthcoming, and thereby breached paragraphs (d), (g), and (h) of the Solicitors Publicity Code 2001, Rules 1(c) and 1(d) of the Solicitors Practice Rules 1990 ("SPR 1990") and Rules 1.04, 1.06 and Rule 7 of the Solicitors Code of Conduct 2007 ("SCC 2007"). It was further alleged that the Respondent acted in breach of Rule 1(a) of SPR 1990 and Rule 1.02 of SCC 2007.

Improper agreement with Mr Younis in July 2015 intended to influence evidence from him, which was to be (and was) provided to the SRA, on whether clients had been sourced by unsolicited direct approaches

1.2 The Respondent improperly authorised and procured Public Interest Lawyers Limited to enter into an agreement in June 2015 providing financial benefits to Mr Younis in order to cause or persuade him to change his evidence on the issue of how the Al-Sweady clients (as defined below) had been identified and thereby breached Principles 2 and 6 of the SRA Principles 2011 ("the Principles"). Dishonesty was alleged, although this was not a requirement for the Allegation to be proved.

1.3 The Respondent improperly presented the changed evidence from Mr Younis to the SRA (in response to a s44B Notice served on him) without explanation as to the circumstances in which it had been obtained, and thereby breached Principles 2, 6 and 7 of the Principles. Dishonesty was alleged, although this was not a requirement for the Allegation to be proved.

1.4 The Respondent improperly sanctioned and approved the creation of emails dated 29 and 30 June 2015 which did not disclose the true reason for the agreement with Mr Younis, but falsely gave the impression that it was the product of a routine discussion and thereby breached Principles 2 and 6 of the Principles. Dishonesty was alleged, although this was not a requirement for the Allegation to be proved.

Improper referral fees and fee-sharing arrangements for the payment of fees to Mr Younis

1.5 The Respondent authorised, procured and approved the payment to Mr Younis of prohibited referral fees in or about September 2007, and thereby breached Rules 1.01, 1.04, 1.06, 8.02 and 9.02 of SCC 2007.

1.6 The Respondent authorised, procured and approved an improper fee sharing arrangement with Mr Younis pursuant to the tripartite agreements (between PIL, [LD] and Mr Younis) made on or about 17-23 March 2009, which was an improper

arrangement in that it was an improper contingency fee arrangement and thereby breached Rules 1.01, 1.06, 8 and 9.01(4) of SCC 2007.

1.7 The Respondent authorised, procured and approved an improper fee sharing arrangement with Mr Younis pursuant to the tripartite agreements (between PIL, [LD] and Mr Younis) made on or about 27 April 2010, which was an improper arrangement in that it was an improper contingency fee arrangement and thereby breached Rules 1.01, 1.06, 8 and 9.01(4) of SCC 2007.

1.8 The Respondent authorised, procured and approved an improper fee sharing arrangement with Mr Younis pursuant to the tripartite agreements (between PIL, [LD] and Mr Younis) made on or about 17-23 March 2009, which was an improper arrangement in that it was an arrangement for the payment of a referral fee in respect of historic cases, and thereby breached Rules 1.01, 1.06, 8, 9.01(4) and 9.02 of SCC 2007.

1.9 The Respondent authorised, procured and approved an improper fee sharing arrangement with Mr Younis pursuant to the tripartite agreements (between PIL, [LD] and Mr Younis) made on or about 27 April 2010, which was an improper arrangement in that it was an arrangement for the payment of a referral fee in respect of historic cases, and thereby breached Rules 1.01, 1.06, 8, 9.01(4) and 9.02 of SCC 2007.

1.10 The Respondent authorised, procured and approved an improper fee sharing arrangement with Mr Younis pursuant to the tripartite agreements (between PIL, [LD] and Mr Younis) made on or about 17-23 March 2009, which was an improper arrangement in that it was an arrangement for the payment of a referral fee in respect of publicly funded cases, and thereby breached Rules 1.01, 1.02, 1.06, 8, 9.01(4) and 9.02(h) of SCC 2007.

1.11 The Respondent authorised, procured and approved an improper fee sharing arrangement with Mr Younis pursuant to the tripartite agreements (between PIL, [LD] and Mr Younis) made on or about 27 April 2010, which was an improper arrangement in that it was an arrangement for the payment of a referral fee in respect of publicly funded cases, and thereby breached Rules 1.01, 1.02, 1.06, 8, 9.01(4) and 9.02(h) of SCC 2007.

1.12 The Respondent authorised, procured and approved the payment to Mr Younis of £25,000 in prohibited referral fees on or about 30 March 2009, and thereby breached Rules 1.01, 1.02, 1.06, 8, 9.01(4) and 9.02 of SCC 2007.

Misleading, incomplete and non-existent responses to a Notice dated 23 April 2015 served under s44B of the Solicitors Act 1974 ("the 1974 Act")

1.13 The Respondent provided the SRA with a misleading and incomplete response to Q10 of a s44B Notice dated 23 April 2015, and thereby breached Principles 2, 6 and 7 of the Principles as well as Outcomes 10.1 and 10.9 of the SRA Code of Conduct 2011 ("SCC 2011"). Dishonesty was alleged, although this was not a requirement for the Allegation to be proved.

1.14 The Respondent provided the SRA with a misleading and incomplete response to Q15 of a s44B Notice dated 23 April 2015, and thereby breached Principles 2, 6 and 7 of the Principles as well as Outcomes 10.1 and 10.9 of the SCC 2011. Dishonesty was alleged, although this was not a requirement for the Allegation to be proved.

1.15 The Respondent provided the SRA with a misleading and incomplete response to Q17 of a s44B Notice dated 23 April 2015, and thereby breached Principles 2, 6 and 7 of the Principles as well as Outcomes 10.1 and 10.9 of the SCC 2011. Dishonesty was alleged, although this was not a requirement for the Allegation to be proved.

1.16 The Respondent provided the SRA with a misleading and incomplete response to Q21 of a s44B Notice dated 23 April 2015, and thereby breached Principles 2, 6 and 7 of the Principles as well as Outcomes 10.1 and 10.9 of the SCC 2011. Dishonesty was alleged, although this was not a requirement for the Allegation to be proved.

1.17 The Respondent failed to provide the SRA with a timely response to Q1 and Q3 of a s44B Notice dated 23 April 2015, and thereby breached Principles 6 and 7 of the Principles as well as Outcomes 10.1, 10.8 and 10.9 of SCC 2011.

1.18 [Allegation directed to lie on the file].

Failure to establish and maintain a proper and effective system for document management

1.19 The Respondent failed, during the period June 2007 to August 2013, to establish and maintain proper and effective arrangements with LD for the sharing of information and documents held by PIL and LD in respect of the Al-Sweady claims (as defined below) and matters, and thereby breached Rules 1(c), (d) and (e) of SPR 1990, Rules 1.01, 1.04, 1.05 and 1.06 of SCC 2007 and Principles 1, 4, 5 and 6 of the Principles.

Failure to comply with the duty of candour to the Court in relation to the Judicial Review

1.20 The Respondent failed to comply with his duty of candour to the Court in relation to the Judicial Review, and failed to take proper steps to ensure that the relevant Al-Sweady clients complied with their duty of candour to the Court, and thereby breached Rules 1.01, 1.04 and 1.06 of SCC 2007.

Failure to give full and frank disclosure to the Legal Services Commission in relation to the Judicial Review

1.21 The Respondent failed to comply with his duty of full and frank disclosure to the Legal Services Commission ("LSC") in relation to the Judicial Review, and failed to take proper steps to ensure that the relevant Al-Sweady clients complied with their comparable duties, and thereby breached Rules 1.01, 1.02, 1.04 and 1.06 of SCC 2007.

The 22 February 2008 Press Conference

1.22 At a press conference on 22 February 2008, the Respondent made and personally endorsed allegations that the British Army had unlawfully killed, tortured and mistreated Iraqi civilians, including his clients, who had been innocent bystanders at the Battle of Danny Boy, in circumstances where it was improper to do so, and thereby breached Rules 1.02, 1.03 and 1.06 of SCC 2007.

1.23 [Allegation directed to lie on the file].

Failure to keep the Al-Sweady clients informed of the progress of the Al-Sweady Inquiry

1.24 The Respondent failed, in the period March 2013 to March 2014, to keep the Al-Sweady clients properly informed as to the progress of the Al-Sweady Inquiry and in particular as to the declining prospects of their allegations that cold-blooded executions had occurred at Camp Abu Naji ("CAN"), and thereby breached Principles 4, 5 and 6 of the Principles and failed to achieve Outcome 1.12 of SCC 2011.

2. It was alleged that, by reason of each of all of the matters set out at paragraphs 1.1, 1.2, 1.3, 1.4, 1.12, 1.13, 1.14, 1.15, 1.16, 1.18, 1.21 and 1.22 he acted without integrity in breach of Rule 1(a) SPR 1990, 1.02 of SCC 2007 and Principle 2 of the Principles by reason of the seriousness of the said breaches and/or his reckless disregard of his professional obligations. In the case of Allegations 1.2, 1.3, 1.4, 1.13, 1.14, 1.15, 1.16 and 1.18 if the Respondent was not dishonest (as alleged), he was reckless.

Documents

3. The Tribunal had regard to all the documents in the case including:

Applicant

- Application and Rule 5 Statement with exhibit JCG/1 dated 12 May 2016
- Applicant's Reply to Respondent's Answer dated 16 January 2017
- Applicant's Witness Statements and exhibits
- Applicant's Skeleton Argument dated 25 January 2017
- Medical evidence including report of Dr Mogg dated 8 November 2016 (joint instruction)
- Schedules of Costs

Respondent

- Letter from Jayne Willets to Russell-Cooke dated 7 December 2016
- Letter from Jayne Willets to Russell-Cooke dated 16 December 2016
- Medical evidence including report of Professor Heun dated 7 November 2016 with Appendix dated 18 November 2016 and letters from Dr Davis dated 20 November 2015, 6 December 2016, 18 December 2016 and 27 January 2017

- Letter from Respondent to Russell-Cooke dated 16 January 2017 (in error – assumed to be 26 January 2017)
- Letter from four lawyers dated 23 January 2017
- Letter from 15 individuals dated 30 January 2017
- Character References
- Statement of Means

Preliminary Matters

Application for part of the hearing to take place in Private

4. In her letter of 16 December 2016, Ms Willets, who was at that time acting for the Respondent, requested that "the Tribunal deal with all medical evidence in private at all future hearings as this is personal confidential information". She submitted in that letter that "If it were to be made public there would be a breach of the First Respondent's Article 8 ECHR rights". The Tribunal treated this request as a formal application under Rule 12(4) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR 2007").

5. The Applicant told the Tribunal that although it would be necessary to touch on the medical evidence in the course of the hearing, it was not anticipated that there would be a need to go into the detail of it. The Tribunal had already had sight of the contents and it was unlikely to be necessary to read out the specifics of any medical condition. The Applicant accepted that if it did become necessary to go into further detail then the Tribunal may wish to hear those parts of the evidence in private. However this was not anticipated.

The Tribunal's Decision

6. SDPR Rule 12(4) states:

> "Any party to an application and any person who claims to be affected by it may seek an order from the Tribunal that the hearing or part of it be conducted in private on the grounds of a) exceptional hardship b) exceptional prejudice to a party, a witness or any person affected by the application."

7. The Tribunal was mindful of the requirement for open justice and of the Respondent's right to privacy. The details of the Respondent's medical history were clearly personal and would ordinarily be confidential. At the same time, he had relied upon his medical condition to advance both his application to adjourn and his defence to some of the Allegations. The Tribunal found that it would be contrary to the principles of open justice for there to be no reference of any sort to medical issues. It would be disproportionate to exclude any sort of reference to medical matters in those circumstances.

8. However the Respondent was entitled not to have his full medical history examined in the public domain as this would clearly result in an unjustifiable invasion of his right to privacy. It was therefore right that the details of the Respondent's medical data be heard in private, if indeed it was necessary to refer to them at all.

9. The Tribunal directed that if there was to be any discussion of, the specific details of the Respondent's medical condition, this would be heard in private. The Tribunal was not, in fact, required to sit in private for any part of the hearing.

Application to Adjourn

10. The Respondent had written to the Applicant by letter dated 16 January 2017 (taken to be a typographical error that most likely should have read 26 January 2017) in which he sought an adjournment of the hearing ("the Adjournment Request"). That letter had been forwarded to the Tribunal by the Applicant. The Respondent had not written to the Tribunal and there was therefore no formal application before it. However to ensure fairness to the Respondent, the Tribunal dealt with the matter as if it had been a properly made application for an adjournment.

11. The Adjournment Request referred to a letter sent to the Clerk dated 23 January 2017 signed by two barristers and two solicitors ("the Four Lawyers") concerning the Respondent's health and lack of representation. The letter made clear that none of the lawyers were acting for the Respondent. They had written in a private capacity, not on instructions from the Respondent, and had no intention to be involved in any way in the litigation of the case.

12. This letter had not initially been placed before the Tribunal as it had not come from the parties to the proceedings, nor was it written to the Tribunal with the consent of the parties in the knowledge that the letter was to be put before the Tribunal and copied to the parties. The letter therefore had no evidential status in the proceedings. The parties were notified of this on 26 January 2017. The Respondent had referred, in the Adjournment Request, to the letter from the Four Lawyers and had asked that the Applicant put it before the Tribunal. He stated that he had not seen the letter, but believed it would be helpful.

13. The Applicant, in the Skeleton Argument prepared for the hearing, had referred to the letter from the Four Lawyers and submitted that it would therefore be wrong for the Tribunal not to see the letter to which the Applicant had referred. The letter from the Four Lawyers was therefore placed before the Tribunal, which considered its contents in full.

14. The Respondent sought an adjournment on the following grounds:-

    i) Ill health;
    ii) Lack of representation, itself brought about by poor health and lack of financial resources.

15. The Respondent stated that he had avoided engaging with the proceedings in order to reduce the risk to his health. The Respondent referred to correspondence from his GP, Dr Davis, which had been provided to the Tribunal in December. He stated that he had seen Dr Davis again on 24 January 2017 and been advised that "there was a real risk" to his health if he attempted to engage in his own defence. He confirmed that he was prepared to submit to a further assessment and invited the Applicant, and by implication the Tribunal, to afford him that opportunity.

16. The Respondent stated that he did not have the funds to pay for representation at the hearing and his previous solicitor had come off the record after he had exhausted his means of paying her fees.

17. The Tribunal had before it a letter from Dr Davis addressed 'To Whom it May Concern' dated 27 January 2017 that had been sent to the Applicant by one of the "Four Lawyers". That letter described the Respondent's symptoms and stated that he had referred him for further assessment. He suggested that the Respondent remained unfit for work and stated he was providing a medical certificate covering the period 2 January 2017 – 27 February 2017.

18. The Applicant opposed the application for an adjournment. The report of Dr Mogg in November 2016 had expressed a clear conclusion as to the ability of the Respondent to prepare his case and attend the hearing. Dr Mogg had concluded that he was able to participate and attend, but that reasonable adjustments may need to be considered. The Applicant had agreed that sitting days could be considerably shortened and include regular breaks as part of those adjustments. The Tribunal had also canvassed the Respondent's views as to participating via video link and had received no response from him. The hearing had, at the time of Dr Mogg's report, been anticipated to last three weeks, with all 24 Allegations contested. Since then, however, the issues had narrowed considerably as a result of the Respondent making admissions to some Allegations and the Applicant taking a proportionate view in respect of some others. The issues remaining were serious but narrow, and the hearing would now be shorter. The Applicant submitted that none of the letters from Dr Davis went outside the parameters of Dr Mogg's report.

19. The Applicant submitted that the Adjournment Request was articulate and demonstrated that the Respondent was fully capable of expressing his position with clarity. He was clearly capable of rational thought and the reality was that he was in a state of avoidance and did not wish to engage. In those circumstances, an adjournment would serve no useful purpose and would not be just.

20. On the issue of representation, the Applicant invited the Tribunal to consider whether the Respondent had de-instructed his previous solicitor as a tactical choice. The Respondent had been represented throughout the investigation and the proceedings until mid-December 2016. His statement of means indicated that he had funds, or access to funds, that would enable him to fund representation at a relatively short hearing.

The Tribunal's Decision

21. The Tribunal considered carefully all the material placed before it including the medical information and considered the application for an adjournment in accordance with the Tribunal's Policy/Practice Note on Adjournments ("the Practice Note").

22. The relevant sections of the Practice Note, at [4] stated:

> "The following reasons will NOT generally be regarded as providing justification for an adjournment:

(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."

Ill health

23. The Adjournment Request demonstrated that the Respondent had the capacity to present his own case, which was consistent with the report of Dr Mogg, prepared before the narrowing of the issues and the shortening of the case. Dr Mogg had stated "In my opinion, there is nothing to suggest from interview or from his medical records that he is intellectually unable to prepare his case". He further stated that he had capacity to instruct lawyers and that he understood the allegations against him and the legal processes of the Tribunal. Dr Mogg went on to state that the Respondent was able to attend and confirmed that he would be able to give evidence and be cross-examined although he suggested that frequent breaks should be considered. The Applicant had been open to reasonable adjustments that would have resulted in shorter sitting days and frequent breaks. The Tribunal had offered the Respondent the opportunity to make an application to participate in the proceedings by video link. The Respondent had not addressed this in his letter to the Applicant and he had elected not to communicate directly with the Tribunal at any stage.

24. The subsequent letters from Dr Davis were very brief and did not take matters further. The letter of 18 December 2016 relayed brief details as to the Respondent's symptoms but was silent as to what steps, if any, Dr Davis had taken. The letter of 27 January 2017 was not addressed to the Tribunal and made no reference to the proceedings. The letter confirmed that a referral had been made and that a medical certificate was being issued. The only reference to fitness was contained in the sentence "I have also suggested that he remains unfit to perform any form of work".

25. Without in any way criticising Dr Davis, the Tribunal found that the letters did not amount to the reasoned opinion of an appropriate medical adviser for the purposes of this application, as they did not go into sufficient detail, such as to alter the conclusions reached by Dr Mogg, who had prepared a full report.

26. The Tribunal saw no evidence that any of the difficulties that the Respondent was facing would be alleviated by an adjournment, indeed further delay may well have been burdensome to him. The Tribunal referred to Bank of Ireland v Jaffrey [2012] EWHC 734, which referred to the need for "proper medical evidence" such that would indicate that an adjournment would bring about an improvement in the Respondent's condition.

27. The Tribunal was not satisfied that the Respondent was too unwell to attend or unfit to participate in the proceedings. Not only did the medical evidence not support the Respondent's assertion, it tended to point in the other direction. The Tribunal was satisfied that the Respondent was fit to attend and participate, particularly with reasonable adjustments. The Tribunal decided that there was no basis for an adjournment on medical grounds.

Lack of Representation

28. The Respondent had stated in his Adjournment Request that "at present I do not have the money to pay for representation". His solicitor had come off the record on 20 December 2016 and as at 26 January 2017 the Respondent had not considered how he might fund future representation. He had not indicated that he was seeking representation following his previous solicitor ceasing to act and had not made this application for an adjournment until one working day before the commencement of the main part of the hearing.

29. The Tribunal noted the statement of means that the Respondent had provided. It was not supported by a statement of truth and much of its contents were not supported by documentary evidence, despite an earlier direction from the Tribunal. Insofar as there was information before the Tribunal as to the Respondent's means, the Tribunal was not persuaded that he had insufficient funds to pay for representation at a relatively short hearing in which no cross-examination of the Applicant's witnesses would be required, the Respondent not having challenged any of the evidence.

30. The Tribunal found that there was no basis for an adjournment based on lack of representation.

31. The Respondent's application was therefore refused on both grounds as it was not in the interests of justice to grant an adjournment.

Application to Proceed in Absence

32. The Applicant applied to proceed in the absence of the Respondent. The Respondent had waived his right to representation by choosing not to use available funds or assets to instruct legal representatives. There was, inevitably, a degree of disadvantage to the Respondent but this was inherent in situations where a Respondent was voluntarily absent. The Tribunal and the Applicant were required to ensure that the proceedings were fair to the Respondent. The Applicant confirmed that it was one of its fundamental duties to draw the Tribunal's attention to any defences the Respondent had put forward.

33. The Applicant referred the Tribunal to R v Hayward, Jones and Purvis [2001] QB 862, CA which was a useful starting point for consideration of this matter and GMC v Adeogba [2016] EWCA Civ 162 which applied these principles to professional regulatory proceedings.

34. The Applicant relied on the submissions made in relation to the adjournment application and contained in the Skeleton Argument.

The Tribunal's Decision

35. The Tribunal considered the representations made by the Respondent and by the Applicant. The Respondent was aware of the date of the hearing and SDPR Rule 16(2) was therefore engaged. The Tribunal had regard to the criteria for exercising the discretion to proceed in absence as set out in Jones, CA by Rose LJ at paragraph 22 (5) which stated:

> "In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:
>
> (i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;
>
> (ii) …;
>
> (iii) the likely length of such an adjournment;
>
> (iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;
>
> (v) …;
>
> (vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;
>
> (vii) …;
>
> (viii) …;
>
> (ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;
>
> (x) the effect of delay on the memories of witnesses;
>
> (xi) …;"

36. In Adeogba, Leveson P noted that in respect of regulatory proceedings there was a need for fairness to the regulator as well as a respondent. At [19] he stated:

> "…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 with 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."

37. Leveson P went on to state at [23] that discretion must 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."

38. In assessing the criteria in Jones, the Tribunal started from the position that the discretion as to whether to proceed in absence must be exercised with great care and only in rare and exceptional cases should it be exercised in favour of proceeding in absence. The Tribunal also took account of the interests of the regulator and the general public interest in the case being dealt with in a timely manner.

39. The nature and circumstances of the Respondent's absence had been examined in detail in the Tribunal's consideration of the application to adjourn. The Tribunal found that the Respondent had not demonstrated a good reason why he had not attended. He had declined to respond to offers to consider reasonable adjustments made by the Applicant and the Tribunal but was clearly able to express himself articulately when he chose to do so. The Tribunal was satisfied that the Respondent had therefore waived his right to appear by deliberately absenting himself from the hearing. He had also waived his right to be represented as he had taken no steps to secure fresh representation after his previous solicitor ceased acting on 20 December 2016.

40. There was no evidence that an adjournment would result in his attendance for the reasons set out in relation to the adjournment decision. If the matter was adjourned, the Tribunal would find itself in exactly the same position on the next occasion, which would be in several months' time.

41. The Respondent was disadvantaged by not being present to give his account of events. However this was significantly mitigated as the majority of the facts were not in dispute, reflected in the fact that he had not sought to cross-examine any of the Applicant's witnesses. The Applicant had assured the Tribunal that it would draw to the Tribunal's attention any point that the Respondent had, or might have, raised in response to the Applicant's case.

42. The Tribunal was satisfied that a fair hearing was possible and therefore it was in the interests of justice for the matter to proceed in the Respondent's absence. The application to proceed in absence was granted.

Application to amend the Rule 5 Statement

43. The Applicant applied to amend the Rule 5 Statement in relation to Allegation 1.1 to correct a typographical error. Para 1.1 of Rule 5 should have read "Rule 1(c) and 1(d)" instead of repeating Rule 1(d) twice. The Applicant submitted that there was no prejudice to the Respondent by the amendment as it was clear what was being referred to at paragraph 69 of the Rule 5 Statement.

44. The Tribunal was satisfied that the nature of the Allegation was properly set out in the Rule 5 Statement and the Respondent would have known of the conduct that was alleged, notwithstanding the typographical error. The Tribunal was satisfied that it was in the interests of justice for the error to be corrected and therefore granted the application.

Factual Background

45. The Respondent was admitted to the Roll on 2 November 1981 and at the time of the hearing held a current Practising Certificate. He was the sole principal of Public Interest Lawyers from 31 October 1999 until 3 December 2009 when the firm became Public Interest Lawyers Limited. At all material times he had remained the sole director and only shareholder of Public Interest Lawyers Limited. Both Public Interest Lawyers and Public Interest Lawyers Limited are referred to as "the Firm" in this Judgment.

46. The Allegations arose from the conduct of the Respondent in acting for a number of Iraqi nationals in connection with allegations against the Secretary of State for Defence and the Ministry of Defence ("MOD") arising from the Battle of Danny Boy, as well as for other Iraqi nationals alleging abuse on the part of the British Army, and arising from the SRA's investigations.

47. The allegations against the MOD were considered, in particular, in an application for Judicial Review made on 19 October 2007, and a subsequent inquiry under the Inquiries Act 2005 ("the Al-Sweady Inquiry") held between 2009 and 2014 set up to deal with these claims ("the Al-Sweady claims"). The Al-Sweady Inquiry found the principal allegations of the Respondent's clients to be the product of "deliberate lies, reckless speculation and ingrained hostility".

48. Between 2007 and 2015, the Firm acted for Client 10 and nine other individuals detained by the British Army ("the detainees"), as well as many others bereaved or otherwise affected by the Battle of Danny Boy ("the Al-Sweady clients"). Some of the Al-Sweady clients brought a Judicial Review ("the Judicial Review") alleging breaches of Articles 2, 3 and 5 of the European Convention on Human Rights ("ECHR"), and in addition sought to recover damages from the MOD for unlawful killing, torture and mistreatment which was alleged to have occurred at Camp Abu Naji ("CAN") on 14-15 May 2004, and alleged ill-treatment at a detention facility, Shaibah Logistics Base, Iraq.

49. The Battle of Danny Boy took place near Amara, Majar-al-Kabir, on 14 May 2004. British Forces were ambushed by an insurgent militia group known as the Mahdi Army. This was a Shia militia, whose members were followers of the radical Shia cleric Muqtada al-Sadr and was a military wing of the political party the Office of the Martyr al-Sadr ("OMS"). After the engagement, in which a number of Iraqis were killed, an order was given by the British Army for the collection of the Iraqi dead from the battlefield. Official records stated that 28 Iraqis were killed during the fire-fight. Twenty of the deceased Iraqis were taken to CAN and were handed over to the Iraqi civilian authorities on 15 May 2004. In addition to the dead, nine individuals present at the time of the engagement were detained and taken to CAN, and thereafter

to Shaibah Logistics Base. These individuals were released into the custody of Iraqi civilian authorities on 21 and 23 September 2004.

50. Following the Battle of Danny Boy rumours began to circulate among the local population that a number of Iraqis had been murdered by British forces and that others had been tortured. These allegations were reported on 17 May 2004 by The Times.

51. One of the Iraqis said to have been killed by British forces at CAN on either 14 or 15 May 2004 was Hamid Al-Sweady, a relative of Client 10. The nine detainees claimed to be innocent civilians unconnected with the armed insurgent ambush. Some of them subsequently provided Witness Statements to the Respondent in 2007 and 2008.

52. The Firm was initially instructed by Client 10 and, through him, some of the detainees to pursue the Judicial Review, citing breaches of Articles 2, 3 and 5 of the ECHR, in order to seek an independent investigation of their underlying allegations.

53. The Respondent submitted an application for legal aid, in order to bring the proposed Judicial Review. Client 10 completed and signed an application on 7 September 2007. The merits of the underlying claim were assessed by the Respondent as "moderate", meaning 50%-60%. The application was submitted on or about 28 September 2007 and the Respondent was in regular contact with the Legal Services Commission ("LSC") in the period September – October 2007 for the purpose of supporting the application for public funding, as well as throughout the ensuing Judicial Review.

54. Legal aid was initially refused on 9 October 2007. The Respondent requested corroborative evidence from Mr Younis (an Iraqi agent of the Firm) on 11 October 2007. On 14 October 2007, Mr Younis secured a statement from Client 7, which purported to corroborate the allegations of murder and torture. This was supplied to the LSC on 15 October 2007. Legal aid was granted to Client 10 that day. This remained in place throughout the Judicial Review.

55. On 19 October 2007, the application for a Judicial Review was issued and served, brought in the names of Clients 7 and 10. It sought declarations that there had been infringements of the ECHR and that there should be an independent investigation of the underlying allegations.

56. Between 15-24 January 2008, the Respondent, accompanied by lawyers from LD, (another firm of solicitors), travelled to Istanbul. Further Witness Statements were prepared at this time and the number of claimants increased to six.

57. On 22 February 2008, the Respondent and MD, of LD, held a joint press conference at the Law Society in relation to the allegations made by Client 10 and the detainee clients. At that press conference the Respondent made statements which represented an adoption and endorsement of those allegations.

58. Permission for the Judicial Review was granted in 2008 and the Judicial Review was heard by the Divisional Court over 20 days in 2009. On 6 July 2009 the Divisional Court stayed the claims, following a concession by the MOD that a full investigation

would take place in light of substantial deficiencies in the disclosure process that had been carried out by the MOD.

59. Following the Judicial Review, the MOD decided that the full investigation would take the form of an Inquiry under the Inquiries Act 2005 and, on 25 November 2009, the Al-Sweady Inquiry was established. It was chaired by a retired High Court Judge, Sir Thayne Forbes ("the Chairman"). The Firm became the designated legal representative of the six Iraqi Core Participants (namely Client 10 and five of the detainees). The Firm also represented over 100 other Iraqi clients, including family members of the deceased.

60. The OMS Detainee List (a document which indicated that the 9 detainees were members of or had some connection to the Mahdi Army) was disclosed to the Al-Sweady Inquiry by LD on 27 September 2013. This had been in LD's possession since either 2004 or 2007. On 20 March 2014, Leading Counsel instructed by the Iraqi Core Participants in the Al-Sweady Inquiry conceded that they would not be submitting that live Iraqis captured during the course of the battle on 14 May 2004 died or were killed at CAN, in light of their duties to "assess the state of the evidence and only to advance submissions to [the Inquiry] on a basis which, we consider, in our professional judgment, to be properly arguable".

61. The Inquiry concluded with the publication of its report ("the Report") on 17 December 2014. The Chairman concluded in the executive summary of his Report

> "... the work of this Inquiry has established beyond all doubt that all the most serious allegations, made against the British soldiers involved in the Battle of Danny Boy and its aftermath and which have been hanging over these soldiers for the last 10 years, have been found to be wholly without foundation and entirely the product of deliberate lies, reckless speculation and ingrained hostility."

The Investigations

62. Having been duly authorised to do so, an Investigation Officer of the Forensic Investigation Department of the SRA ("the IO") commenced an investigation in relation to the activities of the Respondent relating to the Al-Sweady Inquiry. The investigation resulted in a Forensic Investigation Report dated 10 December 2015 ("the FIR"). Simmons & Simmons LLP commenced an investigation on behalf of the SRA in relation to the Respondent's conduct. At the conclusion of that investigation, Simmons & Simmons LLP produced a Forensic Investigation Report dated 17 December 2015 ("the SSFIR"). A second Investigation Officer of the Forensic Investigation Department of the SRA ("IO2") commenced an investigation in relation to the failure to disclose the "OMS Detainee List" until September 2013. The investigation resulted in a Forensic Investigation Report dated 16 March 2016 ("FIR3").

63. Notices under s44B of the Solicitors Act 1974 were served on the Respondent dated 20 January 2015, 23 April 2015 and 17 December 2015, the latter two also being served on the Firm. The Respondent declined to be interviewed in connection with the matters considered in the FIR and SSFIR, citing medical grounds. By way of a letter

dated 20 November 2015, his doctor confirmed that in his opinion the Respondent would not be "in a fit state to be interviewed until he is fit to practice as a solicitor", which he was not at that time. The SRA had written two Explanation with Warning ("EWW") letters to the Respondent dated 18 December 2015 and 26 January 2016 but he had not responded to either.

64. Allegation 1.1

64.1 From the outset of its work in Iraq the Firm was reliant on referrals from Mr Younis. The Respondent had been investigated by the LSC in 2004 over allegations of cold-calling by two case-workers, including Mr Younis. That report had made reference to the Law Society's relevant professional codes, then contained in the SPC 2001, as well as to the terms of the Firm's arrangements with the LSC.

64.2 The Respondent became aware of the Battle of Danny Boy, having been approached by DM, who described himself as an independent film producer, by way of an email dated 25 April 2007.

64.3 DM stated to the Respondent that he was trying to locate those who "survived the night in detention" and inquired if the Respondent had heard of them. The Respondent replied by way of email dated 26 April 2007 in which he stated:

> "Thank you for your message. I am very troubled by what you have to say although hardly surprised. I am afraid that I have never heard of these men and I have good contacts in Iraq. However I am going to make some specific inquiries of my contacts about this incident and see if I can help at all."

64.4 The Respondent and DM met on 1 May 2007, and DM gave the Respondent a dossier relating to allegations of possible unlawful killing of Iraqis after the Battle of Danny Boy, which he read and returned. On 2 May 2007, DM emailed the Respondent recording his understanding that the Respondent was not "seeking cases to pursue", but confirming "that a doctor who had visited Majar was approached by families who wish legal assistance following events of May 14/15, 2004".

64.5 The Respondent had forwarded DM's email of 2 May 2007 to Mr Younis the same day. The Applicant's case was that the email amounted to a request or instruction to Mr Younis to locate the relevant "families who wish legal assistance" with a view to securing instructions from them, and would have been so understood as such by Mr Younis.

64.6 On 7 May 2007, Mr Younis emailed the Respondent, stating; "Hi Phil, I placed a request on our website regarding Al-Majar incident and informed our Basra friend to follow up the matter. I will let you know as soon as there is any success". The "website" was the Iraqi League's website, and the "Basra friend" was AJ. On 18 May 2007, Mr Younis sent an email to the Respondent stating; "Hi Phil. A tribesman from Amara who heard about our legal activities from his friends in Basra has requested me to call him regarding the incident that took place in Al-Majar in May 2004. I called him this afternoon Friday 18th May where he explained how he met a few days ago relatives of Iraqi victims killed on that day. He agreed to visit

them again soon and let us speak to the victim's families directly. I will keep you informed of progress on this case."

64.7 The "tribesman from Amara" was AI. AI was neither a witness nor a potential client. AI had been "contacted by [AJ] A". Mr Younis said he had explained to AI "what we did and how it worked", and AI had agreed to go to Majar "to explain to people what legal action was taken etc."

64.8 On 25 May 2007, Mr Younis emailed the Respondent and stated "We also need to sendat [sic] the same time the expenses [sic] for the people working on Al-Majar case in Amara. Please allocate £300 for that, they are not moving on the case till we pay them!" On 1 June 2007, Mr Younis informed the Respondent that the total for another case "and the Amara guys" was £1,690. The Respondent had replied that day to say that he would send Mr Younis a cheque for the stated amount, which Mr Younis was proposing to pay on his behalf.

64.9 By early June 2007, the "Amara guys" had tracked down Client 10. AJ told the Firm in 2015 that he "called a friend" (AI), who "managed to find a person called [Client 10]."

64.10 On 15 June 2007, Mr Younis emailed the Respondent attaching Client 10's first Witness Statement. Mr Younis had been put in touch with Client 10 by AI. The covering email stated:

> "Hi Phil. Sorry for the delay, here is the witness statement for one key figure in this case, he indicated he can help us to talk to others, especially the farmers who were taken to the camp then released, and the doctors who supervised the post-mortem."

64.11 The Applicant's case was that this email demonstrated an intention to enlist Client 10 in order to facilitate solicitation of the released detainees, as additional clients relating to the Battle of Danny Boy and its aftermath. The Respondent had not dissented from this course of action. He responded to Mr Younis by email dated 18 June 2007 noting that he had discussed the issues with Rabinder Singh QC, and stated that they "both feel that this would be the most important case of all of them". The Respondent told Mr Younis:

> "We need to do everything we can to get this case sorted out so that we can present it properly to Government. I am prepared to do everything I need to do to make this case happen."

64.12 On 29 June 2007, Mr Younis emailed the Respondent, attaching Client 11's first Witness Statement. He claimed to be an ambulance driver who was an eye-witness to the fact that live Iraqis were captured at the Battle of Danny Boy and whose dead bodies were returned the next day. Mr Younis's email stated:

> "I am trying to get hold of the contact in Amara to know whether he had spoken to some victims' families regarding their legal representation."

64.13 On 5 July 2007, Mr Younis emailed the Respondent stating: "Hi Phil. I have spoken to our contacts in Basra and Amara and they are happy with £600 to cover their expenses, I need to send them the money soon. Please post me a cheque to my Leeds address asap". The requested £600 cheque was sent the following day.

64.14 In an email from the Respondent to MD and SM (both of LD) about a proposed trip to Damascus which in fact subsequently took place to Istanbul, he stated:

> "As far as the May 2004/Al-Amara incident is concerned [Mr Younis] has now found 3 further survivors, two of which can give evidence that those being detained were alive whilst the other was in such a bad state from the abuse that whilst being a victim is not an eye witness."

The Applicant's case was that this evidenced the fact that Mr Younis' role was to "find" the potential clients in respect of the Battle of Danny Boy and its aftermath.

64.15 On 6 December 2007, the Respondent emailed MD and SM. The email referred to "clients" coming to Istanbul, which appeared to include "three witnesses also victims in the Al-Majar incident". As yet none of these individuals were clients of either the Firm or LD. The Respondent stated that Panorama had taken statements from "6 survivors", and stated that "I have asked Mazin to try and track down the other two so we might come away with as many as 6 clients as survivors as well as [Client 10] making 7 in total". "Mazin" was Mazin Younis. The Applicant's case was that this email evidenced that Mr Younis' role was to locate potential clients, on the Respondent's instructions.

65. Allegations 1.2, 1.3 and 1.4

65.1 On 24 April 2015, the SRA served, on both the Respondent and the Firm, a Notice dated 23 April 2015 under s44B of the Solicitors Act 1974. Question 15 required an explanation as to:

> "How Mazin Younis identified potential clients or witnesses for the Firm or [LD] in relation to the Al Sweady matters."

65.2 On 16 June 2015, PM, the Firm's Chief Executive Officer, emailed Mr Younis setting out the terms of question 15, and inviting him to provide "a couple of short paragraphs so that I can work up a draft response to the question". Mr Younis responded on 17 June 2015, suggesting the following answer to question 15:

> "In 2005 I was instructed by Mr Shiner of PIL to track and find any Iraqi witnesses in the Danny Boy Battle. I was in Basra at the time, but due to security issues it wasn't possible for me to travel to Al-Majar area. In 2007 my agent in Basra, [AJ], informed me that he had met a tribesman from Amarah called [AI], who agreed to help us find one or more of the witnesses in Majar.
>
> [AI] introduced me to [Client 10] whom I interviewed over the phone and passed his statement to PIL. [Client 10] then introduced me to a couple of witnesses whom I also interviewed, we organised the first trip for 2 witnesses

to meet PIL and LD in Damascus in 2007. [Client 10] later introduced me to more witnesses (I believe they were 9 in total) who met PIL and LD in Istanbul and Beirut. In 2010, my agent and I became very unhappy regarding some of the practices of [Client 10] as well as [PK], which we feared may jeopardise the whole process. Hence we decided to pull out completely from helping in organising and supervising the trips. Apart from the first 9 witnesses who were interviewed by myself initially before seeing their legal representatives, I had no idea or control over which witnesses were interviewed later."

65.3 On 26 June 2015, PM met with Mr Younis at the latter's Manchester office, following which he drafted a handwritten note on the evening of 29 June 2015 and the morning of 30 June 2015. That note explained that the purpose of the meeting had been "to clarify some discrepancies arising from some information" Mr Younis had supplied "as part of a response to question 15". These related to the date of the initial discussion about the Battle of Danny Boy between the Respondent and Mr Younis and "the line at which [Mr Younis] refers to being instructed by Phil Shiner to trace and find people involved in the incident". Mr Younis stated that he proposed "to speak frankly about matters". This included stating to PM:

"a) That "all of these cases" had been found by "knocking doors to find clients", which the Respondent "knew about";

b) That "the only way to find clients was to knock on doors", and "of course Phil knew";

c) That this applied not just to the Al-Sweady clients but to "nearly all of the cases", that "we even paid people" (to give their evidence), and that "Phil was aware";

d) That he had "told Phil that [Client 10] was a member of the Mahdi army & so were some of the [Al-Sweady] clients";

e) That [Client 10] had brought forward two witnesses who were not involved in the Danny Boy incident or did not have family involved, although he accepted that the Respondent had not known this."

65.4 Mr Younis explained that he was upset that, from 2012, the Firm had engaged the services of another translator, and that he wished to revert to "the old way of working and to confirm this in writing". He speculated that "maybe it could have been a journalist who asked me to find people in 2005, it was a long time ago", and added that if the parties reverted to the "old way of working", he could "have a clearer memory" on such a matter.

65.5 PM "felt as though [he] was being blackmailed" but, wishing the meeting to end on a positive note, "gave [Mr Younis] a positive indication on returning to the old way of working."

65.6 At about 8am-8:30am on 29 June 2015, PM had given the Respondent a full explanation of his meeting with Mr Younis the preceding Friday. This was during a walk around a cemetery, PM having requested that the discussion occur "off the premises". The contents of the cemetery discussion were set out in his 15 February 2016 response to a s44B Notice in which he stated:

> "I informed Professor Shiner that I was absolutely clear that we had to provide [TC] at Baker & McKenzie with a full note of the meeting and that it should be hand delivered the same day so that [TC] could inform the SRA and deal with matters and advise PIL accordingly.
>
> Professor Shiner said that I was panicking and wasn't thinking straight. He said let me think about this for a minute. I said that I wasn't panicking and that I was thinking very clearly as I had been thinking about matters all weekend.
>
> In the past Professor Shiner was usually calm and had good judgment. However, by that time, he had been under intense personal and professional pressure and was clearly in a very fragile and nervous mental state. Professor Shiner said that we should communicate to Mazin Younis that we agreed to go back to the old way of working as requested. He said that this would enable us to get what we knew to be the truthful answer from Mazin Younis concerning the Al-Sweady clients and how they instructed PIL which we could then submit to the SRA before informing Baker & McKenzie that we were being blackmailed.
>
> I said that I didn't agree with that approach and that we should simply go to Baker & McKenzie with the full note and let them sort it out. Professor Shiner did not agree and instructed me to follow his lead and do as he said in respect of this matter. I was quite surprised at Professor Shiner's suggestion, as I felt that it was out of character for him to act in this way. Normally he would take stock of the situation and calmly consider the best way forward, but this was not the way he was behaving.
>
> I said that I would do so but I still thought that we should be going straight to Baker & McKenzie. Professor Shiner said that we should communicate our agreement to returning to the old way of working in such a way that Mazin Younis could not have suspected that we were going to be informing our lawyers of his attempted blackmail of PIL.
>
> I said that the only way that I could see of doing this was in an email that included Professor Shiner and did not reference the real reason for the meeting with Mazin Younis, namely the SRA investigation. The Respondent agreed with me and asked me to put that into action."

65.7 In accordance with the Respondent's instructions, at 10:12am that day PM emailed the Respondent, making no reference to any of Mr Younis' allegations or to the answer to question 15. The email referred to having had a "general catch up meeting with" Mr Younis on Friday.

65.8 PM attached a draft email to be sent to Mr Younis, for which the Respondent's authority was sought. This draft email included the following: "Phil and I have discussed this matter this morning and it seems to be completely appropriate to restore our full working relationship and we also confirm that there is and never has been an issue with the service provided by OSW [Mr Younis' company] to PIL and its clients."

65.9 The Respondent responded at 10:22am the same day, stating that PM's proposal "seems sensible to me", suggested that "we go back to the old system", and asked PM to secure Mr Younis' confirmation "asap".

65.10 At 10:35am that day, PM forwarded the earlier chain to Mr Younis so he could see that "Phil is in full agreement that we revert to the old system with immediate effect". Mr Younis indicated his satisfaction with this proposal.

65.11 At 3:20pm PM sent Mr Younis a "clean" email attaching a document which "I believe represents the position in respect of the Al-Sweady matters following our discussion", and requesting Mr Younis' confirmation. The attachment to PM's email was a draft Response to question 15 in the following terms:

> "In 2005 I was asked by a number of journalists to track and find any Iraqi witnesses in the Danny Boy Battle. I was in Basra at the time, but due to security issues it wasn't possible for me to travel to Al-Majar area. In 2007 my agent in Basra, [AJ], informed me that he had met a tribesman from Amarah called [AI]... who agreed to help us find one or more of the witnesses in Majar.
>
> AI introduced me to [Client 9] whom I interviewed over the phone. When I heard what [Client 10] had to say I passed his statement to PIL. [Client 10] then introduced me to a couple of witnesses whom I also interviewed, we organised the first trip for 2 witnesses to meet PIL and LD in Damascus in 2007. [Client 10] later introduced me to more witnesses who met PIL and LD in Istanbul and Beirut."

65.12 On 30 June 2015, there was a series of email exchanges between Mr Younis and PM leading to the signing of a new "Service Level Agreement" ("the Agreement") between the parties.

65.13 On 1 July 2015, Mr Younis replied to PM's 29 June 2015 email. His email included the following:

> "I have recently spoken to [AJ] regarding the circumstances that led to contacting Al-Sweady clients. Now I recall the following:
>
> > "Back in 2005 I was approached by a British journalist, it was either [KS] or [RC], I can't be sure now. I cooperated with both journalists on many issues when they were stationed in Iraq. I recall that one of them was keen to gather information about witnesses in the Danny Boy battle in Amara. I was in Basra at the time, however, I was advised by my driver that it was too dangerous to travel there.

> I informed [AJ] of the importance of this matter and asked him to try and find a way for reaching anyone involved in this incident in Amara. Sometime in 2007, [AJ] informed me that he found an old friend, AI, who was happy to help. I then received a call from [Client 10] who agreed to give me his statement. Seeing the importance of this matter, I immediately informed Phil Shiner of that and forwarded the statement."

65.14 The Respondent and the Firm responded to the SRA's 23 April 2015 s44B Notice, forwarding their responses, which were received on or about 7 July 2015. In response to question 15 the following was stated:

> "In order to provide the most accurate information available PIL asked Mazin Younis the above question. His response was:
>
> > "Back in 2005 I was approached by a British journalist, it was either [KS] or [RC], I can't be sure now. I cooperated with both journalists on many issues when they were stationed in Iraq. I recall that one of them was keen to gather information about witnesses in the Danny Boy battle in Amara. I was in Basra at the time, however, I was advised by my driver that it was too dangerous to travel there.
> >
> > "I informed [AJ] of the importance of this matter and asked him to try and find a way for reaching anyone involved in this incident in Amara. Sometime in 2007, [AJ] informed me that he found an old friend, AI, who was happy to help. I then received a call from [Client 10] who agreed to give me his statement. Seeing the importance of this matter, I immediately informed Phil Shiner of that and forwarded the statement. [Client 10] also introduced me to the clients and also some witnesses in this incident. Again I took statements from them and due to the nature of what these individuals were saying I passed those statements to Phil Shiner also.""

65.15 Under cover of a handwritten letter dated 2 July 2015, PM's handwritten note of his 26 June 2015 meeting with Mr Younis was hand-delivered to Baker & McKenzie and it was read by the relevant fee-earner on 7 July 2015.

65.16 On 15 July 2015, Baker & McKenzie wrote to Simmons and Simmons stating that the Respondent "wished to withdraw his response to question 15 of the SRA's s44B Notice". A "replacement answer" was promised "as soon as possible", but no such replacement answer was provided. The letter advised that the Respondent "had previously thought it was best to rely on Mazin Younis to answer this question since it was directed primarily at his activities. We now have reason to believe that Mr Younis' account should not be relied upon without context and independent corroboration". PM's file note of the 26 June 2015 meeting, and the emails and Agreement of 29-30 June 2015, were enclosed. The letter continued:

> "In short, the enclosed documents evidence that Mazin Younis blackmailed [PM]. To [PM]'s surprise Mazin Younis stated that his response to the SRA's Q15 would be to provide an account that was as damaging as possible to

Professor Shiner. However, he then offered to provide a considerably more sympathetic account if PIL would reinstate his company (OSW) as a provider for translation work.

[PM] relayed this conversation to Professor Shiner, who instructed him to accede to Mazin Younis' demands to secure what he believed (and still believes) to be a true account of events for the purposes of answering the SRA's Q15. [PM] then entered into the relevant contract with OSW on behalf of PIL (see enclosed documents). Mazin Younis duly provided an account of events that is consistent with Professor Shiner's position.

Clearly, Professor Shiner should not have secured Mazin Younis's account in the way he did and should not have presented it to the SRA in an unqualified manner as being true and complete. In the circumstances, Mazin Younis's account of events plainly cannot be relied upon. Professor Shiner recognises that he has made a serious error of judgment. He sincerely and unreservedly apologises for his actions."

66. Allegation 1.5

66.1 In or about mid-September 2007, the Respondent authorised and approved the payment of £2,000 in referral fees to Mr Younis, relating to four new clients. In an email dated 13 September 2007 to the Respondent, Mr Younis attached a schedule of "expenses along with the referral fee that we discussed". The schedule in question included "referral fees for 4 clients @ £500/client as agreed". Of the four clients, two were Al-Sweady clients, and two related to other Iraqi matters.

66.2 The Respondent forwarded Mr Younis' email to BB, a paralegal at the Firm, on 14 September 2007 to be actioned. On 17 September 2007, BB sent the Respondent a schedule of expenses indicating what had been "paid by PIL", and including in that category £2,000 as "referral fee for 4 clients".

67. Allegations 1.6, 1.7, 1.8, 1.9, 1.10, 1.11 and 1.12

67.1 By way of emails dated 11 and 13 January 2006, the Firm and LD had entered into a referral and fee-sharing agreement in respect of the referral by the Firm to LD of Iraqi abuse/injury claims. The main terms of the agreement were that LD would "take over the injury claims for the Iraqis who have instructed you", with the Firm being paid (a) £20,000 up front, and (b) 50% of any success fee recovered.

67.2 The January 2006 agreement was revised by a written agreement dated 22 June 2007, a week after the Respondent had received Client 10's first Witness Statement. The principal terms of the written agreement were as follows:

i. The Firm would pass to LD 45 Iraqi cases in which the Firm was already instructed, for LD to pursue the private law damages claims.

ii. The Firm would be paid £20,000 in recognition of work and outgoings put into those cases.

iii. LD would remit to the Firm 25% of profit costs and success fees recovered in respect of the referred cases.

iv. If there was an Inquiry, the firms would share the work and profit costs on a 50/50 basis.

v. The same arrangement was agreed to apply to "new cases". In addition, once LD had taken on 3 new cases, a further £20,000 would be paid to the Firm. This further £20,000 fell due in January 2008, when a second detainee, in addition to Client 10, instructed LD.

67.3 On 22 April 2008, Mr Younis contacted SM at LD in relation to a number of potential new cases and, in respect of these, suggested that LD enter into a referral agreement with him.

67.4 MD believed that it was the responsibility of the Firm, rather than LD, to compensate Mr Younis for his role in referring cases and that the Firm should make a payment to Mr Younis out of the sums which LD had paid to the Firm. The Respondent agreed that he would be responsible for coming to an agreement with Mr Younis in respect of remuneration for the work he had done.

67.5 MD met the Respondent in early May 2008 to discuss the financial arrangements with Mr Younis. It was agreed between them that the Firm would offer Mr Younis an immediate lump sum payment of £20,000, representing 50% of the Firm's percentage-based referral fee for new cases and a 5% payment for historic cases.

67.6 It was agreed that the sum of £20,000 would be paid by LD in respect of referral fees that would be due on the BM case. Accordingly, £20,000 was paid by LD to the Firm on 7 May 2008 in order that the Firm could pay this sum to Mr Younis on behalf of LD.

67.7 In an email of 8 May 2008 to the Respondent, MD recognised that any referral arrangements between the Firm and Mr Younis had regulatory implications. By July 2008, MD had communicated to the Respondent the fact that the payment of referral fees in publicly funded cases was prohibited.

67.8 On or about 22 July 2008, the Firm and LD revised their 22 June 2007 fee-sharing arrangements. The principal terms of the revised agreement were as follows:

- Clause 1 provided:

> "Public Interest Lawyers (PIL) and [LD] are agreed that PIL will take responsibility for the development of work within Iraq on behalf of Iraqi nationals for the benefit of both practices. It is agreed that PIL will undertake the public law aspects of any cases arising from that development work and LD will undertake any private law claims. To ensure that this is coordinated LD agrees that all work in relation to Iraqi nationals will either be channelled through PIL or, where the case has come to LD from another source, then LD will immediately notify PIL of the case and will consider with PIL the practicalities of meeting with the clients. Again if any public law work arises

from that contact LD will recommend to the clients that PIL undertake that work."

- Clause 5 provided as follows:

  "LD agree that it will claim all the profit costs for its work to which it is entitled (including any success fee) in relation to cases referred to LD directly through PIL and remit to PIL 27.5% of the recovered profit costs and success fee. Where the referral has come from another source other than PIL, then PIL will be entitled to 13.75% of the recovered profit costs and success fee."

- Clause 6 provided that PIL would be entitled to 20.625% of LD's profit costs and success fee in relation to private law work on the Iraqi interpreter cases.

- Clause 7 provided that profit costs arising from any public inquiry would be split two thirds to the Firm and one third to LD.

67.9 Annex B listed 50 cases which were already the subject of the agreement, including those of Client 10 and five of the detainees.

67.10 The arrangements in clause 1 reflected the Respondent's concern that LD should not seek to develop an independent profile in Iraq.

67.11 The agreement reflected MD's comment that: "The deal we [PIL and LD] are putting together reflects everything both past and future – I thought that was the point, the whole idea is we deal with you and leave you to sort out Mazin!"

67.12 Thereafter, the Respondent continued to seek to negotiate terms with Mr Younis. In a 4 September 2008 email, the Respondent told MD that an impasse had been reached in the negotiations.

67.13 The Respondent wrote to the SRA stating that he wished to enter into a fee sharing agreement with Mr Younis, the effect of which would be to "split on a 50/50 basis the money received" under the Firm's agreement with LD. The SRA responded on 7 November 2008, drawing his attention to the requirements of Rule 9.02 SCC 2007. The Respondent passed this on to MD, in consequence of which it was agreed that the Firm would consult Leading Counsel.

67.14 Jeremy Morgan QC advised the Respondent on 22 December 2008 that the Firm was prohibited under Rule 9.02(h) SCC 2007 from entering into the proposed referral agreement with Mr Younis. Mr Morgan QC advised that "it would be artificial to say that the referral fee was only in respect of the civil claim because the reality is that your firm, as well as [LD], gets the benefit of the referral". He concluded: "It is my considered view that there is a real problem here and that any payment made which cannot be brought within the Rules could lead to serious sanctions at the hands of the SDT."

67.15 From January 2009 onwards Mr Younis was withholding further referrals to the Firm until he received payment for cases already referred and he was pressuring LD to enter into a referral agreement with him directly. Accordingly, referrals from

Mr Younis to the Firm dried up. On 4 March 2009, following a meeting with Mr Younis, SM emailed the Respondent on progress:

> "[MD] and I met with Mazin to clarify a few things re the referral fee arrangement and I hope to be able to sort out the paperwork in the next few days. This will also involve us amending the LDC/PIL agreement to reflect the payments we were directly paying to Mazin. We still need to hear from the SRA re how to deal with the issue of fee-sharing with Mazin for past referrals which came via PIL."

67.16 On 13 March 2009 SM sent Mr Younis a proposed fee-sharing agreement. The cover letter explained that the position in respect of historic cases was being explored with the SRA. Mr Younis responded that "obviously we have to wait till a decision is made regarding "historic cases", in order that they are included in the current agreement. I am sure you realise that this issue is of crucial importance to me."

67.17 The Respondent was sent a copy of the proposed agreement, under cover of SM's 13 March email which stated: "I do not see how under the SRA Code we can fee-share with Mazin for those cases referred by him/previously by PIL to us – as per clauses 5 and 6 of our agreement and have told him that". The Respondent made clear that his priority was that Mr Younis "comes off strike".

67.18 On 16 March 2009, SM informed the Respondent that she had spoken to the SRA who were "adamant that the agreement cannot be retrospective to cover historic cases" because it was impossible retrospectively to comply with the notification and other requirements contained in Rules 9.01(2) and 9.02 of the SCC 2007. In addition, because the historic cases had been referred by Mr Younis to the Firm, who had referred them on to LD, there had been no provision of services by Mr Younis to LD compliant with Rule 8.02(1)(a).

67.19 The Respondent, MD and SM discussed and agreed the arrangements which should be proposed by the Firm and LD to Mr Younis. These were contained in a 17 March 2009 email from SM, copied to the Respondent on 19 March 2009:

> "The SRA are adamant that the Agreement cannot apply to any clients we have taken on prior to the Agreement being signed, i.e. the Agreement cannot apply retrospectively. As PIL are also unable to share fees with you in respect of these cases, for which they have public funding, we propose the following way forward, to which Phil agrees: In respect of any cases you refer to us following the signing of the Agreement and until such time as the amount of fees we share with you equals the fees we have shared and will in the future share with PIL (in respect of cases already referred to us by you/PIL), we will share 27.5% of our recovered fees with you and no fees with PIL. We are prepared to pay an advance to you now of £50,000 in respect of the fees we anticipate sharing with you."

67.20 Mr Younis indicated on 19 March 2009 that he was "happy to accept" the revised proposal. In consequence, a written agreement was made between Mr Younis and LD on 23 March 2009. Clause 1 provided that Mr Younis would be paid 27.5% of recovered profit costs and success fees on cases referred by him to LD. The

23 March 2009 document did not fully set out the terms agreed between the parties, in that the full tripartite arrangements set out in SM's 17 March 2009 email were not included, and there was no reference to the promised payment of £50,000, which was to be jointly funded by the Firm and LD.

67.21 The effect of the tripartite agreements made on 17-23 March 2009 was that a mechanism was put in place whereby Mr Younis would receive an immediate payment of £50,000, of which £25,000 was to be paid by the Firm, and the total referral fees received by the Firm and Mr Younis in respect of all cases referred to LD, including historic cases, would ultimately be the same. Because the total referral fees payable by LD were calculated as 27.5% of received profit costs, the exact liability of LD under the agreements could only be determined once costs were recovered in each case. In the interim, payments were to be made on account.

67.22 On 24 March 2009, LD transferred the sum of £50,000 to Mr Younis. On 30 March 2009, the sum of £25,000 was paid by the Firm to LD. The £50,000 paid by LD to Mr Younis was therefore partly funded by the Firm, in the sum of £25,000. The payment of £25,000 was authorised by the Respondent and was recorded in the Firm's books as a disbursement, as confirmed in PM's response to question 15 of the 22 January 2016 s44B Notice.

67.23 A revised tripartite agreement was subsequently entered into between the Firm, LD and Mr Younis on or around 27 April 2010.

67.24 This agreement enabled LD to choose whether each subsequent referral fee in any matter was to be credited to either Mr Younis or the Firm. This agreement and that of 17-23 March 2009 permitted LD to credit Mr Younis disproportionately until such time as he had effectively "caught up" with the payments that had been made by LD to the Firm and the total fees paid to Mr Younis equalled those paid to the Firm in respect of all cases, including historic cases. It also permitted fees to be redirected from the Firm to Mr Younis in the amount that reflected the Respondent's intention to reward Mr Younis with 50% of the Firm's referral fees due from LD, including for "historic" referrals.

67.25 The 2009 and 2010 arrangements did not increase the total fees payable by LD, which continued to be 27.5% of the profit costs received, and it was envisaged that once the total payments to Mr Younis had equalised with those of the Firm, the Firm and Mr Younis would be entitled to 13.75% each of the recovered profit costs of the cases covered by the agreement.

67.26 In November 2010, the arrangements between LD and the Firm were again varied to take account of the work being carried out in respect of the Al-Sweady Inquiry, such that each firm would receive the profit costs in respect of its own work on the Inquiry but that work would be split two thirds to the Firm and one third to LD.

67.27 The Respondent was entitled to receive annual accounting from LD pursuant to clause 4 of the April 2010 agreement, and was aware at all times that the arrangements were being operated by LD in order to achieve the stated goal of "equalisation" as between the Firm and Mr Younis, taking into account historic cases.

68. Allegations 1.13 and 1.14

68.1 Question 10 of the 23 April 2015 s44 B Notice (Allegation 1.13) sought a summary of the Firm's work "in the Al Sweady matters from May 2004 – September 2007". In response, the Respondent claimed that he discussed the matter with Mr Younis in June 2007 in a passing manner and while discussing other issues, and then "thought no more of the incident" until he returned from annual leave in mid-August 2007.

68.2 Question 15 of the Notice (Allegation 1.14) inquired "How Mazin Younis identified potential clients or witnesses for the firm or [LD] in relation to the Al Sweady matters". The Respondent's response is as set out above in relation to Allegations 1.2-1.4.

69. Allegations 1.15 and 1.16

69.1 Question 17 of the Notice (Allegation 1.15) inquired "whether and if so how [AJ] identified potential clients or witnesses for the firm or [LD] in relation to the Al-Sweady matters". In forwarding AJ's explanation to the SRA, the Respondent stated "This is the first that PIL are aware of [AJ]'s involvement in the Al-Sweady matter. As previously stated, [AJ] was not known to PIL at the time of either trip in 2007 and 2008."

69.2 Question 21 of the Notice (Allegation 1.16) inquired; "Whether the firm made or offered to make any payment, gift or reward directly or indirectly to any client (or potential client) or individual to any person for the referral of clients (or potential clients) to the firm and if so a schedule identifying the payee, the amount to be paid, or the value of the gift or reward, and the reason". The response stated that, in the context of the Firm's public law work on Iraqi cases, "PIL can confirm that it has not made or offered to make any payment, gift or reward directly or indirectly to any client (or potential client) or individual to any person for the referral of clients (or potential clients) to the firm."

70. Allegation 1.17

70.1 Question 1 of the Notice required: "A schedule of documents provided by the Firm to the ASI [Al Sweady Inquiry] including a description and the date when each was so provided". Question 3 of the Notice required: "A schedule of documents provided by the firm to the Treasury Solicitors and the Administrative Court in connection with the prospective or actual judicial review proceedings including the date when each was so provided." It had been agreed that responses to these questions would be provided by 12 June 2015. The response to question 1 was provided on 11 January 2016, and the response to question 3 was provided on 19 January 2016.

71. Allegation 1.19

71.1 From June 2007 onwards, it was envisaged that the Firm would work closely alongside LD in the pursuit of claims on behalf of Iraqi nationals against the British Government, including at any public inquiry held in relation to allegations arising from the Battle of Danny Boy.

71.2 From July 2007, the two firms were closely involved in the process of gathering and reviewing evidence. From September 2007 onwards, the Firm and LD were instructed by the same Al-Sweady clients. In October 2007, Judicial Review proceedings had been issued by the Firm, with relevance to the private law claims which LD wished to pursue.

72. Allegation 1.20

72.1 The Respondent was familiar with his duty of candour to the Court as his practice had long embraced an extensive case-load before the Administrative Court. He had been reminded by Rabinder Singh QC on 4 April 2008 that "I do have an overriding duty to the Court for two reasons, first because I am a solicitor of the Supreme Court and second because this is a case on Judicial Review. Thus, if I did come into possession of something which was accounted to our case I would have a duty to disclose that notwithstanding my duty to the clients". Further, during a 28 July 2008 telephone call with the Treasury Solicitor he emphasised that he "took my own duty of full and frank disclosure very seriously indeed", and "explained that if I had doubts on the evidence as to whether my clients were telling the truth then I would immediately approach Rabinder Singh QC with that material and if so advised the Legal Services Commission too":

73. Allegation 1.21

73.1 In seeking public funding to bring and prosecute the Judicial Review, the relevant Al-Sweady clients and the Respondent had an obligation to draw the attention of the LSC to all matters material to the funding decision. This duty went beyond the duty of candour relevant to the Judicial Review application, encompassing the implications of privileged material held by the Firm, and any other matters that might bear on the LSC's assessment as to whether the claims should be publicly funded.

74. Allegation 1.22

74.1 The restrictions on publication of the allegations pursued in the Judicial Review imposed by the Divisional Court, were lifted on 31 January 2008.

74.2 Following the trip to Istanbul, the Respondent considered with MD how to develop a media strategy in respect of the claims of the Al-Sweady claimants. They decided to hold a joint press conference at the Law Society, which was to be timed to take place just before an edition of "Panorama" was aired on the BBC on the same topic.

74.3 In an email on 24 January 2008, MD reminded the Respondent that "go[ing] public" was "a massive step we are taking and I want to be as sure as I can that we are right". In a 7 September 2007 email exchange, the Respondent stated that "this is one of those stories where we cannot afford to slightly overstate the position or the state of the evidence", and MD replied with agreement and commenting that "if we overplay our hand it could well cause us a lot of difficulties in the future". Between 7 and 21 February 2008, the Respondent liaised with MD as to the structure and content of the press conference.

74.4 At the press conference, the Respondent and MD jointly presented the evidence that they had collated and the allegations being pursued against the British Forces that up to 20 Iraqi prisoners had been tortured and murdered after their capture.

74.5 The Respondent's comments at the press conference included the following:

> "[MD] and I spent five days with these witnesses. We have analysed their evidence alongside evidence from other sources and we have concluded that, on balance, our clients' version is the true one. As [MD] has stressed the Ministry of Defence's explanation does not make sense and aspects of it are frankly absurd …"

The Respondent also stated

> "We do not want to be talked about in the same vein as the Japanese in the Second World War or the Americans at My Lai, but unless we stand up and say as a nation that this cannot happen in our name – that is where we seem to be headed."

MD stated:

> "We have tried to examine as best we can the evidence of what the Iraqis are saying as against what we know the British Army to have said in terms of the events of that day.
>
> …
>
> Phil Shiner and I have a combined experience of 60 years of interviewing clients in the field. For us both the evidence of these five witnesses was entirely compelling.
>
> …
>
> As Phil Shiner and I have said, on the evidence we have seen, we believe that our clients' allegations are likely to be true, but what is crucial is that an immediate and thorough investigation is carried out into what happened."

74.6 The allegations of torture, execution and mistreatment were widely covered in the media, and a clip of the press conference duly appeared in the Panorama programme.

75. Allegation 1.24

75.1 For purposes of the oral phase of the Inquiry, the Respondent had a supervisory role, but was significantly involved on certain issues.

75.2 By March 2013, the MOD had disclosed material not available during the Judicial Review.

75.3 The oral phase of the Inquiry began in March 2013. Oral evidence of the Iraqi witnesses was given to the Inquiry between 18 March 2013 and 26 June 2013, and the witnesses were subject to questioning.

75.4 On or about 4 June 2013, the Iraqi Core Participants' legal team received a report from Mr Richard Shepherd, an expert instructed by the Firm, which did not materially dispute the conclusions of the forensic expert reports served by the MOD.

75.5 On 19 June 2013, [Counsel] provided an "Advice on Deceased Evidence". [REDACTED].

75.6 On 1 July 2013, the legal team received the report of Mr Michael Moore on the timing of photographs of the deceased taken by Captain Rands at CAN on the evening of 14 May 2004. This had been a contentious issue during the Judicial Review, with Captain Rands accused of having manipulated the timings to suit the MOD's case. Mr Moore's report supported the proposition that the timings had not been altered.

75.7 The military witnesses gave their evidence between 2 September 2013 and 27 March 2014. The Inquiry procedure required that each Core Participant team provide any Notice of Questions ("NOQ") 10 days before the witness gave evidence, and any Notice of Potential Criticism ("NPC"), with full particulars of the basis of any potential criticism, 28 days in advance.

75.8 On 27 September 2013, the Al-Sweady Inquiry was provided with the OMS Detainee List for the first time, by LD. On 19 October 2013, [Counsel] provided a "Second Advice on Deceased Evidence" [REDACTED]:

75.9 [REDACTED]

75.10 [REDACTED]

75.11 On 30 October 2013, there was a conference attended by the Respondent and the full counsel team. [REDACTED].

75.12 On 5 November 2013, [Counsel] produced an "Advice on Contemporary Documentation and Deaths in CAN". [REDACTED].

75.13 On 8 November 2013, [Counsel] produced his "Third Advice on Deceased Evidence". [REDACTED].

75.14 On 20 November 2013, [Counsel] provided a "Note on Evidence of Capt. Turner".[REDACTED].

75.15 On 20 November 2013, BB spoke with Client 10 by phone. No mention was made of the declining prospects of the clients' position on executions at CAN.

75.16 On 6 December 2013, [Counsel] prepared a Note following the oral evidence of Captain Rands. [REDACTED].

75.17 There was further discussion, in early 2014, between the counsel team and the Respondent [REDACTED].

75.18 On 7 March 2014, the proposed concession was mentioned by BB to Client 10. Following that meeting, a letter, drafted by D (a solicitor with the Firm) and BB, dated 14 March 2014 explained the concession that was to be made. This was sent on 17 March 2014.

75.19 The next day, 18 March 2014, there was a telephone call between Client 10 and BB and D in which the latter explained why the executions at CAN issue was to be conceded. It was agreed that there should be a further conversation, including with other clients. This took place on 24 March 2014, with "much concern" expressed by various Al-Sweady clients.

75.20 On 17 March 2014, [Counsel] had provided a draft of the proposed concession on the issue of executions at CAN to the Inquiry and to counsel for the other Core Participants. On 20 March 2014, Mr O'Connor QC made an open statement to the Inquiry to the effect that the "Iraqi Core Participants will not submit that, on the balance of probabilities, live Iraqis captured during the course of the battle on 14 May 2004 died or were killed at Camp Abu Naji".

75.21 On or about 17 December 2015 the Respondent and the Firm were served with s44B Notices relating to the extent to which the Al-Sweady clients had been kept informed of the progress of the Inquiry and the declining prospects of the execution at CAN allegation.

75.22 In response to question 5 of the 17 December 2015 s44B Notice, the Firm confirmed that clients were not informed of the content of [Counsel's] advices "specifically".

Witnesses

76. No witnesses attended to give live evidence.

Findings of Fact and Law

77. 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 Tribunal did not draw any adverse inference from the Respondent's absence when considering whether or not the Allegations had been proved. Although discussion of some of the Allegations made reference to LD, the Tribunal made clear that it made no comments nor findings in respect of LD.

78. **Allegation 1.1 - [As amended]: The Respondent encouraged and authorised the making of unsolicited direct approaches to potential clients arising out of the Battle of Danny Boy, through the agency of Mazin Younis, and [Client 10], which he adopted when client instructions were forthcoming, and thereby breached paragraphs (d), (g), and (h) of the Solicitors Publicity Code 2001, Rules 1(c) and 1(d) of the SPR 1990 and Rules 1.04, 1.06 and Rule 7 of the SCC 2007. It was further alleged that the Respondent acted in breach of Rule 1(a) of SPR 1990 and Rule 1.02 of SCC 2007.**

Applicant's Submission

78.1 The Respondent was kept informed of progress in locating the relevant potential clients throughout May and June 2007, and could not have been unaware of the fact that his agents were making unsolicited direct approaches to potential clients.

78.2 The Respondent had breached paragraphs (d), (g) and (h) of section 1 of the SPC 2001 and Rule 7 SCC 2007 (in particular, Rules 7.03(1), 7.05 and 7.06) by encouraging and authorising the making of unsolicited direct approaches to potential clients arising out of the Battle of Danny Boy, through the agency of Mr Younis, AJ, AI and Client 10, which he later adopted when the clients instructed the Firm.

78.3 He had turned a blind eye to the overwhelming likelihood of breaches of paragraphs (d), (g) and (h) of section 1 of the SPC 2001 and Rule 7 SCC 2007.

78.4 He had failed to act in the best interests of clients, in breach of Rule 1.04 SCC 2007 and Rule 1(c) SPR 1990 and had behaved in a way that was likely to diminish the trust the public places in him or the legal profession, in breach of Rule 1.06 SCC 2007 and Rule 1(d) SPR 1990.

78.5 The Applicant submitted that the Responded had failed to act with integrity. He was aware that it was contrary to his professional obligations to make or procure unsolicited direct approaches to potential clients, and had received a clear warning of the same when the LSC investigated such matters at his Firm in 2004-2005. It was, or ought to have been, obvious to the Respondent that the chain of inquiries he had initiated and the instructions he had given to Mr Younis would involve unsolicited direct approaches to potential clients, given that in May 2007, he had no relationship with any of the said potential clients. The reports he received in May and June 2007 strongly indicated that this was precisely what was occurring, but he took no steps to prevent it.

78.6 The Respondent gave no instruction to Mr Younis or the "Amara guys" to ensure that paragraphs (d), (g) and (h) of section 1 of the SPC 2001 and Rule 7 SCC 2007 were complied with despite the obvious risk that they would not be, and was provided with no basis for thinking that they had been. He had told Mr Younis on 18 June 2007 that he was "prepared to do everything I need to do to make this case happen". In the event, this included turning a blind eye to the inevitability of unsolicited approaches if his ambition was to be achieved. In giving instructions and encouragement to Mr Younis to make unsolicited direct approaches to potential clients on his behalf, the

Respondent was motivated, at least in part, by the potential financial rewards available to him under the fee-sharing arrangements with LD. He secured the variation of these fee-arrangements on 22 June 2007, shortly after Client 10 had been located.

Respondent's Submissions

78.7 The Respondent had admitted this Allegation in full, including the allegation of acting without integrity, by way of the letter sent to the Tribunal on his behalf dated 7 December 2016 from his previous solicitor.

The Tribunal's Findings

78.8 At the material times prior to 1 July 2007, the Solicitors' Publicity Code 2001 ("the SPC 2001") was in force. Paragraphs (d), (g) and (h) of section 1 of the SPC 2001 were in the following terms:

> "(d) **Unsolicited visits or telephone calls**
>
> (a) Practitioners must not publicise their practices by making unsolicited visits or telephone calls to a member of the public.
>
> (b) "Member of the public" does not include:
>
> - a current or former client;
> - another lawyer;
> - an existing or potential professional or business connection; or
> - a commercial organisation or public body.
>
> ....
>
> (g) **Practitioners' responsibility for publicity**
>
> A practitioner must not authorise any other person to conduct publicity for the practitioner's practice in a way which would be contrary to this code.
>
> (h) **Application**
>
> This section of the code applies to all forms of publicity including stationery, advertisements, brochures, directory entries, media appearances, press releases promoting a practice, and direct approaches to potential clients and other persons and whether conducted in person, in writing, or in electronic form."

78.9 As from 1 July 2007, Rule 7 SCC 2007 came into effect, replacing the SPC 2001.

78.10 Rule 7.03(1) SCC 2007 provided that: "You must not publicise your practice by making unsolicited approaches in person or by telephone to a member of the public". Rule 7.04 SCC 2007 provided that publicity intended for a jurisdiction outside England and Wales must comply with Rule 7. Rule 7.05 SCC 2007 provided: "You must not authorise any other person to conduct publicity for your practice in a way

that would be contrary to Rule 7". Rule 7.06(1) SCC 2007 stated that Rule 7 applied to "any publicity you or your firm conduct(s) or authorise(s) in relation to: (a) your practice; (b) any other business or activity carried on by you or your firm; or (c) any other business or activity carried on by others". Rule 7.06(2) SCC 2007 was in the following terms: "Subrules 7.01 to 7.05 apply to all forms of publicity including the name or description of your firm, stationery, advertisements, brochures, websites, directory entries, media appearances, promotional press releases, and direct approaches to potential clients and other persons, and whether conducted in person, in writing, or in electronic form."

78.11 Guidance Note 2 to Rule 7 SCC 2007 stated:

> "In the delivery of professional services, there is an imbalance of knowledge between clients and the public on the one hand, and the service provider on the other. Rule 7 addresses this in a number of ways – for example, by ensuring that clients and the public have appropriate information about you, your firm and the way you are regulated; and by prohibiting misleading publicity and inappropriate approaches for business."

78.12 The Tribunal noted that the Respondent had been warned about this issue in April 2005 following an investigation by the LSC, only two years prior to the material time. Although no action had been taken against him at that stage, the issue would have been fresh in his mind at the time of these events.

78.13 The exchange of emails between the Respondent and Mr Younis during May and June 2007 reflected the fact that the Respondent wished Mr Younis to track down potential clients who may have been affected by the events surrounding the Battle of Danny Boy. Mr Younis proceeded to do precisely that, resulting in the introduction of Client 10 and others. Mr Younis had been keeping the Respondent regularly updated as to progress and the Tribunal was entirely satisfied that the Respondent was aware of, and encouraging, the methods being employed by Mr Younis. The Respondent was very keen to secure clients and the Tribunal noted his own comment in an email of 18 June 2007 to Mr Younis in which he stated that he was "prepared to do everything I need to make this case happen". The Tribunal was satisfied beyond reasonable doubt that this motivation caused the Respondent to disregard his professional obligations.

78.14 The Respondent had admitted this Allegation in full and the Tribunal was satisfied that on the evidence, the admission was properly made. The Tribunal found this matter proved in full beyond reasonable doubt.

79. **Allegation 1.2 - The Respondent improperly authorised and procured Public Interest Lawyers Limited to enter into an agreement in June 2015 providing financial benefits to Mr Younis in order to cause or persuade him to change his evidence on the issue of how the Al-Sweady clients had been identified and thereby breached Principles 2 and 6 of the Principles. Dishonesty was alleged, although this was not a requirement for the Allegation to be proved.**

Allegation 1.3 - The Respondent improperly presented the changed evidence from Mr Younis to the SRA (in response to a s44B Notice served on him) without explanation as to the circumstances in which it had been obtained, and thereby breached Principles 2, 6 and 7 of the Principles. Dishonesty was alleged, although this was not a requirement for the Allegation to be proved.

Allegation 1.4 - The Respondent improperly sanctioned and approved the creation of emails dated 29 and 30 June 2015 which did not disclose the true reason for the agreement with Mr Younis, but falsely gave the impression that it was the product of a routine discussion and thereby breached Principles 2 and 6 of the Principles. Dishonesty was alleged, although this was not a requirement for the Allegation to be proved.

Applicant's Submissions

79.1 The Applicant submitted the Respondent improperly authorised the Firm to enter into an agreement with Mr Younis in June 2015 providing financial benefits in order to cause or persuade him to change his evidence on the issue of how the Al-Sweady clients had been identified. He then improperly presented the changed evidence from Mr Younis to the SRA in response to a s44B Notice served on him without explanation as to the circumstances on which it had been obtained. Further, he improperly sanctioned and approved the creation of emails dated 29 and 30 June 2015 which did not disclose the true reason for the agreement with Mr Younis, but falsely gave the impression that it was the product of a routine discussion.

79.2 In doing so the Applicant submitted that the Respondent had failed to act in a way that maintained the trust the public placed in him and in the provision of legal services, contrary to Principle 6 of the Principles. He had failed to comply with his legal and regulatory obligations or deal with the SRA in an open, timely and co-operative manner, contrary to Principle 7 of the Principles and in so doing had acted dishonestly, alternatively recklessly, and without integrity in breach of Principle 2 of the Principles.

79.3 The Respondent had ignored advice from PM that it was preferable to pass the matter to Baker & McKenzie, preferring instead to authorise an obviously improper arrangement with Mr Younis in order to secure his changed evidence. He knew that the emails to Mr Younis early on 29 June 2015 did not reflect the true and complete picture, contained various misleading and false statements, and were calculated to give a false impression. In overriding PM's advice, and later authorising the response to question 15 which was sent, the Respondent knew that the SRA would not be presented with all facts relevant to assessing the response they had been given, and might be misled. These actions demonstrated that the Respondent had acted dishonestly or alternatively recklessly in respect of each of the three Allegations.

Respondent's Submissions

79.4 The Respondent had admitted these three Allegations, including the allegations of acting without integrity, by way of the letter sent to the Tribunal on his behalf dated 16 December 2016 from his previous solicitor. He denied acting dishonestly or recklessly in each respect of each Allegation. The letter stated that the Respondent

"accepted the actus reus but not the mens rea". He undertook the acts alleged against him but was not responsible for his actions because he was suffering from ill-health at the material time. It was shortly after this incident that he was signed-off as not fit to practice by his GP. The contemporaneous note prepared by PM referred to the Respondent having been "under intense personal and professional pressure and was clearly in a very fragile and nervous... state". It had been submitted on his behalf that he had acted "wholly irrationally as a result of his ill-health and that therefore his actions could not be judged against the usual standards of professional conduct. Further, as soon as his error of judgement was brought to his attention [he] immediately instructed Baker and McKenzie to inform Simmons and Simmons by telephone of the mistake and that the relevant response was to be withdrawn and replaced". The Tribunal was referred to the report of Professor Heun and the conclusions contained therein. It was submitted that on the basis of the medical evidence and the evidence of PM that it would be unsafe for the Tribunal to draw a conclusion that the subjective limb of the test for dishonesty, set out in Twinsectra v Yardley and others [2002] UKHL 12, had been proved beyond reasonable doubt.

The Tribunal's Findings

79.5 The Tribunal considered the evidence of PM of his meeting with Mr Younis and the subsequent discussion at the cemetery with the Respondent. It was clear that Mr Younis was linking the issue of his answer to the section 44B notice to that of the remuneration arrangements between himself and the Firm. This was starkly expressed in the note of the meeting between PM and Mr Younis in which PM had written "He then added that if we went back to the old way of working he "can have a clearer memory". This had been relayed to the Respondent at the cemetery and the Respondent had agreed to Mr Younis' demands to return to the "old ways of working". The Tribunal was satisfied beyond reasonable doubt that the purpose of agreeing to Mr Younis' terms was to bring about a change in his account on the issue of how the Al-Sweady clients had been identified.

79.6 The amended answer as provided by Mr Younis was untrue and therefore had the effect of misleading the SRA. On the Respondent's own admission (in relation to Allegation 1.1), Mr Younis had been correct in his first answer for the reasons set out in relation to the Tribunal's findings on Allegation 1.1. No proper explanation as to the circumstances of the answer was provided and although the answer was withdrawn a few days later, it was not substituted.

79.7 In order to bring about the amended answer it had been agreed between the Respondent and PM that an email chain would be created in order to give context to the revised working arrangements. The context that was created by the emails bore no relation to the reality of PM's meeting with Mr Younis. The Tribunal was satisfied beyond reasonable doubt that this had the result of creating a false impression of the circumstances behind the agreement.

79.8 The Respondent had admitted the factual basis of Allegations 1.2, 1.3 and 1.4 and had admitted that his actions lacked integrity and diminished the trust placed in him and the profession. In respect of Allegation 1.3 this included an admission that he had failed to comply with his regulatory obligations to deal with the SRA in an open,

timely and co-operative manner. The Tribunal was satisfied beyond reasonable doubt on the basis of the evidence that these admissions were properly made.

79.9 In considering the allegation of dishonesty the Tribunal applied the combined test laid down in Twinsectra.

79.10 The Tribunal applied the objective test. The Respondent had entered into an agreement in order to bring about a change in Mr Younis' evidence in order that an untrue answer could be provided to the regulator (Allegation 1.2). He had subsequently presented that untrue answer to the SRA (Allegation 1.3). In order to achieve this he had engaged in an elaborate plan over a number of days whereby disingenuous emails were created with the Respondent's approval in order to disguise the fact that the real reason for the return to the "old ways of working" was to bring about an answer which the SRA would find satisfactory (Allegation 1.4). The Tribunal was satisfied beyond reasonable doubt that at each of these stages the Respondent's actions would be considered dishonest by the ordinary standards of reasonable and honest people.

79.11 The Tribunal considered the subjective test. In applying this limb the Tribunal had full regard to the character references supplied on the Respondent's behalf and to the medical evidence.

79.12 The character references spoke highly of the Respondent both in professional and personal contexts.

79.13 The basis of the Respondent's defence was that he was not responsible for his actions at the time due to ill-health. The Tribunal examined the medical material before it in detail. The report of Professor Huen, which was relied upon by the Respondent, was based on an assessment carried out in October 2016, more than a year after these events. Professor Huen noted that it was "impossible in hindsight to say" which individual decisions may have been affected by the Respondent's health issues but he concluded that the Respondent's problems "would not have affected his ability to distinguish a subjective truth from a lie". There was nothing contained in any of the medical evidence before the Tribunal that contradicted this conclusion.

79.14 The Tribunal noted that the Respondent had taken a complex series of decisions and acts that were rational in the context of achieving an aim – specifically to ensure that the SRA would receive a response that they would find satisfactory despite, and indeed because, it was untrue. The decision to approve the creation of emails was a clear example of this.

79.15 The Tribunal was satisfied beyond reasonable doubt that the Respondent knew at the time he entered into the agreement to cause Mr Younis to change his evidence, at the time he presented that changed evidence to the SRA and at the time he sanctioned and approved the creation of the emails, that he was acting dishonestly by the ordinary standards of reasonable and honest people and had done so knowingly.

79.16 The Tribunal was not required to consider the question of recklessness as that was pleaded as an alternative to dishonesty.

79.17 In respect of Allegations 1.2, 1.3 and 1.4 the Tribunal was satisfied beyond reasonable doubt that each of them were proved in full, including the allegations of dishonesty.

80. **Allegation 1.5 - The Respondent authorised, procured and approved the payment to Mr Younis of prohibited referral fees in or about September 2007, and thereby breached Rules 1.01, 1.04, 1.06, 8.02 and 9.02 of SCC 2007.**

Applicant's Submissions

80.1 The Applicant submitted that the £2,000 referral fees were agreed and authorised by the Respondent in breach of Rules 8.02, and Rules 9.02(a), (b), (c), (d), (f), (g) and (h) SCC 2007, in that there was no advance written agreement between the Respondent or the Firm and Mr Younis, whether compliant with the requirements of Rule 9.02 or otherwise. There was no evidence or reason to believe that clients were provided with the information specified in Rule 9.02 prior to the referral or prior to the Firm's acceptance of instructions. The Respondent and the Firm intended at all material times to act for the referred clients with the benefit of public funding (within the meaning of Rule 9.02(h)). At this time, neither the Respondent nor the Firm engaged in private law personal injuries claims or litigation.

80.2 In agreeing and authorising payment by the Firm of the said £2,000 referral fees, the Respondent breached Rules 8.02, and Rules 9.02(a), (b), (c), (d), (f), (g) and (h) of SCC 2007. He failed to uphold the rule of law and/or the proper administration of justice in breach of Rule 1.01 of SCC 2007 and failed to act in the best interests of his clients in breach of Rule 1.04 SCC 2007. The Applicant submitted that in so acting he had diminished the trust the public places in himself and/or the legal profession, in breach of Rule 1.06 SCC 2007.

Respondent's Submissions

80.3 The Respondent had admitted this Allegation in full by way of the letter sent to the Tribunal on his behalf dated 7 December 2016 from his previous solicitor.

The Tribunal's Findings

80.4 At the times material to this and following Allegations, the SCC 2007 contained Rules and Guidance as set out below.
Rule 8.02 of the SCC 2007 provided:

> "8.02 Fee sharing with other non-lawyers
>
> (i) … you may share your professional fees with another person or business ("the fee sharer") if:
>
> (a) The purpose of the fee sharing arrangement is solely to facilitate the introduction of capital and/or the provision of services to your firm;
>
> …

(e) Your fee sharing agreement does not involve a breach of rule 9 (referrals of business) ...."

Guidance Note 1 to Rule 8 provided:

> "Fee sharing is not defined in Rule 8. It can have a variety of forms and includes relationships where you make a payment within a firm or to a third party by reference to a percentage of the fees charged to a client in respect of a particular case, or a percentage of your gross or net fees, or your profits."

Guidance Note 13 to Rule 8 stated:

> "Although 8.02 does not specify any cap or limit on the amount of fees which you may share with third parties, you must ensure that the extent of the fees shared does not put at risk your duties to act independently and in clients' best interests – see rule 1 (Core duties). Firms should carry out an assessment of any risk to these core duties that could be created by any fee sharing arrangement, and take action to limit or manage that risk. In assessing whether a firm may have been in breach of these duties, particularly where the percentage of all fees shared is higher than 15% of gross fees, the Solicitors Regulation Authority may ask for evidence of this risk assessment."

Rule 9 is entitled "Referrals of business". The introduction stated: "Rule 9 applies when you receive referrals of business from, or make referrals to, third parties. Its purpose is to protect your independence".

Rule 9.01 included the following:

> "(4) You must not, in respect of any claim arising as a result of death or personal injury, either:
>
> i. Enter into an arrangement for the referral of clients with; or
> ii. Act in association with,
>
> any person whose business, or any part of whose business, is to make, support or prosecute (whether by action or otherwise, and whether by a solicitor or agent or otherwise) claims arising as a result of death or personal injury, and who, in the course of such business, solicits or receives contingency fees in respect of such claims."

Rule 9.02 of the SCC 2007 stated:

> "9.02 Financial arrangements with introducers
>
> The following additional requirements apply when you enter into a financial arrangement with an introducer:
>
> (A) The agreement must be in writing and be available for inspection by the Solicitors Regulation Authority.

(B) The introducer must undertake, as part of the agreement, to comply with the provisions of this rule.

(C) You must be satisfied that clients referred by the introducer have not been acquired as a result of marketing or publicity or other activities which, if done by a person regulated by the Solicitors Regulation Authority, would be in breach of any of these rules.

(D) The agreement must not include any provision which would:

- Compromise, infringe or impair any of the duties set out in these rules; or
- Allow the introducer to influence or constrain your professional judgment in relation to the advice given to the client.

a. The agreement must provide that before making a referral the introducer must give the client all relevant information concerning the referral, in particular:

- The fact that the introducer has a financial arrangement with you; and
- The amount of any payment to the introducer which is calculated by reference to that referral; or
- Where the introducer is paying you to provide services to the introducer's customers:
- The amount the introducer is paying you to provide those services; and
- The amount the client is required to pay the introducer.

(E) If you have reason to believe that the introducer is breaching any of the terms of the agreement required by this rule, you must take all reasonable steps to ensure that the breach is remedied. If the introducer continues to breach it you must terminate the agreement.

(F) Before accepting instructions to act for a client referred under 9.02 you must, in addition to the requirements contained in 2.02 (Client care), 2.03 (information about the cost) or 2.05 (Complaints handling), give the client, in writing, all relevant information concerning the referral, in particular:

a) the fact that you have a financial arrangement with the introducer;

b) The amount of any payment to the introducer which is calculated by reference to that referral; or

c) Where the introducer is paying you to provide services to the introducer's customers:

- The amount the introducer is paying you to provide those services; and

- The amount the client is required to pay the introducer.

d) A statement that any advice you give will be independent and that the client is free to raise questions on all aspects of the transaction; and

e) Confirmation that information disclosed to you by the client will not be disclosed to the introducer unless the client consents; but that where you are also acting for the introducer in the same matter and a conflict of interests arises, you might be obliged to cease acting.

(G) You must not enter into a financial arrangement with an introducer for the referral of clients in respect of criminal proceedings or any matter in which you will act for the client with the benefit of public funding."

Under the heading "Financial arrangements with introducers", Guidance Note 3 to Rule 9 provided as follows:

> "Rule 9 permits you to pay for referrals, and to be paid by an introducer to provide services to the introducer's customers, subject to conditions. These conditions apply whenever you make a payment, or give other consideration, to a third party who refers clients to you, unless you can show that the payment is wholly unconnected with the referral of any client to you. The conditions also apply regardless of how the payment (or other consideration) is described. For example, the conditions would apply to the payment of administrative or marketing fees, payments described as "disbursements" which are not proper disbursements, and panel membership fees. Equally, you will not be able to avoid the requirements of the rule by, for example, making the payment to an intermediary who, in turn, has an arrangement with the introducer. When investigating complaints the SRA will consider the substance of any relationship rather than the mere form."

80.5 The Tribunal was satisfied that the reference to "the referral fee that we discussed" in Mr Younis' email of 13 September 2007 was a referral fee within the meaning of Rules 8 and 9 of SCC 2007. There was no evidence that this agreement between the Respondent and Mr Younis was in writing and as such was a breach of Rule 9.02(a). The clients had been acquired as a result of marketing and publicity, as set out in the Tribunal's findings in relation to Allegation 1.1, thereby breaching Rule 9.02(c). There was no evidence that the clients had been given the information required by Rule 9.02(e). The clients were intended to be publically funded, as the Firm did not

conduct private law or personal injury claims at the time, thereby breaching Rule 9.02(h).

80.6 By virtue of being in breach of aspects of Rule 9, the referral fees were not permitted under Rule 8.02, which required adherence to Rule 9. The Respondent had admitted that the referral fees were prohibited and the Tribunal was satisfied beyond reasonable doubt that this admission was properly made on the evidence.

80.7 The breach in relation to Rule 9.02(e) meant that clients were not properly informed about the financial arrangement between the Respondent and Mr Younis. The purpose of Rule 9.02(e) was to protect clients and the Tribunal was therefore satisfied that the Respondent had failed to act in the best interest of his client. The Respondent had admitted breaching Rule 1.04 and the Tribunal was satisfied beyond reasonable doubt that this admission was properly made.

80.8 The failure to comply with the SCC 2007 and the consequent failure of the Respondent to act in his clients best interests inevitably meant that he had behaved in a way which diminished the trust the public placed in him and in the profession. The Respondent had admitted breaching Rule 1.06 and the Tribunal was satisfied beyond reasonable doubt that this admission was properly made.

80.9 Although the referral fees paid were improper for the reasons set out above, they were examples of professional misconduct rather than law-breaking and that misconduct had not had an obvious bearing on the Respondent's duties to the Court and/or the parties. The failure to uphold the law and/or the proper administration of justice did not automatically flow from a breach of professional regulation, although that potential existed in some cases. The Tribunal could not be sure that the Respondent's conduct amounted to a breach of Rule 1.01. Notwithstanding the Respondent's admission to breaching Rule 1.01, the Tribunal was not satisfied beyond reasonable doubt that he was in breach of this element of the Allegation.

80.10 Allegation 1.5 was therefore proved beyond reasonable doubt in respect of Rules 1.04, 1.06, 8.02 and 9.02 but not proved in respect of Rule 1.01.

81. **Allegation 1.6 - The Respondent authorised, procured and approved an improper fee sharing arrangement with Mr Younis pursuant to the tripartite agreements (between PIL, LD and Mr Younis) made on or about 17-23 March 2009, which was an improper arrangement in that it was an improper contingency fee arrangement and thereby breached Rules 1.01, 1.06, 8 and 9.01(4) of SCC 2007.**

Allegation 1.7 - The Respondent authorised, procured and approved an improper fee sharing arrangement with Mr Younis pursuant to the tripartite agreements (between PIL, LD and Mr Younis) made on or about 27 April 2010, which was an improper arrangement in that it was an improper contingency fee arrangement and thereby breached Rules 1.01, 1.06, 8 and 9.01(4) of SCC 2007.

Applicant's Submissions

81.1 The Applicant submitted that the referral and fee-sharing agreements with Mr Younis made on or about 17-23 March 2009 and 27 April 2010 were made in breach of Rule 9.01(4) in that the Firm was party to arrangements whereby Mr Younis was to be remunerated for the referral of clients in respect of claims arising as a result of death or personal injury; Mr Younis was a person "whose business" or at least "part of whose business" was to "support" claims arising as a result of death or personal injury; and Mr Younis was both soliciting and receiving a "contingency fee", in that for the purposes of Rule 9.01(4) and (5), "contingency fee" was defined by rule 9.01(6) as meaning "any sum (whether fixed, or calculated either as a percentage of the proceeds or otherwise) how so ever payable only in the event of success in the prosecution or defence of any action, suit or other contentious proceedings".

81.2 The agreement with Mr Younis provided for the payment of a fee calculated (or purportedly calculated) by way of a percentage of profit costs (including the success fee) which was payable only in the event of success in bringing a claim. To the extent that the relevant claims were issued, they were within the meaning of Rule 9.01(6); in so far as the claims referred were not formally issued they nonetheless were and were intended to be contentious proceedings within the meaning of Rule 9.01(6) as evidenced by the terms of the conditional fee agreements entered into with the various clients. The fee payable to Mr Younis was therefore a contingency fee within the meaning of Rule 9.01(4).

81.3 In the alternative, the Applicant submitted that the increase to 27.5% represented a referral fee which was excessive and not commensurate with the services provided by Mr Younis. The SRA's letter to the Respondent dated 7 November 2008 had referred him to paragraph 13 of the Guidance Notes to Rule 8, and observed that the Firm "would have to be satisfied the payment to Mr Younis is commensurate with the services received (that is the services to your practice) and that you can substantiate that if called upon to do so". He was therefore aware that the SCC 2007 required that referral fees paid to Mr Younis be commensurate with the services provided. However, there were no additional services proposed to be provided by Mr Younis between the draft agreement of 13 March 2009, which mentioned the figure of 13.75%, and the final agreements reached between all parties on 17-23 March 2009, in which the figure increased to 27.5%. There was no other justification for the increased sum. Mr Younis' initial demand had been for 15%. The referral agreements with Mr Younis made on or about 17-23 March 2009 and 27 April 2010 were made in breach of Rule 9.01(4) of the SCC 2007 by reason of being an improper contingency fee arrangement. In negotiating, approving and authorising the Firm to enter into such improper arrangements, the Respondent breached Rule 8 and Rule 9.01(4) of the SCC 2007, failed to uphold the rule of law and/or the proper administration of justice in breach of Rule 1.01 SCC 2007 and acted in such a way as to diminish the trust the public places in himself and/or the legal profession in breach of Rule 1.06 SCC 2007.

Respondent's Submissions

81.4 The Respondent had admitted both Allegations in full by way of the letter sent to the Tribunal on his behalf dated 7 December 2016 from his previous solicitor.

The Tribunal's Findings

81.5 The arrangements between the Respondent, LD and Mr Younis clearly related to the referral of clients in respect of claims arising out of death or personal injury and Mr Younis was a person whose business was to support such claims. The Tribunal was satisfied that the method of calculation of the sum payable meant that the fee-sharing arrangements amounted to a contingency fee and that the fee sharing arrangements were therefore improper in relation to the 17-23 March 2009 tripartite agreement (Allegation 1.6) and the 27 April 2010 agreement (Allegation 1.7) as they breached Rule 9.01(4) and were therefore also in breach of Rule 8 which required adherence to Rule 9. The Respondent had admitted that the fee-sharing arrangements were improper in each case and the Tribunal was satisfied beyond reasonable doubt that these admissions were properly made on the evidence.

81.6 The failure to comply with the SCC 2007 inevitably meant that he had behaved in a way which diminished the trust the public placed in him and in the profession. The Respondent had admitted breaching Rule 1.06 and the Tribunal was satisfied beyond reasonable doubt that this admission was properly made.

81.7 Although the fee-sharing arrangements were improper, they were again examples of professional misconduct rather than law-breaking and that misconduct had not had an obvious bearing on the Respondent's duties to the Court and/or the parties. The Tribunal could not therefore be sure that the Respondent's conduct amounted to a breach of Rule 1.01. Notwithstanding the Respondent's admission to breaching Rule 1.01, the Tribunal was not satisfied beyond reasonable doubt that he was in breach of this element of the Allegations.

81.8 Allegations 1.6 and 1.7 were therefore proved beyond reasonable doubt in respect of Rules 1.06, 8 and 9.01(4) but not proved in respect of Rule 1.01.

82. **Allegation 1.8 - The Respondent authorised, procured and approved an improper fee sharing arrangement with Mr Younis pursuant to the tripartite agreements (between PIL, LD and Mr Younis) made on or about 17-23 March 2009, which was an improper arrangement in that it was an arrangement for the payment of a referral fee in respect of historic cases, and thereby breached Rules 1.01, 1.06, 8, 9.01(4) and 9.02 of SCC 2007.**

Allegation 1.9 - The Respondent authorised, procured and approved an improper fee sharing arrangement with Mr Younis pursuant to the tripartite agreements (between PIL, LD and Mr Younis) made on or about 27 April 2010, which was an improper arrangement in that it was an arrangement for the payment of a referral fee in respect of historic cases, and thereby breached Rules 1.01, 1.06, 8, 9.01(4) and 9.02 of SCC 2007.

Applicant's Submissions

82.1 The Applicant submitted that the referral agreements made on or about 17-23 March 2009 and 27 April 2010 were improper as they provided for the payment of referral fees to Mr Younis in respect of historic cases in breach of Rules 8, 9.01(4) and 9.02 in that Mr Younis had been indicating for some time that he wanted to be remunerated for historic referrals and by early 2009, it was clear to the Respondent

that Mr. Younis was effectively "on strike". Prior to the SRA's 16 March 2009 advice that referrals could not be paid for historic cases, the terms which all parties were prepared to accept envisaged that Mr Younis would receive a referral fee of 13.75% of LD's relevant recoveries on both past and future referrals, with the Firm surrendering an equivalent entitlement under the 22 July 2008 agreement.

82.2 Once the SRA's view was known, the parties sought to achieve the same result by the device of increasing Mr Younis' share to 27.5% while granting discretion to LD to allocate the referral fees in a manner that would achieve equalisation. The parties' true intentions, as corroborated by their written exchanges preceding and comprising the 17-23 March 2009 agreement, and their later conduct in performance of the said arrangements, were to remunerate Mr Younis for historic referrals. The increase to 27.5% was in substance an increased payment in order to pay sums to Mr Younis in respect of previous referrals, as an attempt to circumvent the advice received from the SRA on 16 March 2009. SM's email of 17 March 2009, which was seen by the Respondent on 19 March 2009, expressly linked the negotiation about "historic cases" with the increased level of referral fees from that previously negotiated. Mr Younis confirmed that the agreement was operated to cover "historic" cases, with the ambition of "equalisation" in accordance with the parties' intention.

82.3 Guidance Note 3 to Rule 9 SCC 2007 was clear that it was the "substance" of the arrangements that was key. In addition, the Respondent had been warned off "artificial" structures or contentions by Jeremy Morgan QC on 22 December 2008.

82.4 The improper arrangements regarding referral fees for historic cases contained in the 17-23 March 2009 agreements were perpetuated in the tripartite agreement made on or about 27 April 2010. Accordingly, the referral agreements with Mr Younis dated 17-23 March 2009 and 27 April 2010 were made in breach of Rules 8 and 9 of the SCC 2007 by reason of being improper arrangements for historic referrals. In negotiating, approving and authorising the Firm to enter into such improper arrangements, the Respondent breached Rule 8, Rule 9.01(4) and Rule 9.02 of the SCC 2007, failed to uphold the rule of law and/or the proper administration of justice in breach of Rule 1.01 SCC 2007 and acted in such a way as to diminish the trust the public places in himself and/or the legal profession in breach of Rule 1.06 SCC 2007.

Respondent's Submissions

82.5 The Respondent had admitted both Allegations in full by way of the letter sent to the Tribunal on his behalf dated 7 December 2016 from his previous solicitor.

The Tribunal's Findings

82.6 The SRA had given clear advice on 16 March 2009 that referral fees could not be paid in respect of historic cases. The negotiations that followed this advice and that led up to the 17-23 March 2009 agreement (Allegation 1.8) made explicit references to historic cases. This was carried over into the 27 April 2010 agreement (Allegation 1.9). The Tribunal was satisfied that the increase in Mr Younis' share to 27.5% was intended to achieve the payment of a referral fee in respect of historic cases in a way which did not appear to contradict the advice of the SRA. The Tribunal

had regard to Guidance Note 3 to Rule 9 and was satisfied beyond reasonable doubt that it was the substance of the arrangement that mattered. The arrangements that were devised amounted to the type of artificial structure that Mr Morgan QC had warned against in his advice on similar matters in December 2008.

82.7 The Tribunal was satisfied that the fee-sharing arrangements related to historic cases and were therefore improper in relation to the 17-23 March 2009 tripartite agreement and the 27 April 2010 agreement as they breached Rule 9.01(4) and Rule 9.02 and therefore breached Rule 8 which required adherence to Rule 9. The Respondent had admitted that the fee-sharing arrangements were improper in each case and the Tribunal was satisfied beyond reasonable doubt that these admissions were properly made on the evidence.

82.8 The failure to comply with the SCC 2007 inevitably meant that he had behaved in a way which diminished the trust the public placed in him and in the profession. The Respondent had admitted breaching Rule 1.06 and the Tribunal was satisfied beyond reasonable doubt that this admission was properly made.

82.9 Although the fee-sharing arrangements were improper, they were again examples of professional misconduct rather than law-breaking and that misconduct had not had an obvious bearing on the Respondent's duties to the Court and/or the parties. The Tribunal could not therefore be sure that the Respondent's conduct amounted to a breach of Rule 1.01. Notwithstanding the Respondent's admission to breaching Rule 1.01, the Tribunal was not satisfied beyond reasonable doubt that he was in breach of this element of the Allegations.

82.10 Allegations 1.8 and 1.9 were therefore proved beyond reasonable doubt in respect of Rules 1.06, 8, 9.01(4) and 9.02 but not proved in respect of Rule 1.01.

83. **Allegation 1.10 - The Respondent authorised, procured and approved an improper fee sharing arrangement with Mr Younis pursuant to the tripartite agreements (between PIL, LD and Mr Younis) made on or about 17-23 March 2009, which was an improper arrangement in that it was an arrangement for the payment of a referral fee in respect of publicly funded cases, and thereby breached Rules 1.01, 1.02, 1.06, 8, 9.01(4) and 9.02(h) of SCC 2007.**

Allegation 1.11 - The Respondent authorised, procured and approved an improper fee sharing arrangement with Mr Younis pursuant to the tripartite agreements (between PIL, LD and Mr Younis) made on or about 27 April 2010, which was an improper arrangement in that it was an arrangement for the payment of a referral fee in respect of publicly funded cases, and thereby breached Rules 1.01, 1.02, 1.06, 8, 9.01(4) and 9.02(h) of SCC 2007.

Applicant's Submissions

83.1 The Applicant submitted that the referral agreements made on or about 17-23 March 2009 and 27 April 2010 were improper as providing for the payment of referral fees to Mr Younis by the Firm in respect of publicly funded cases, in breach of Rules 8, 9.01(4) and 9.02(h). The Respondent had been advised by Leading Counsel on 22 December 2008 that the Firm could not pay Mr Younis referral fees in respect of publicly funded work. At the material times, all referrals from Mr Younis

to the Firm were in respect of publicly funded work. Upon receipt of Counsel's advice, and in order to avert Mr Younis' "strike", the Respondent had sought to reach the same result indirectly, by the device of surrendering half of the Firm's entitlements under the 22 July 2008 fee-sharing arrangements between the Firm and LD. The tripartite arrangements of 17-23 March 2009 amounted to an agreement whereby Mr Younis became entitled to a referral fee, funded in equal parts by the Firm and LD, albeit involving only a single payment to Mr Younis, direct from LD. The Respondent failed to take advice on the 17-23 March 2009 arrangements, whether from the SRA or from counsel or otherwise. This was notwithstanding the importance of regulatory compliance in this regard of which he had been made well aware. The improper arrangements contained in the 17-23 March 2009 agreements whereby the Firm surrendered 50% of its extant entitlements from LD, thereby in substance rewarding Mr Younis for referring publicly funded cases, were perpetuated in the tripartite agreement made on or about 27 April 2010.

83.2 The Applicant referred the Tribunal to the schedules of clients exhibited by Timothy Harris and Simon Ramsden, listing the status of cases where the client was represented by the Firm and by LD and the referral fees/fee-shares paid by the Firm. John Baker, of the LSC, had confirmed in his Witness Statement that at least six of the clients on this schedule had received public funding.

83.3 Accordingly, the referral agreements with Mr Younis made on or about 17-23 March 2009 and 27 April 2010 were in breach of Rules 8 and 9 of the SCC 2007 by reason of being improper arrangements whereby in substance the Firm remunerated Mr Younis for referrals of publicly funded cases. In negotiating, approving and authorising the Firm to enter into such improper arrangements, the Respondent breached Rule 8, Rule 9.01(4) and Rule 9.02(h) of the SCC 2007, failed to uphold the rule of law and/or the proper administration of justice in breach of Rule 1.01 SCC 2007 and acted in such a way as to diminish the trust the public places in himself and/or the legal profession in breach of Rule 1.06 SCC 2007.

Respondent's Submissions

83.4 The Respondent had denied these Allegations by way of the letter sent to the Tribunal dated 16 December 2016 by his previous solicitor. The Respondent's position was that the 2009 LD agreement, as amended in 2010, only related to those cases where LD would ultimately bring a successful claim for damages on behalf of the claimants. The Tribunal was referred to the 2009 agreement where a successful case was defined as being one where a client's claim for damages was finally decided in their favour whether by a court decision or an agreement to pay the client damages and the costs. The Respondent submitted that the fees referred to within the agreement were not for publicly funded cases. The monies paid and received under the agreements were further LD cases that were conducted under a conditional fee agreement. Both firms were entirely clear that all Judicial Review publicly funded cases were to be handled by the Firm and all private law Queen's Bench Division cases by LD.

The Tribunal's Findings

83.5 The Tribunal considered the schedule exhibited by Mr Harris against the Witness Statement of John Baker. This evidence had not been challenged by the Respondent.

In the example of MAAH, the schedule demonstrated that the client was represented by both firms, the damages claim having been settled in May 2012. This client had been granted Legal Aid on 24 July 2009. The same pattern existed with five other clients. Mr Baker had stated "I infer from the above that they are the same individuals, i.e. that all six of these individuals for whom Public Interest Lawyers acted in public law claims (i.e. Judicial Review claims) and in respect of whom referral fees were paid or owed to Mazin Younis received public funding for those public law claims". LD had made a payment to Mr Younis in respect of this client in the sum of £21,055.24 on 7 November 2012. The ledger entry described this as "Payment to Mazin Younis for fee share in the matter".

83.6 Under the terms agreed between the Firm and LD, 50% of the fee paid to Mr Younis comprised the share that the Firm had surrendered. The referral fee was therefore effectively funded in equal parts by both firms even though the actual payment was made by LD.

83.7 The Respondent had admitted that the fee-sharing arrangements were improper and the Tribunal had found those matters proved for the reasons set out in relation to Allegations 1.6-1.9 inclusive. The issue in respect of Allegations 1.10 and 1.11 was the matter of public funding. The Tribunal was satisfied beyond reasonable doubt that the fee-sharing related to clients who were in receipt of Legal Aid. These payments arose out of the 17-23 March 2009 agreements between the Firm and LD, the terms of which were carried over into the 27 April 2010 agreement.

83.8 The Tribunal was therefore satisfied that the fee-sharing arrangements related to publicly funded cases and were therefore improper in relation to the 17-23 March 2009 tripartite agreement and the 27 April 2010 agreement as they breached Rule 9.01(4) and Rule 9.02(h) and therefore breached Rule 8 which required adherence to Rule 9.

83.9 The Respondent had entered into these improper arrangements following receipt of advice he had received from Counsel and from the SRA via SM. In both cases the advice was unequivocal, as was the SCC 2007. The arrangements were explicitly entered into following receipt of the SRA's advice and were an attempt to disguise payments being made by the Firm in publicly funded cases. The Tribunal found that this was a deliberate attempt to get around the rules in order to end the "strike" that Mr Younis was engaged in at the time. The Tribunal was satisfied beyond reasonable doubt that entering into agreements for this purpose amounted to a lack of integrity in breach of Rule 1.02.

83.10 The failure to act with integrity or comply with the SCC 2007 inevitably meant that the Respondent had behaved in a way which diminished the trust the public placed in him and in the profession.

83.11 Although the fee-sharing arrangements were improper, they were again examples of professional misconduct rather than law-breaking and that misconduct had not had an obvious bearing on the Respondent's duties to the Court and/or the parties. The Tribunal could not therefore be sure that the Respondent's conduct amounted to a breach of Rule 1.01.

83.12 Allegations 1.10 and 1.11 were therefore proved beyond reasonable doubt in respect of Rules 1.02, 1.06, 8, 9.01(4) and 9.02(h) but not proved in respect of Rule 1.01.

84. **Allegation 1.12 - The Respondent authorised, procured and approved the payment to Mr Younis of £25,000 in prohibited referral fees on or about 30 March 2009, and thereby breached Rules 1.01, 1.02, 1.06, 8, 9.01(4) and 9.02 of SCC 2007.**

Applicant's Submissions

84.1 The Applicant submitted that the payment of £25,000 made by the Firm on 30 March 2009 was a disguised payment of a referral fee of £25,000 to Mr Younis in performance of referral arrangements which breached Rules 8, 9.01(4) and 9.02 SCC 2007, in that the payment was made pursuant to improper contingency fee arrangements, the payment related to historic cases and the payment related to publicly funded cases.

84.2 In authorising, procuring and approving the £25,000 payment, the Respondent had breached Rule 8, Rule 9.01(4) and Rule 9.02 of the SCC 2007 failed to uphold the rule of law and/or the proper administration of justice in breach of Rule 1.01 SCC 2007 and acted in such a way as to diminish the trust the public places in himself and/or the legal profession in breach of Rule 1.06 SCC 2007.

84.3 Further, it was submitted that the Respondent acted recklessly and/or in reckless disregard of his professional obligations and/or in a manner lacking in integrity, contrary to Rule 1.02 of SCC 2007. He was in receipt of Counsel's advice as from 22 December 2008. He was aware that any payment, or agreement to pay, by the Firm to Mr Younis in respect of referrals for historic cases or for publicly funded work would amount to professional misconduct. No legitimate avenue appeared available to avert Mr Younis's continuing "strike". With knowledge of the above matters, the Respondent authorised the Firm to enter into arrangements with LD and Mr Younis whereby the Firm would in substance remunerate the latter for referrals of historic, publicly funded work out of what had been the Firm's entitlement from LD; and, in addition, on 30 March 2009, the Respondent authorised a payment by the Firm to LD intended in substance to achieve the same goal. The Respondent had failed to take any or any reasonable steps to consider whether making such a payment was proper and/or complied with regulatory requirements. In doing so he had acted with a reckless disregard for his professional obligations and so as to disguise the true nature of the payment to Mr Younis. He had acted without integrity, and acted in a way so as to diminish the trust the public places in himself and/or the legal profession in breach of Rules 1.02 and 1.06 SCC 2007.

Respondent's Submissions

84.4 The Respondent had admitted this allegation including the allegation of acting without integrity by way of the letter sent to the Tribunal on his behalf dated 16 December 2016 from his previous solicitor. However the Respondent denied that the payment related to publicly funded cases. The basis of this denial was that the agreements which were the subject of Allegations 1.10 and 1.11 did not relate to publicly funded cases and it "would not be consistent with the non-admissions of

Allegations 1.10 and 1.11 for this particular element of Allegation 1.12 to be admitted".

The Tribunal's Findings

84.5 The Tribunal's findings on the question of public funding in relation to Allegations 1.10 and 1.11 also applied to this Allegation. The Respondent had admitted this Allegation, including lack of integrity, save the public funding element. For the reasons set out above, the Tribunal found beyond reasonable doubt that the 30 March 2009 payment was in respect of publicly funded cases, historic cases and pursuant to improper contingency fee arrangements. The payment was therefore in breach of Rule 9.01(4) and Rule 9.02 and therefore breached Rule 8 which required adherence to Rule 9.

84.6 The allegation of lack of integrity related to those matters addressed by Allegations 1.10 and 1.11. The Tribunal had found Rule 1.02 to have been breached in respect of those Allegations and for the same reasons as set out above, found that part of the Allegation proved beyond reasonable doubt in relation to Allegation 1.12. The Tribunal found the Respondent's admission to the breaches of the SCC 2007 and to Rule 1.02 to be properly made.

84.7 The failure act with integrity or to comply with the SCC 2007 inevitably meant that he had behaved in a way which diminished the trust the public placed in him and in the profession. The Respondent had admitted breaching Rule 1.06 and the Tribunal was satisfied beyond reasonable doubt that this admission was properly made.

84.8 For the reasons set out above in relation to Allegations 1.5-1.11, the Tribunal could not be sure that the Respondent's conduct amounted to a breach of Rule 1.01. notwithstanding the Respondent's admission.

84.9 Allegation 1.12 was therefore proved beyond reasonable doubt in respect of Rules 1.02, 1.06, 8, 9.01(4) and 9.02 but not proved in respect of Rule 1.01.

85. **Allegation 1.13 - The Respondent provided the SRA with a misleading and incomplete response to Q10 of a s44B Notice dated 23 April 2015, and thereby breached Principles 2, 6 and 7 of the Principles as well as Outcomes 10.1 and 10.9 of the SCC 2011. Dishonesty was alleged, although this was not a requirement for the Allegation to be proved.**

Allegation 1.14 - The Respondent provided the SRA with a misleading and incomplete response to Q15 of a s44B Notice dated 23 April 2015, and thereby breached Principles 2, 6 and 7 of the Principles as well as Outcomes 10.1 and 10.9 of the SCC 2011. Dishonesty was alleged, although this was not a requirement for the Allegation to be proved.

Applicant's Submissions

85.1 The Applicant submitted that the responses provided to question 10 (Allegation 1.13) and question 15 (Allegation 1.14), were false and incomplete to the Respondent's

knowledge such that he acted dishonestly, alternatively recklessly, and without integrity in breach of Principle 2 of the Principles. He knew that the Al-Sweady clients had come to him in consequence of his encouraging and authorising Mr Younis to locate them. It was not credible that the Respondent had forgotten this, given the significant and prominent role the Al-Sweady case has played in his practice since 2007, and the 2005 warning he received from the LSC to avoid unsolicited approaches.

85.2 The Respondent had been instructed by clients sourced by AJ for some years before the Al-Sweady clients were tracked down. There is no evidence he was in any way unfamiliar with the identity of the person described by Mr Younis as "our Basra friend" when the hunt for the Al-Sweady clients commenced. It is not credible that he had forgotten all this when asserting that he had not previously known AJ had been involved in locating the Al-Sweady clients, or that AJ "was not known to PIL" at the relevant time. The Respondent was well aware of his relevant dealings with Mr Younis. The "strike" was long-standing, and the Respondent must have appreciated that it was only ended when he relinquished half of the Firm's entitlements from LD in favour of Mr Younis. It is not credible that he had forgotten all of the relevant history and dealings when denying to the SRA that the Firm had paid or offered any referral fees to Mr Younis. At the very least, he had failed to review his emails from the material period, and was therefore reckless as to the truth and completeness of the responses he provided to the SRA.

Respondent's Submissions

85.3 The Respondent had admitted these Allegations, including the allegations of acting without integrity, by way of the letter sent to the Tribunal on his behalf dated 16 December 2016 from his previous solicitor. He denied acting dishonestly or recklessly.

85.4 It had been submitted on the Respondent's behalf that, again, he was suffering from ill-health at the material time and this would have affected his ability to respond to the s44B Notice. The Tribunal was again referred to the report of Professor Heun.

85.5 It was further submitted that in addition to the issue of the Respondent's ill-health, the Applicant was seeking to establish that the Respondent was at fault "in not being able to recollect 100% accurately in 2015 events that occurred very many years earlier." It was submitted that this was not a reasonable basis upon which to found such serious allegations. Allegation 1.13 related to events that took place between May 2004 and September 2007. The response was submitted on 7 July 2015. Question 10 had required "a summary of the Firm's work in the Al-Sweady matters from May 2004 to September 2007". The Respondent's response had been qualified, stating at paragraph 6 that his answer was "from memory" and "but I may be wrong on that". The Tribunal was also referred to the phrase "from recollection". It was submitted that his conduct could not be described as dishonest within the subjective limb of the test in Twinsectra.

85.6 In respect of Allegation 1.14 the events occurred between April 2007 and December 2007. The response had been submitted eight years later on 7 July 2015. The response, set out in the Rule 5 statement, was that of Mr Younis and was clearly stated to be so. It had been submitted on behalf of the Respondent that "we do not

understand therefore the basis upon which an allegation of dishonesty can be sustained…when the response sets out a version of events provided by Mr Younis."

85.7 The emails referred to in the Rule 5 statement, and which formed the basis of the evidence upon which Allegation 1.1 was founded, had not been made available to the Firm until 28 January 2016 when the SSFIR was served by Simmons and Simmons. The Respondent was signed off sick from work in January 2016. The discovery of the emails was as a result of a data harvesting exercise which had been arranged by Baker and McKenzie as agreed with Simmons and Simmons on behalf of the SRA. This exercise cost in excess of £25,000 and was paid for by the Firm. The Tribunal was invited to note that the Firm's server had been replaced in 2009 so that emails prior to that were not on the current server in use by the Firm. The old server was provided by the Firm after July 2015 in order to assist with this exercise. It was submitted that his conduct could not be described as dishonest within the subjective limb of the test in Twinsectra.

The Tribunal's Findings

85.8 The Tribunal considered the contents of the responses provided to the s44B notices and was satisfied on the evidence that they were misleading and incomplete. In respect of question 10 (Allegation 1.13), his response that he had discussed the matter "in a passing manner" in June 2007 and then given it no thought until mid-August was clearly disproved by the email correspondence, which demonstrated that he was fully engaged throughout that period. The provision of such responses reflected a blatant disregard by the Respondent of his obligations to his regulator. The answer to question 15 was also untrue for the reasons set out in relation to the Tribunal's findings in relation to Allegations 1.2, 1.3 and 1.4.

85.9 The Tribunal found beyond reasonable doubt that the provision of responses, to a formal notice from a regulator, which were manifestly untrue amounted to a lack of integrity in breach of Principle 2. It was an obvious breach of his legal and regulatory obligations in breach of Principle 7 and the trust and confidence placed in him and the profession was undoubtedly diminished in those circumstances. The Tribunal was satisfied beyond reasonable doubt that the Respondent's admissions to the breaches of these Principles and to the failure to achieve the Outcomes were properly made.

85.10 The Tribunal again applied the test laid down in Twinsectra in considering whether the Respondent's actions were dishonest. The Tribunal applied the objective test. The provision of answers to a regulator which were misleading and in some cases completely untrue would be considered dishonest by the ordinary standards of reasonable and honest people.

85.11 The Tribunal applied the subjective test. The Respondent had, again, relied upon medical grounds in connection with this Allegation. The Tribunal had addressed those issues in relation to Allegations 1.2-1.4 and the same factors applied with regards to these Allegations as they covered the same period in time. The Tribunal rejected the submission that the Respondent did not know what he was doing. In addition to medical defence, reference had been made to the passage of time between the events in the questions and the submission of the answers. The Tribunal agreed that there was a number of years between the two dates. However that was of limited assistance

on account of the Respondent's conduct as detailed in Allegations 1.2-1.4, all of which had been proved in full and indeed largely admitted. The suggestion that the Respondent's recollection was poor was disproved by the fact that he had, by his own admission, taken steps to provide an answer to the SRA that was untrue. The response provided to question 10 was very detailed and the methods by which question 15 was answered were elaborate. The Tribunal was satisfied beyond reasonable doubt that these were not the responses of someone who had a bad memory but of someone who was being dishonest and knew he was being dishonest by the ordinary standards of reasonable and honest people.

85.12 The Tribunal therefore found Allegations 1.13 and 1.14 each proved in full beyond reasonable doubt including the element of dishonesty. In view of the Tribunal's finding on dishonesty, the Tribunal was not required to consider the issue of recklessness as that was pleaded as an alternative.

The Tribunal's Findings

86. **Allegation 1.15 - The Respondent provided the SRA with a misleading and incomplete response to Q17 of a s44B Notice dated 23 April 2015, and thereby breached Principles 2, 6 and 7 of the Principles as well as Outcomes 10.1 and 10.9 of the SCC 2011.**

Allegation 1.16 - The Respondent provided the SRA with a misleading and incomplete response to Q21 of a s44B Notice dated 23 April 2015, and thereby breached Principles 2, 6 and 7 of the Principles as well as Outcomes 10.1 and 10.9 of the SCC 2011.

Applicant's Submissions

86.1 The Respondent's response to Q17 was misleading and incomplete. As was clear from the emails in mid-2007 the Respondent was at that time well aware of "our Basra friend" who had been mentioned in the first substantive communication from Mr Younis on 7 May 2007, and of "the Amara guys". It was inconceivable that Mr Younis failed to mention the role of AJ during any of their "regular conversations" in this period.

86.2 PM's 15 February 2016 response to a 22 January 2016 s44B Notice was evidence that AJ was assisting Mr Younis in soliciting potential Iraqi clients as from 2003/2004. PM's Response provided evidence confirming that Mr Younis and AJ had made unsolicited approaches on behalf of the Firm in or around 2004 to (a) FK, and (b) JFD. As well as demonstrating AJ's material involvement for a number of years before 2007, PM's response thus also provided corroboration that Mr Younis and AJ were in the habit of making unsolicited approaches to potential clients in Iraq, prior to the Respondent enlisting them in the summer of 2007 to locate potential clients arising from the Battle of Danny Boy.

86.3 The Respondent's response to question 21 was false and misleading, in that the Firm paid Mr Younis referral fees of £2,000 in September 2007, paid Mr Younis referral fees of £25,000 in March 2009 and surrendered to Mr Younis 50% of its fee-sharing

entitlements with LD from 23 March 2009, thereby indirectly paying him referral fees.

86.4 The Applicant did not seek to pursue an allegation of dishonesty in relation to this Allegation at this stage and invited the Tribunal to stay that element of the Allegation on the grounds of proportionality, noting that the Respondent had been signed off sick by the time the response was provided.

Respondent's Submissions

86.5 The Respondent had admitted these Allegations but denied dishonesty or recklessness. Allegation 1.15 related to events between 2004 and 2007. The response been submitted on 17 July 2015 by which time the Respondent had been signed off work. It was submitted that the section of the response which was the subject of Allegation 1.15 appeared to be a response on behalf of the Firm commenting upon the short paragraph supplied by AJ via an interpreter, as opposed to a statement from the Respondent.

86.6 Allegation 1.16 related to events between 2007 and 2009. The response was submitted on 7 July 2015 which was between six and eight years after the event in question. The Allegation arose from the failure to recollect a single payment to Mr Younis in 2007 and the later interlinked arrangements made between LD and Mr Younis in 2009. It was submitted on the Respondent's behalf that it would not be unreasonable for him to have forgotten in 2015 a single payment of £2000 made in 2007 to Mr Younis. The Respondent submitted that it had not been alleged by the Applicant that there were regular payments of this nature. The Respondent had not been aware in 2009 that the agreement with Mr Younis was in breach of the rules and so when the response to question 21 was formulated in July 2015 stating that the Firm had not made payments of referral fees this reflected the Respondent's understanding at the time. The Applicant had subsequently interpreted the agreement as being in breach of the rules and so the response given in July 2015 was correct to the best of the Respondent's knowledge and understanding at the time. It was submitted that it was not surprising that the Respondent's memory could have failed him when being asked to recall events that occurred between six and 11 years previously. His health would also have been a "significant factor".

86.7 In relation to the allegations of incomplete responses to the s44B Notices, the Respondent had accepted with the benefit of hindsight that these responses were incomplete. It was submitted on his behalf that "he accepts his overall responsibility for these responses notwithstanding that one of these responses was submitted to the SRA after he had been signed off sick… He also accepted that his conduct could be described as lacking integrity as this is an objective test".

The Tribunal's Findings

86.8 The Tribunal granted the Applicant's application that the allegation of dishonesty and, in the alternative, recklessness, lie on the file. The Tribunal made no findings in respect of dishonesty in relation to this Allegation. The Tribunal considered carefully the evidence in relation to the remaining elements of the Allegation. The Respondent had admitted the factual elements of these Allegations and had admitted the

consequent breaches of the Principles and Outcomes. The Tribunal found that in providing misleading and incomplete responses to the SRA, the Respondent lacked integrity. He had clearly failed to comply with his regulatory obligations and in doing so had failed to achieve Outcomes 10.1 and 10.9. The trust and confidence placed in the Respondent and the profession was clearly diminished by such behaviour. The Tribunal was satisfied beyond reasonable doubt that the admissions were properly made.

86.9 The Tribunal found Allegations 1.15 and 1.16 each proved in full beyond reasonable doubt, save for the elements relating to dishonesty and recklessness which the Tribunal ordered to lie on the file.

87. **Allegation 1.17 - The Respondent failed to provide the SRA with a timely response to Q1 and Q3 of a s44B Notice dated 23 April 2015, and thereby breached Principles 6 and 7 of the Principles as well as Outcomes 10.1, 10.8 and 10.9 of SCC 2011**

Applicant's Submissions

87.1 The Applicant submitted that the Respondent had failed to comply with his legal and regulatory obligations to deal with his regulators in an open, timely (in respect of Q1 and Q3) and co-operative manner, contrary to Principle 7 of the SRA Principles and Outcomes 10.1, 10.8, and 10.9 of the SCC 2011. He had also failed to behave in a way that maintains the trust the public placed in him and in the provision of legal services, contrary to Principle 6 of the Principles.

Respondent's Submissions

87.2 The Respondent had admitted this Allegation in full by way of the letter sent to the Tribunal on his behalf dated 7 December 2016 from his previous solicitor.

The Tribunal's Findings

87.3 The Tribunal considered the timing of the responses, which were more than six months overdue. The Respondent had admitted this Allegation in full and the Tribunal was satisfied that on the evidence, the admission was properly made. The Tribunal found this Allegation proved in full beyond reasonable doubt.

88. **Allegation 1.18: [Allegation directed to lie on the file].**

88.1 The Applicant submitted that in view of the extensive admissions made by the Respondent and the submissions of dishonesty in relation to other allegations and grounds of proportionality, the Applicant did not propose to pursue this allegation further at this stage and invited the Tribunal to stay it.

88.2 The Tribunal was satisfied that this was a proportionate course of action and was content that the Allegation lie on the file. Accordingly the Tribunal was not required to make a finding in respect of this Allegation.

89. **Allegation 1.19 - The Respondent failed, during the period June 2007 to August 2013, to establish and maintain proper and effective arrangements with LD for the sharing of information and documents held by PIL and LD in respect of the Al-Sweady claims (as defined below) and matters, and thereby breached Rules 1(c), (d) and (e) of SPR 1990, Rules 1.01, 1.04, 1.05 and 1.06 of SCC 2007 and Principles 1,4,5 and 6 of the Principles.**

Applicant's Submissions

89.1 In circumstances where both the Firm and LD (i) were acting for the same clients, (ii) were relying on the same core evidence to support the most serious of allegations, (iii) were contemplating and/or had commenced legal actions based on the same factual allegations but (iv) were separately as well as jointly gathering evidence relevant to the legal actions, it was necessary for the Firm to put in place and operate a system which ensured that all relevant documentation and information was shared between the two firms.

89.2 Such a system was necessary to ensure that the Firm and LD held all relevant documentation and evidence relating to their clients in order that they could properly advise them and comply with their professional obligations and to enable the Firm and LD to comply with their duties to the Court to uphold the administration of justice in respect of any litigation.

89.3 The Respondent and MD had discussed setting up a database in order to share documents but no such database was implemented, nor was any other procedure or system implemented for ensuring that regular reviews of material held by each of the firms of relevance to Iraqi clients were carried out. No proper and effective system for the sharing of documents was put in place once they knew that the Inquiry was to be established and that the firms would be working together in relation to that Inquiry, nor once the relevant Al-Sweady clients had been accorded Core Participant status by the Inquiry.

89.4 It was submitted that these failings likely contributed to LD omitting to provide the Firm with the OMS Detainee List until its significance was identified by them in late August 2013. In consequence, that document was not provided to the LSC when public funding was sought for the Judicial Review, nor was it provided to the Administrative Court or the MOD during the Judicial Review.

89.5 The OMS Detainee List was of fundamental importance to the substantive allegations and legal claims of the Al-Sweady clients, in that it undermined the credibility of the evidence they gave the Firm and LD. Had the OMS Detainee List been disclosed to the Firm and reviewed by the Respondent, as would have occurred had a proper and effective system for sharing documents been established, it was overwhelmingly likely in the Applicant's submission that (a) legal aid would have been refused or discontinued, (b) the Judicial Review would have been abandoned or dismissed, (c) the civil claims would have been abandoned, and (d) the Al-Sweady Inquiry would not have been constituted, with consequent substantial expenditure of public funds.

89.6 By failing to establish and maintain proper and effective systems and procedures in respect of sharing documents relating to the Al-Sweady clients between the Firm and

LD, the Respondent failed to uphold the rule of law and/or the proper administration of justice in breach of Rule 1.01 SCC 2007 and Principle 1 SRA Principles 2011, failed to act in the best interests of his clients in breach of Rule 1(c) SPR 1990, Rule 1.04 SCC 2007 and Principle 4 SRA Principles 2011, failed to provide a proper standard of service to his clients in breach of Rule 1(e) SPR 1990, Rule 1.05 SCC 2007 and Principle 5 of the Principles and acted in such a way as to compromise or impair his good repute or the good repute of the solicitor's profession contrary to Rule 1(d) SPR 1990 and/or in such a way as to diminish the trust the public places in him, the legal profession and/or the delivery of legal services in breach of Rule 1.06 SCC 2007 and Principle 6 of the Principles.

Respondent's submissions

89.7 The Respondent had admitted this Allegation in full by way of the letter sent to the Tribunal on his behalf dated 7 December 2016 from his previous solicitor.

The Tribunal's Findings

89.8 The Respondent's ability to discharge his duties to the Court and to the parties was inevitably impaired by his failure to have a proper document system in place. The Respondent had admitted this Allegation in full and the Tribunal was satisfied that on the evidence, the admission was properly made. Although the Tribunal found the breaches of the SPR 1990 Rules, the SCC 2007 Rules and the Principles proved beyond reasonable doubt, the Tribunal was not persuaded that all the consequences identified by the Applicant would have necessarily occurred. There were other factors involved in the background to the setting up of the Inquiry and it would be simplistic to suggest that it hinged on a failure to establish a document management arrangement, serious though that was.

89.9 The Tribunal therefore confined itself to the actuality of the rule breaches and found this Allegation proved in full beyond reasonable doubt.

90. **Allegation 1.20 - The Respondent failed to comply with his duty of candour to the Court in relation to the Judicial Review, and failed to take proper steps to ensure that the relevant Al-Sweady clients complied with their duty of candour to the Court, and thereby breached Rules 1.01, 1.04 and 1.06 of SCC 2007.**

Applicant's Submissions

90.1 The Applicant submitted that had the Respondent and/or the relevant Al-Sweady clients complied with their duties of candour to the Court, it was likely, or realistically possible, that the Judicial Review would have taken a completely different course, and that there would or may have been no need to constitute the Al-Sweady Inquiry.

90.2 The Applicant alleged five ways in which the Respondent had failed to comply with his duties:

90.3 First: Failed to investigate fully or raise with the counsel team instructed on the case or disclose to the Court credible evidence that Client 10 had made death threats to AJ

90.3.1 Client 10 was the Respondent's first client in relation to the Battle of Danny Boy and was pivotal in the Respondent's efforts to track down and secure instructions from the detainees. The Respondent worked on the basis that Client 10 was a senior figure in the Mahdi Army, and he had discussed these suspicions with both the LSC and Rabinder Singh QC. The Respondent had commented in his email of 24 January 2008 that he was "less sure about [Client 10] as he appears to have an agenda which I suspect is linked to his active membership (then and possibly still) of the Mahdi Army". On 19 February 2008, the Respondent emailed Mr Younis as follows:

> "On a different note I have just had a message from [A] at Panorama. He has been asked to pass on a message from [Client 10] to me. It really amounts to nothing less than a threat. What [Client 10] is saying is that if he is not included in the next trip then none of the survivors and witnesses will make that trip. This is typical [Client 10] territory."

90.3.2 The Respondent had become aware of credible evidence that Client 10 had made much more serious threats. On 2 April 2008, Mr Younis emailed him in the following terms:

> "Despite that we both discussed with [MD] that he should not be contacting any of our clients behind our backs, he did exactly that, and via [Client 10], which has bolstered [Client 10's] position and enabled him to apparently block anything that is done without him being on the scene.
>
> [Client 10] was not only nasty and troublesome, he has physically threatened to send militias to kill [AJ] in Basra unless he is involved in every trip. This is extremely serious and may emphasise our initial doubts that [Client 10] may be influencing the clients' testimony in some way."

90.3.3 The Respondent sent MD a text, to which he responded on 3 April 2008 which included the following:

> "Mazin told us the other day that the reason he wanted nothing to do with [Client 10] was that [Client 10] had threatened [AJ], His Basra man, on the last trip- and thinks that [Client 10] is tied into the Mahdi Army and is dangerous. He also suggested that [Client 10] was effectively blackmailing the Majar people in terms of forcing them to go through [Client 10].
>
> All of that maybe entirely true but it does not fit the picture we have from everything else going on. My perception of the guys and that of [SM] and [S] was that the five were actually quite close to [Client 10] and looked up to him as some soret [sic] of father [sic] figure. There certainly did not seem to be any animosity between them. Furtehr [sic] since coming back, in talking to some of the five to sort out details in their statements a number of them and particularly [LH] has made it

absolutely clear that [Client 10] is their man. This was in a conversation which had nothing to do with [Client 10] – he just came out with it.

Then when we have been dealing with the death cases, again when we have spoken to the other families they have all said that they wanted to use [Client 10] as the conduit for information.

...

I did not want to say too much about all this before, because who knows what the truth of it all is, and I am fully recognisant of the fact that without Mazin the claims would be nowhere. I can but say that from where I stand it would seem that if we are to run the Majar cases it will be very difficult if not impossible to do them without [Client 10's] help. ..."

90.3.4 This was not the first time Client 10 had made threats, although the nature of the threat passed to the Respondent through Panorama was of a different magnitude. As Mr Younis recorded in his email to the Respondent of 2 April 2008, and as reflected in his own 24 January 2008 email about Client 10's "agenda", there were "initial doubts" about the extent of his influence. The credible evidence of death threats to AJ should have underscored such doubts. These "initial doubts" should have been enhanced given the working assumption that Client 10 was a senior figure in the Mahdi Army. It should have been self-evident to the Respondent that such matters, taken together, were, or might have been, material to the claims being advanced in the Judicial Review. At any rate, they could not simply be ignored through the expediency expressed in MD's email that "if we are to run the Majar cases it will be very difficult if not impossible to do them without [Client 10's] help".

90.3.5 Despite being in possession of credible evidence that Client 10 had made death threats and that there were accordingly increasing concerns as to his influence over the detainees, the Respondent took no steps to investigate the alleged death threats further, by raising the matter directly with AJ, Client 10 or any witness. He did not raise these concerns with any member of the counsel team in order to seek advice on the need to disclose the same to the Court, the MOD or LSC nor did he disclose the same to those bodies. He did not discuss the same with his and the Firm's other Al-Sweady clients and he had failed to consider whether it was appropriate to continue acting for Client 10 or the other Al-Sweady clients.

90.3.6 The Applicant submitted that the Respondent tolerated the evidence he had as to Client 10's misconduct, because of the perceived expediency that the Judicial Review would not proceed without Client 10's continuing participation and support.

90.4 Second: Failure to investigate direct with Client 10 whether he was a senior member of the Mahdi Army or make comparable inquiries of the detainees.

90.4.1 The Respondent claimed to the LSC that he worked on the assumption that Client 10 was a senior member of the Mahdi Army. However, at no time had he inquired directly of Client 10 whether this was correct.

90.4.2 This was an obvious line of inquiry which the Respondent should have pursued direct with Client 10 at the earliest possible time, but certainly when they were together in Istanbul in January 2008. Had Client 10 denied it, this would likely have required further investigations and would have re-enforced the "initial doubts" he and Mr Younis shared about Client 10's involvement and influence. Had Client 10 confirmed that he was a member of the Mahdi Army, that was a matter which should have then been disclosed to the MOD, the Court, and the LSC. Such a confirmation would itself have been material evidence relevant to the Judicial Review.

90.4.3 It was apparent from the response to question 12 of the 23 April 2015 s44B Notice that the comparable question was never directly asked of the detainees despite its obvious relevance both to their cases, and to the Firm's ability to continue acting for all of their Al-Sweady clients.

90.5 Third: Failure to investigate the purported explanation as to why 9 detainees were spared.

90.5.1 In Client 10's 1 June 2007 statement he had asserted that the British Army "surrounded the region and arrested all the people who were in that circle, the number of Iraqi detainees was about 37. Nine of these detainees came out alive while the other 28 were murdered. The reason why the 9 detainees were kept alive was that a harvester driver claimed those nine worked with him in the farm, they were kept in detention for a year then were released". To the same effect he stated "As for the 9 detainees who were released alive, they mentioned to us that they were taken together to the Camp but in a different armoured vehicle. They were all farmers and the driver of a combine harvester in the field managed to convince the British that they were farmers and guards working for him".

90.5.2 The credibility and coherence of the explanation as to why 9 detainees had been spared was an obviously relevant issue. The Respondent took no proper steps to investigate it. The Tribunal was invited to infer that had such efforts been made, the Respondent would, or may have, alighted on the fact that this aspect had been fabricated by Client 10, and the allegation of executions at CAN would or may have been exposed many years before it was.

90.5.3 Further, he failed to appreciate that Client 10's explanation was inconsistent with the story later told by various detainees as to having allegedly been transported to CAN together with various live Iraqis whose corpses were returned the following day. For example, the October 2007 statement of Client 7 claimed he had been taken to CAN together with Hamid Al-Sweady and HHM.

90.6 Fourth: Failure to secure and supply the Court with the OMS detainee list

90.6.1 The OMS Detainee List was of obvious materiality to the Judicial Review. In consequence of the failure to establish and maintain proper and effective systems and procedures in respect of sharing documents as set out in Allegation 1.19, the Respondent failed to secure and supply the Court with highly relevant evidence.

90.6.2 The Applicant submitted that it was a fundamental failure on the part of the Respondent to fail to write to LD to remind them of the relevant duties of candour and disclosure in the Judicial Review, and to require that the Firm be furnished with all disclosable documents held by LD. That failure was all the more serious given the Respondent's knowledge that (a) the Firm had conduct of the Judicial Review, and that (b) despite initial discussions, no effective or reliable system for sharing documents and information was ever put in place between the Firm and LD.

90.7. Fifth: Failure to inform the Court that (a) the relevant Al-Sweady clients had provided instructions to the Firm in consequence of unsolicited direct approaches through Mr Younis, in breach of professional conduct rules, or that (b) referral fees had been paid by the Firm to Mr Younis in respect of the relevant Al-Sweady clients, in breach of professional conduct rules

90.7.1 The Respondent failed to inform the Court or the counsel team as to of the following:

- The fact that the relevant Al-Sweady clients had provided instructions to the Firm in consequence of unsolicited direct approaches through Mr Younis, in breach of professional conduct rules.

- The fact that referral fees had been paid by the Firm to Mr Younis in respect of the relevant Al-Sweady clients, in breach of professional conduct rules.

90.7.2 Each of these matters was relevant to an assessment by the Court of the credibility of the evidence deployed in support of the Judicial Review.

90.7.3 Accordingly, the Respondent failed to comply with his duty of candour in the Judicial Review, and failed to take the necessary steps to ensure that his clients complied with their duty of candour in those proceedings. Thus he failed to uphold the rule of law and the proper administration of justice, in breach of Rule 1.01 of the SCC 2007, failed to act in the best interests of his clients, in breach of Rule 1.04 of the SCC 2007, behaved in a way that was likely to diminish the trust the public places in him and the profession, in breach of Rule 1.06 of the SCC 2007.

Respondent's Submissions

90.8 The Respondent had denied this Allegation by way of the letter sent to the Tribunal on his behalf dated 16 December 2016 from his previous solicitor.

90.9 It was submitted on the Respondent's behalf that the only credible evidence of threats being made by Client 10 came from Mr Younis. The credible evidence was not first-hand and it was not considered that this was a threat that needed to be taken seriously. It was for that reason that the Respondent took no further action. It was an "example of an unpleasant relationship" between Client 10 and AJ which had its roots in sectarianism. It was submitted that it would have been a waste of public funds to investigate the matter and/or raise it with counsel. The Respondent had exercised professional judgement at the time and saw no reason to take any of the steps suggested in the Rule 5 statement.

90.10 The question as to whether Client 10 was a member of the Mahdi Army was not considered a material factor. Client 10 was acting on behalf of his relative who it was alleged had been the subject of human rights abuses and was not able to give direct evidence of what had occurred. It would therefore have made no difference to the evidence. The point was notified to the LSC and to Rabinder Singh QC and all the clients, including Client 10, were offered up at a directions hearing in open court in late March 2009 to give evidence. The MOD had declined to call any of them for the purposes of cross examination.

90.11 As regards the alleged failure to investigate the purported explanation as to why nine detainees were spared, the Respondent's responsibilities were to assist the Judicial Review court to ensure that the state discharged its duty properly, and independently investigated credible allegations of breaches of Article 2 and 3 of ECHR. His responsibility did not extend to assuming the role of the MOD investigating authority, namely the Royal Military Police ("RMP").

90.12 The Respondent was unable to provide a copy of the OMS detainee list as he did not have it in his possession. LD had a copy of the document and the Respondent did not have "any inkling at the time of its existence".

90.13 The Applicant had alleged that the Respondent failed to disclose to the Judicial Review three alleged breaches of the professional rules of which he had only become aware of at a much later date, namely after the conclusion of the Inquiry and as a result of the SRA investigation and subsequent Tribunal proceedings. It was submitted that if he was unaware of the significance of these issues during the Judicial Review, he could not be held to be in breach of his duties to the Judicial Review as alleged or at all.

90.14 It was submitted on the Respondent's behalf that it would be unsafe to draw "speculative conclusions" as to the possible outcome of the Judicial Review had these failings not occurred or come to light sooner. The reason why the Inquiry became necessary was that the MOD failed to provide disclosure of documents and was therefore in a position where its own inability to discharge its duty of candour led to the concession of the Judicial Review case. The failings alleged against the Respondent would have made no difference to this and speculation about the outcome of the Judicial Review was not a proper exercise of the jurisdiction of the Tribunal.

The Tribunal's Findings

90.15 The Tribunal considered each of the five ways in which the Applicant submitted that the Respondent had failed to comply with his duty of candour to the Court.

90.16 The making of death threats by Client 10, if true, was a very serious matter. The fact that the evidence of this was not first-hand did not mean that the issue should have been left at that. If indeed it was, as the Respondent believed, an example of an unpleasant relationship "which had its roots in sectarianism", this was a reason why some sort of action should have been taken, not the opposite. This was not the first indication the Respondent had been given that Client 10 may have had inappropriate influence over the detainees. He had said himself in January 2008 that he was "less sure" about Client 10 and in February 2008 he had received a message via Panorama which he described as "nothing less than a threat". This was not a scenario whereby the Respondent was alleged to have taken some steps, albeit inadequate ones. The Respondent had, by his own admission, seen no reason to undertake any investigation at all. The Tribunal rejected the submission that it would have been a "waste of public funds" to investigate the matter. It would not necessarily have incurred any significant expenditure and the importance of ensuring that his duty of candour was discharged outweighed such considerations in any event. The Respondent should have raised this issue with the Counsel team at the minimum. The Tribunal was satisfied beyond reasonable doubt that in not doing so he had failed to ensure that he and his clients complied with their duty of candour. This particular of Allegation 1.20 was therefore proved beyond reasonable doubt.

90.17 The membership, or otherwise, of the Mahdi Army on the part of Client 10 was, again, a matter of importance that should have been investigated. The Respondent could not have known that "it would have made no difference to the evidence" until he had investigated it. It went to the credibility of the Respondent's clients and had the potential to be of material relevance to the Judicial Review. The Tribunal was satisfied beyond reasonable doubt that in not investigating this matter he had failed to ensure that he and his clients complied with their duty of candour.

90.18 The Respondent was under an obligation to investigate contradictions in the Witness Statements. The inconsistencies were significant and the fact that the RMP were the investigating authority did not absolve him of that obligation. The Tribunal was satisfied beyond reasonable doubt that in not investigating the reason behind the 9 detainees being spared he had failed to ensure that he and his clients complied with their duty of candour. This particular of Allegation 1.20 was proved beyond reasonable doubt.

90.19 The Tribunal noted that the OMS detainee list was in the possession of LD. The Respondent had admitted failing to establish and maintain effective arrangements with LD for the sharing of documents (Allegation 1.19). However for this element of Allegation 1.20 to be proved the Tribunal had to be satisfied beyond reasonable doubt that such systems would have yielded the OMS detainee list. While it was certainly possible that it might have done, the Tribunal could not be sure that it would have. This particular of Allegation 1.20 was therefore not proved.

90.20 The failure to inform the Court that the clients had been approached by Mr Younis as described in Allegation 1.1 and that referral fees had been paid as described in Allegations 1.5-1.12 was significant. Even if the Respondent had been unware that he was in breach of his obligations, something the Tribunal rejected, that could not amount to a defence to failing to comply with a duty of candour. The responsibility

for the breaches lay with the Respondent and the Tribunal was satisfied beyond reasonable doubt that in falling to inform the Court of these matters he had failed to discharge his duty of candour. This particular of Allegation 1.20 was proved beyond reasonable doubt.

90.21 The Respondent's duties of candour to the Court went to the heart of upholding the rule of law and the administration of justice. The failure to comply with that duty was a breach of Rule 1.01 of SCC 2007. The Respondent's duty also included ensuring that his clients discharged their own duty of candour. He had failed to achieve this, indeed he had taken few if any steps to try to, and had therefore not acted in their best interests and had breached Rule 1.04.

90.22 The Tribunal found this Allegation proved beyond reasonable doubt in full, save for the particular relating to the OMS detainee list, which was not proved.

91. **Allegation 1.21 - The Respondent failed to comply with his duty of full and frank disclosure to the Legal Services Commission ("LSC") in relation to the Judicial Review, and failed to take proper steps to ensure that the relevant Al-Sweady clients complied with their comparable duties, and thereby breached Rules 1.01, 1.02, 1.04 and 1.06 of SCC 2007.**

Application to stay the Allegation

91.1 The Respondent invited the Tribunal to note that the Legal Aid Agency ("LAA" - successor to LSC) was claiming that all cases conducted by the Firm for Iraqi nationals since 2003 were tainted. As a result they were claiming £3,684,261.23 against the Firm and the Respondent as confirmed in a letter from the LAA dated 18 October 2016. It was submitted that it would "interfere with and be prejudicial to the LAA investigation for this allegation to be pursued". It would also be prejudicial to the Respondent and his ability to contest the claims being pursued. The Tribunal was requested to order that this allegation be left to lie on the file.

91.2 The Applicant opposed the application for a stay. Ongoing proceedings were not imminent, and so there was no risk of muddying the waters of justice. The extent of overlap between this Allegation and the LAA investigation was limited. The Tribunal was invited to conclude that the only reason a stay was suggested was because there was no reason why he should not admit the Allegation but due to the LAA demand for £3.6m he did not wish to. The Tribunal was invited to draw an inference from his absence.

91.3 The Tribunal referred to the Practice Note on Adjournments. There were no ongoing proceedings nor were they imminent. The issues for the Tribunal were narrowly focussed on professional conduct and the issue for the LAA went wider than that. The Tribunal saw no prospect of the waters of justice being 'muddied' by proceeding to deal with this matter. The application for a stay was refused. The Tribunal did not, however, draw any inference from the Respondent's absence in this case.

Applicant's Submissions

91.4 The Applicant submitted that there were seven ways in which the Respondent had failed to comply with the duty to give full and frank disclosure to the LSC or to take reasonable steps to ensure that his clients so complied.

91.5 First: Failure to investigate fully to raise with the counsel team instructed on the case or disclose to the LSC credible evidence that [Client 10] had made death threats to AJ

91.5.1 There was no evidence the Respondent informed the LSC or the counsel team of these matters, as submitted above, which were relevant to the continued extension of public funding, and the Tribunal was invited to draw the inference that he did not.

91.6 Second: Failure to provide Client 10's 1 June 2007 statement to the LSC

91.6.1 There was no evidence the Respondent supplied the LSC with Client 10's 1 June 2007 statement, and the Tribunal was invited to infer that he did not.

91.6.2 This document had obvious relevance to the grant and continued extension of public funding in that the explanation as to why the 9 detainees were allegedly spared was inconsistent with later statements of the detainees.

91.6.3 The 1 June 2007 statement was inconsistent with Client 10's 10 September 2007 statement. In the former, Client 10 described himself as an "eyewitness to the events that took place on the 14th May 2004" and listed himself as one of at least "4 eyewitnesses who saw the British army taking Iraqis alive". Having listed by name 17 of those he alleged were captured alive and later murdered, he asserted: "We saw the British taking those people alive with them, I saw one of the detainees being taken on top of the armoured vehicle and his hands were tied to the vehicle itself, he was [HRK]". HRK was one of those who died in the Battle of Danny Boy, and his body was handed back to the Iraqi authorities on 15 May 2004. By contrast, in his 10 September 2007 statement, Client 10 had stated that he was not close enough to recognise the identities of the participants. Further, he specifically referred to HRK but without making any reference to his earlier evidence that he had personally observed this person captured and alive.

91.6.4 A further inconsistency between the two statements was that in Client 10's 1 June 2007 statement, he alleged: "Apart from the 37 in total taken to Camp Abu-Naji, 4 or 5 Iraqis were killed on the spot in the field, one of them was the 70 year old shepherd". He also alleged that a 70 year old man was among those captured alive and murdered overnight. By contrast, in his 10 September 2007 statement, Client 10 alleged that the 70 year old shepherd had been brought wounded to the hospital where he worked in Amara at about 3pm on 14 May 2004 and had died 5 days later.

91.6.5 These inconsistencies were fundamental, and highly material to the credibility of the Al-Sweady clients' underlying allegations. The Respondent was in possession of both statements as from early-mid September 2007. Despite this, he failed to take any steps to investigate these fundamental inconsistencies, by raising them expressly with Client 10 in the first instance

or otherwise or by raising them with any member of the extensive counsel team instructed for the Al-Sweady claimants, in order to seek advice on next steps. More generally, there is no evidence that the Respondent supplied his counsel team or the LSC with Client 10's 1 June 2007 statement, and the Tribunal was invited to infer that he did not.

91.7 Third: Failure to provide Client 11's June 2007 statement to the LSC

91.7.1 Client 11's 19 June 2007 statement was supplied to the Respondent on 29 June 2007. Client 11 was an ambulance driver who claimed to have seen various people captured alive whose corpses were returned to Iraqi authorities the next day. He named three such people and made no mention of Hamid Al-Sweady. Client 11 signed a further statement, on 10 September 2007, which was served with the application for Judicial Review. The second statement referred to having seen Hamid Al-Sweady (whom he knew) captured alive. It was a striking omission that Hamid Al-Sweady had not been mentioned in Client 11's first statement.

91.7.2 There was no evidence that the Respondent disclosed Client 11's June 2007 statement to the LSC or to any of the extensive counsel team instructed in the Judicial Review, nor that he drew their attention to the omission contained in it. The June 2007 statement had obvious relevance to the grant and continued extension of public funding.

91.8 Fourth: Failure to disclose the November 2007 statement of Client 6 to the LSC

91.8.1 On 12 November 2007, Mr Younis emailed the Respondent statements from Client 9 and Client 6, which purported to support the allegation that Iraqis were captured alive and later executed. Client 6's November 2007 statement (a) alleged that he had been transported to CAN in an armoured vehicle alongside AM and HH, and (b) alleged that, at CAN, he had heard people screaming during the night, but made no reference to any executions.

91.8.2 There was no evidence that the Respondent disclosed the statement to the LSC or to any of the extensive counsel team as he should have, in circumstances where AM and HH were among the dead whose bodies were handed back to the Iraqi authorities on 15 May 2004, and were both listed as such in Client 9's 1 June 2007 statement. Further, the statement of Client 9, referred to HHM (who is presumed to be the same as HH). The statement of Client 6 was therefore inconsistent with the purported explanation offered by Client 9 in his 1 June 2007 statement in that the reason the 9 detainees were spared was because they were all transported in a separate armoured vehicle and were saved by the intervention of a combine harvester driver.

91.8.3 Client 6 made a further statement, in January 2008. This statement referred to being in the armoured carrier with "[H]", but made no mention at all of AJ. Further, the statement now alleged that each screaming episode at CAN was

followed by an execution, a glaring omission from his November 2007 statement.

91.9 Fifth: Failure to secure and supply the OMS Detainee List to the LSC

91.9.1 The Respondent had acknowledged in his Witness Statement to the Al-Sweady Inquiry that the OMS Detainee List would have had "obvious and profound implications from a funding point of view" and that he had "little doubt that the receipt of these documents at that time … would have led to the LSC maintaining its refusal" of funding.

91.10 Sixth: Payment of, and arrangements for, improper referral fees to Mr Younis; and recruitment of the Al-Sweady clients through unsolicited direct approaches

91.10.1 There was no evidence that the Respondent had disclosed to the LSC at any time the fact that the Firm and the Respondent paid improper referral fees to Mr Younis in respect of the relevant Al-Sweady clients, or some of them, in breach of Rules 8 and 9 SCC 2007.

91.10.2 He did not mention that Client 10 and the detainee clients had been tracked down and had instructed the Firm in consequence of breaches of Rule 7 SCC 2007. Such matters would have been material to the funding decision, not least because of the clear warning the Respondent had received from the LSC on such issues in April 2005. These matters were relevant to the funding decision because they would or might indicate to the LSC that steps had been taken which had or might have the tendency to encourage false or distorted claims.

91.10.3 He had failed to mention the £2,000 in referral fees (£1,000 of which related directly to the first two Al-Sweady clients) which he had paid Mr Younis only days before, in September 2007. This was plainly relevant to the specific inquiries Mr Baker of the LSC was making, because he was interested in whether Mr Younis' intentions were financial or altruistic.

91.11 Seventh: Fee-sharing arrangements between the Firm and LD

91.11.1 There was no evidence that the Respondent disclosed to the LSC at any time that at all material times the Firm enjoyed the benefit of fee-sharing arrangements with LD whereby the Firm stood to recover substantial sums from any private law claims brought by the Al-Sweady clients that followed or were related to the public law claims on which the Firm was instructed. It was to be inferred that he did not.

91.11.2 The application for Legal Aid for Client 10 failed to mention the Firm's fee-sharing arrangements (or LD's 7 September 2007 CFA with him) and failed to identify the Firm as a party liable to benefit from the proposed public law case, when asked specifically to give details of who would benefit.

91.11.3 On 22 January 2008, Mr Baker of the LSC had asked the Respondent to clarify LD's role in relation to the Al-Sweady clients. The Respondent

mentioned in his email response that he had referred the private law aspects to LD "at the outset", but gave no indication at all that he was personally interested, by way of the fee-sharing arrangements then encapsulated in the 22 June 2007 agreement. This carefully worded response failed to give the LSC the full and complete picture to which it was entitled.

91.11.4 In a letter dated 4 March 2008, the Respondent sought to assure the LSC (in an unrelated context): "I am known for my honesty, integrity, and absolute commitment to keeping my promises and I am put out, to say the least, by the potential implications of your question. Do you wish me to read that as a full-square challenge to my honesty and integrity?"

91.11.5 In failing to draw any or all of these material matters to the attention of the LSC before public funding was extended or while it was in place, in circumstances where any one of them may have resulted in the Judicial Review not being brought or being discontinued, the Respondent had failed to uphold the rule of law and the proper administration of justice, in breach of Rule 1.01 of the SCC 2007, failed to act in the best interests of his clients, in breach of Rule 1.04 of the SCC 2007 and had behaved in a way that was likely to diminish the trust the public places in him and the profession, in breach of Rule 1.06 of the SCC 2007.

91.11.6 In failing to disclose the matters forming the basis of the sixth and seventh particulars to the LSC, and in supplying carefully-worded answers which (as he must have appreciated was the effect of his answers) avoided giving the full and complete picture as he knew it to be, the Respondent acted recklessly and without integrity, in breach of Rule 1.02 of the SCC 2007.

Respondent's Submissions

91.12 The Respondent had denied this Allegation by way of the letter sent to the Tribunal on his behalf dated 16 December 2016 from his previous solicitor but had not submitted a basis of the denial.

The Tribunal's Findings

91.13 The Tribunal considered each of the seven ways in which the Applicant submitted that the Respondent had failed to comply with his duty of full and frank disclosure to the LSC.

91.14 The issue of death threats being made by Client 10 had been considered by the Tribunal in relation to Allegation 1.20. The Tribunal found that the same considerations applied in respect of this Allegation. The Tribunal found that this was a material fact relevant to the continuation of Legal Aid funding that should have been disclosed, at a minimum, to the Counsel team. In failing to do so the Tribunal was satisfied beyond reasonable doubt that the Respondent had failed in his duty of full and frank disclosure to the LSC. This particular of Allegation 1.21 was proved beyond reasonable doubt.

91.15 The statements of Client 10, made in June 2007 and September 2007 contained discrepancies which the Tribunal found to be material and significant. They were not minor instances of detail and would have been material to the question of whether Legal Aid should continue, particularly given that the decision to grant public funding in the first place had been borderline as confirmed by John Baker. The Tribunal was satisfied beyond reasonable doubt that in failing to disclose the June 2007 statement, the Respondent had failed in his duty of full and frank disclosure to the LSC. This particular of Allegation 1.21 was proved beyond reasonable doubt.

91.16 In respect of the failure to disclose Client 11's statement and Client 6's statement, the Tribunal again found that the discrepancies contained in these statements were fundamental. There were major omissions and it was inconceivable that this was not something the LSC would have wanted to be aware of. The Tribunal referred to the unchallenged evidence of Mr Baker who had stated that the LSC would have expected "each and every category of documents…would have been provided to the LSC/LAA at the time of the application if they pre-existed the application or if created or discovered after the application, as soon as practical after discovery or creation of them". Mr Baker had continued "I consider all of the above documents and information would have been relevant to a decision to grant and/or continue funding these certificates and also the continuation of the contract to undertake legal aid work". The Tribunal was satisfied beyond reasonable doubt that in failing to disclose these statements, the Respondent had failed in his duty of full and frank disclosure to the LSC. This particular of Allegation 1.21 was proved beyond reasonable doubt.

91.17 The Tribunal had considered the question of the OMS detainee list in relation to Allegation 1.20. Again, while it was possible that the Respondent may have come into possession of the list had he not failed to establish proper systems (Allegation 1.19), the Tribunal could not be sure of this beyond reasonable doubt. This particular of Allegation 1.21 was therefore not proved.

91.18 The Tribunal's findings on the matter of referral fees is set out in detail above. John Baker had stated that he was unaware of the LSC/LAA "ever having been provided with information or documents suggesting or identifying any such payments". This put the Respondent in breach of his contractual obligations to the LSC and under the Funding Code. The Respondent had paid Mr Younis £2,000 in referral fees in mid-September 2007. On 28 September the Respondent had written to Mr Baker in which he followed up a telephone conversation of the previous day. The letter was detailed and lengthy but at no time did it make any reference to referral fees having been paid to Mr Younis. The Respondent had then been asked a direct question as to the status of Mr Younis by the LSC on 15 October 2007. The Respondent had recorded that his response was "I said that he was the president of the Iraqi league and I had gone to great care to ensure that the Iraqi league were no more than one of my contacts and he had put these cases to me". The Tribunal was satisfied beyond reasonable doubt that this was a misleading and disingenuous answer. The question put by the LSC was clear and by obfuscating in this way the Respondent had lacked integrity. The Tribunal was satisfied beyond reasonable doubt that in failing to disclose the referral fee payments and arrangements, the Respondent had failed in his duty of full and frank disclosure to the LSC. This particular of Allegation 1.21 was proved beyond reasonable doubt.

91.19 The Tribunal's findings on the matter of fee-sharing are also set out in detail earlier in this Judgment. Again, the LSC/LAA were not made aware of these arrangements or payments as confirmed in the evidence of John Baker. Mr Baker had asked the Respondent to explain LD's role in relation to the Al-Sweady clients on 22 January 2008. The Respondent's reply had not been open and frank and had not given the full picture to the LSC. This particular of Allegation 1.21 was proved beyond reasonable doubt.

91.20 The conduct in relation to the fee-sharing arrangements was part of a pattern of behaviour that had manifested itself in relation to the referral fees. The Tribunal was satisfied beyond reasonable doubt that the Respondent's communications with the LSC had been misleading and disingenuous. In dealing with the LSC in this manner, the Respondent's conduct had lacked integrity. The Respondent was aware of his obligations to the LSC as he conducted a large amount of publically funded work. The Tribunal was satisfied beyond reasonable doubt that in failing to disclose the fee-sharing arrangements, the Respondent had failed in his duty of full and frank disclosure to the LSC. This particular of Allegation 1.21 was proved beyond reasonable doubt.

91.21 The duty of candour to the LSC was intrinsically linked to the administration of justice as it underpinned the ability of the Respondent to commence Judicial Review proceedings. The Funding Code was issued under the Access to Justice Act 1999 and breach of it amounted, in this case, to failing to uphold the rule of law. The Tribunal was satisfied beyond reasonable doubt that the Respondent's failure to comply with his duty of full and frank disclosure to the LSC was a breach of Rule 1.01 of SCC 2007. In respect of the failure to disclose the referral fees and the fee-sharing arrangements the Tribunal had found the Respondent to have acted with a lack of integrity. It therefore followed that the trust the public placed in the Respondent and the profession was diminished by this conduct.

91.22 The Tribunal found this Allegation proved in full beyond reasonable doubt, save for the particular that related to the OMS detainee list, which the Tribunal had found not proved.

92. **Allegation 1.22 - At a press conference on 22 February 2008, The Respondent made and personally endorsed allegations that the British Army had unlawfully killed, tortured and mistreated Iraqi civilians, including his clients, who had been innocent bystanders at the Battle of Danny Boy, in circumstances where it was improper to do so, and thereby breached Rules 1.02, 1.03 and 1.06 of SCC 2007.**

Applicant's Submissions

92.1 In light of the admissions made by the Respondent, including the allegation of acting recklessly, the Applicant did not seek to pursue an allegation of lack of integrity.

92.2 The Applicant submitted that it was not a proper exercise of professional judgment for the Respondent to have participated in this press conference. The Tribunal was invited to infer that the Respondent's pre-disposition to believe the worst of the British Army when he first heard about the Battle of Danny Boy allegations coupled

with a desire to publicise the case and his involvement in it, overrode his professional judgment.

92.3 If a press conference of any kind was to have been held, it required commensurate exercise of care to ensure that what was said at the press conference (a) fairly reflected an assessment of all the evidence already collated by the Firm and LD, and (b) was not premature, having regard to reasonable investigations which should have (but had not) been undertaken before making the sort of comments that were made at the press conference.

92.4 In this instance there were doubts as to Client 10's "agenda" and influence on the evidence of the detainees, and just days before the press conference he had threatened to undermine the case unless included in future trips. Despite having suspicions on the matter, the Respondent had failed to make direct inquiries of Client 10 to explore whether he was a member of the Mahdi Army. The Respondent had failed to make direct inquiries of the detainees to ascertain whether any was a member of or sympathiser with the Mahdi Army.

92.5 The Respondent had failed to investigate the purported explanation as to why the 9 detainees had been spared. The Respondent was in possession of a Witness Statement from a detainee which was inconsistent with the explanation he had been given by Client 10, and he had no basis for reconciling the same.

92.6 The Respondent had failed to take the opportunity of revisiting the issue of establishing and maintaining proper and effective systems and procedures for sharing documents and information with LD. Had he done so, the OMS Detainee List may well have been alighted upon at this time.

92.7 The Respondent had carried out no investigations at all into a report in The Guardian to the effect that the death certificates were disputed by one of the doctors who had been involved at the time. No forensic pathologist's expert assessment had analysed whether the available video and photographic evidence was consistent with allegations of torture and mutilation, or with battlefield injuries. The Respondent was in possession of Client 10's 1 June 2007 statement, which was inconsistent in a number of material respects with his 10 September 2007 statement, and there was no available basis known to him for reconciling the same.

92.8 The Respondent was in possession of Client 11's 19 June 2007 statement, which was materially different from his 10 September 2007 statement, and he had no available basis for reconciling the two.

92.9 The Respondent was in possession of Client 6's Witness Statement, which was materially inconsistent with (a) Client 10's June 2007 statement, and (b) his own January 2008 statement, and there was no available basis known to him for reconciling all the above.

92.10 The Respondent had not properly investigated and considered the prosecutions of his detainee clients in Iraq in connection with those clients' involvement in the Battle of

Danny Boy, including obtaining the relevant Witness Statements and documentation from the Iraqi criminal proceedings.

92.11 The Respondent had acted recklessly in participating as he did in the relevant press conference. He had disregarded the need for a rigorous and thorough investigation, and his responsibility to maintain public confidence in the solicitors' profession. Further, in participating in the press conference in circumstances where it was improper to do so, the Respondent had acted in such a way as to diminish the trust the public places in him and the legal profession, in breach of Rule 1.06 of the SCC 2007 and permitted his independence to be compromised, contrary to Rule 1.03 of the SCC 2007.

Respondent's Submissions

92.12 The Respondent had admitted this Allegation, including the allegation of recklessness, by way of the letters sent to the Tribunal on his behalf dated 7 and 16 December 2016 from his previous solicitor.

The Tribunal's Findings

92.13 Rule 11 of the SCC 2007 relating to litigation and advocacy was followed by Guidance, paragraph 10 of which provided:

> "Statements to the media
>
> You should exercise your professional judgment as to whether it is appropriate to make a statement to the media about your client's case and, if you do make a statement, about its content. In making these decisions you should consider:
>
> a) whether it is in the client's best interest to do so;
> b) whether the client has consented to this course of action; and
> c) the legal position and, for example, whether anything you say might be in contempt of court (see 11.03 and note 20 below)."

92.14 The Tribunal considered carefully the evidence in relation to this Allegation. The Respondent had not paid sufficient attention to the factors which should, at the very least, have been a warning to him to tread carefully. This included his concerns about Client 10, the discrepancies in the Witness Statements, and the credibility of the death certificates. To hold a press conference in those circumstances and in the terms he did was undoubtedly reckless. By associating himself with the allegations, without having taken steps to be absolutely certain of their veracity, he had allowed his independence to be compromised. The trust the public placed in the Respondent and the profession was inevitably diminished in circumstances where he had acted recklessly and in doing so had compromised his independence. The Respondent had admitted this Allegation in full and the Tribunal was satisfied that on the evidence, the admission was properly made. The Tribunal found this Allegation proved in full including recklessness, but not including lack of integrity, which the Applicant had not pursued.

93. **Allegation 1.23: [Allegation directed to lie on the file].**

93.1 The Applicant invited the Tribunal to stay this Allegation on the grounds of proportionality. The Applicant submitted that the lack of disclosure arose from earlier failings in relation to disclosure to the legal services commission and the court and from the admitted failure to establish and maintain a proper and effective system for document management.

93.2 The Tribunal was satisfied that this was a proportionate course of action and was content that the Allegation lie on the file. Accordingly the Tribunal was not required to make a finding in respect of this Allegation.

94. **Allegation 1.24 - The Respondent failed, in the period March 2013 to March 2014, to keep the Al-Sweady clients properly informed as to the progress of the Al-Sweady Inquiry and in particular as to the declining prospects of their allegations that cold-blooded executions had occurred at CAN, and thereby breached Principles 4, 5 and 6 of the Principles and failed to achieve Outcome 1.12 of SCC 2011.**

Applicant's Submissions

94.1 The Respondent failed, in the period of approximately 1 year between the opening of the oral phase of the Al-Sweady Inquiry and the 20 March 2014 concession, to keep his clients properly advised of (a) the declining prospects of their case on executions at CAN, (b) the lack of a sufficient evidential basis to criticise the military witnesses, or the consequences in terms of future scope for the case on executions at CAN, or (c) the likely need to concede the issue formally at the close of the oral evidence.

94.2 It was submitted that the reason clients were not initially advised about the impact on the prospects of the "executions at CAN" allegation was because such advice might well have discouraged them from attending the Inquiry, which would cause intense embarrassment to the Firm. This much was explained by [D] in his 6 March 2013 "off the record" conversation with AC. This was not a good reason for failing to keep clients informed.

94.3 There was no good reason for having failed to provide updates to their clients to take account of (a) the Firm's own assessment of the new disclosure provided by the MOD in the lead-up to the oral phase of the Inquiry, (b) the advice received by the Firm from Mr Shepherd in relation to the photographic and video evidence being consistent with battlefield injuries, (c) the evidence of Mr Moore as to the timing of Captain Rands' photographs, and the implications thereof, (d) the relevance and significance of the late emerging OMS Detainee List, (e) the absence of a basis for criticising the military witnesses, or (f) the declining prospects of the case on "the executions at CAN", [REDACTED].

94.4 By the time the Firm discussed the matter with any client other than Client 10, the concession had already been publicly made.

94.5 Accordingly, the Respondent had failed to act in the best interests of each client, contrary to Principle 4 of the Principles, failed to provide a proper standard of service to his clients, contrary to Principle 5 and failed to behave in a way that maintained the trust the public places in him and in the provision of legal services, contrary to

Principle 6. He had failed to ensure their clients were in a position to make informed decisions about the services they needed, how their matter will be handled and the options available to them, thereby failing to achieve Outcome 1.12 SCC 2011.

Respondent's Submissions

94.6 The Respondent had admitted this Allegation in full by way of the letter sent to the Tribunal on his behalf dated 7 December 2016 from his previous solicitor.

The Tribunal's Findings

94.7 Outcome 1.12 SCC 2011 required that clients are put in a position to make informed decisions about the services they need, how their matter will be handled and the options available to them.

94.8 The Tribunal considered carefully the way in which the Inquiry had developed over a number of months and the advice provided by [Counsel] in that regard. It was clear that the prospects of the clients' objectives being met were becoming increasingly slim. The reality of this was only brought home to them on the eve of the concession, when it was far too late for them to have any meaningful input. This clearly did not amount to acting in their best interests or providing a proper standard of service as Outcome 1.12 had not been achieved. The trust the public placed in the Respondent and the profession was diminished in circumstances where clients were not kept properly informed as to the progress of their case. The Respondent had admitted this Allegation in full and the Tribunal was satisfied that this admission was properly made. The Tribunal found this Allegation proved in full beyond reasonable doubt.

95. **Allegation 2: It was alleged that, by reason of each of all of the matters set out at paragraphs 1.1, 1.2, 1.3, 1.4, 1.12, 1.13, 1.14, 1.15, 1.16, 1.18, 1.21 and 1.22 he acted without integrity in breach of Rule 1(a) SPR 1990, 1.02 of SCC 2007 and Principle 2 of the Principles by reason of the seriousness of the said breaches and/or his reckless disregard of his professional obligations. In the case of Allegations 1.2, 1.3, 1.4, 1.13, 1.14, 1.15, 1.16 and 1.18, if the Respondent was not dishonest (as alleged), he was reckless.**

95.1 This Allegation re-stated the allegations of lack of integrity and, where dishonesty had been alleged and not proved, recklessness. The Tribunal had found lack of integrity proved in all cases where it had been alleged and maintained. The Applicant had not pursued an allegation of lack of integrity in relation to Allegation 1.22. The Tribunal had found dishonesty proved where it had been alleged and maintained and had not therefore been required to consider recklessness as an alternative to dishonesty in respect of any Allegation. The Applicant had not pursued an allegation of dishonesty or recklessness in relation to Allegations 1.15 and 1.16 and those matters were to lie on the file. Allegation 1.18 had also been directed to lie on the file. Allegation 2 was therefore proved to the extent that the basis of it had been proved in relation to Allegations 1.1-1.24.

Previous Disciplinary Matters

96. None.

Mitigation

97. The Respondent had not advanced any mitigation directly. However medical information and character references had been put before the Tribunal. In the letter from his solicitor dated 7 December 2016 he had invited the Tribunal to strike him off the Roll.

Sanction

98. The Tribunal referred to its Guidance Note on Sanctions (December 2016) when considering sanction. The Tribunal assessed the seriousness of the misconduct by considering the Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.

99. The Tribunal assessed the Respondent's culpability. His motivation had been to secure clients and high profile cases, which brought with it reputational and financial reward. In order to ensure that nothing got in the way of that, the Respondent had been willing to disregard his professional obligations, in some cases dishonestly. His actions were planned and continued over a number of years. He had direct control and responsibility for the circumstances giving rise to the misconduct. At the material time the Respondent had been on the Roll for over 25 years and he was therefore highly experienced. He had also handled similar cases in the past. A number of the proved Allegations related directly to misleading the regulator. The Tribunal found the Respondent's culpability to be very high.

100. There was harm caused to individuals and to the reputation of the profession. The allegations made against the British Army, which were found to be false, had a significant impact on those individuals accused of carrying out atrocities. While the Respondent was not responsible for the fact that the clients had lied in the first place, his serious disregard for his professional obligations had meant that the consequences of those lies were suffered by soldiers for several years. Col. James Coote had described the process as "thoroughly unpleasant and demeaning" and it had led to the return of some symptoms of ill health he had suffered upon his return from Iraq.

101. The harm caused to the reputation of the profession was serious. In any case where a solicitor had acted dishonestly and without integrity there would be significant harm to the reputation of the profession. In this case the Respondent was dealing with matters which called for the utmost care and diligence. The case was inevitably high profile given the subject matter, indeed the press conference that the Respondent had taken part in raised that profile considerably. In that context the consequences to the profession of serious misconduct was amplified by that profile.

102. The Tribunal found that matters were aggravated by the fact that the misconduct was deliberate, calculated and repeated. It had continued over several years and the Respondent had sought to conceal his wrongdoing through the construction of elaborate strategies to mislead the SRA. The Respondent knew that he was in material breach of his obligations to protect the public and the reputation of the profession. Although he had made admissions to some Allegations, he had not demonstrated insight into his wrongdoing beyond that.

103. The Tribunal found that matters were mitigated by the fact that the Respondent had no previous matters before the Tribunal. He had made a number of admissions, which was to his credit. The character references spoke well of the Respondent and the Tribunal took into account his personal circumstances at the time of the misconduct.

104. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the Respondent. The misconduct was at the highest level and the only appropriate sanction was a Strike Off. The protection of the public and of the reputation of the profession demanded nothing less.

105. The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. The Tribunal had regard to the Respondent's personal circumstances both at the material times and at the time of the hearing. The Tribunal took into account all that had been said on the Respondent's behalf by way of character references and the medical evidence.

106. There was nothing before the Tribunal that could justify an indefinite suspension. The only appropriate and proportionate sanction in all the circumstances was that the Respondent be Struck Off the Roll.

Costs

107. The Applicant applied for costs against the Respondent in the sum of £722,983.05. The Applicant invited the Tribunal to order detailed assessment of these costs and sought an interim payment of £250,000. The Applicant submitted that the detailed assessment would not reduce the costs to such an extent that this figure would exceed the total sum payable. The Applicant reiterated the submissions made as to the Respondent's means that had been relevant to the application to adjourn.

108. The Tribunal decided that the Respondent should be ordered to pay the Applicant's costs. The majority of the Allegations faced by him had been admitted and/or proved. In view of the sums involved, it was not a suitable case for summary assessment and the Tribunal was satisfied that a detailed assessment was appropriate. The Tribunal noted that the interim payment sought by the Applicant amounted to just over a third of the total costs claimed. The Tribunal regarded it as highly unlikely that the Applicant's costs would be reduced by two-thirds and therefore agreed that the appropriate and proportionate interim payment was £250,000. The Tribunal had noted previously that the statement of means did not contain a statement of truth. The Respondent appeared to have assets but had not responded to the Applicant's request for further details. There was therefore no basis on which to reduce the interim payment.

Statement of Full Order

109. The Tribunal Ordered that the Respondent, PHILIP JOSEPH SHINER, 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, such costs to be subject to detailed assessment. The Tribunal further Orders that the Respondent make an interim payment in respect of costs in the sum of £250,000.00.

Dated this 21st day of March 2017
On behalf of the Tribunal

N. Lucking
Chairman

ADDENDUM

The Applicant had addressed the Tribunal in correspondence prior to the substantive hearing on the issue of Legal Professional Privilege ("LPP"). In order to protect the clients' LPP the Tribunal had been invited by the Applicant to anonymise the clients during the hearing and in the Judgment. The Tribunal had agreed to this and the Judgment was drafted accordingly. The Tribunal was not invited to take any additional steps in respect of advice provided by Counsel in relation to Allegation 1.24.

The Applicant, subsequent to the Judgment being signed, made written representations inviting redactions in respect of Counsel's advice in relation to Allegation 1.24 on the grounds that it infringed on LPP. The Tribunal invited submissions from the Respondent on the point, who was supportive of the Applicant's position.

The Tribunal considered that while the anonymisation of the clients was sufficient to protect their LPP, out of an abundance of caution it would be appropriate for some redactions to be made. The Tribunal was satisfied that the case against the Respondent and the Tribunal's findings could still be fully understood by the reader notwithstanding the redactions, and that accordingly the principle of open justice was not offended.
The Tribunal also took the opportunity to correct a typographical error at paragraph 94.2. The first name referred to in the second sentence should have read "D".

The Tribunal therefore directed that the published version of the Judgment be redacted as indicated.

Dated this 23rd day of March 2017
On behalf of the Tribunal

N Lucking
Chairman