The Tribunal's Order dated 17 April 2019 was subject to appeal to the High Court (Administrative Court) by the Respondent. By Order dated 21 February 2020 the Respondent's appeal was dismissed by Lord Justice Simon and Mrs Justice Andrews DBE .

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11518-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

IMTIAZ ALI Respondent

Before:

Mr E. Nally (in the chair)
Mr P. Jones
Dr S. Bown

Date of Hearing: 16 and 17 April 2019

Appearances

Rory Dunlop QC, counsel, of 39 Essex Street Chambers, 81 Chancery Lane, London, WC2A 1DD, Instructed by Capsticks Solicitors LLP, for the Applicant.

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The allegations made by the Applicant against the Respondent were set out in a Rule 5 Statement dated 26 May 2016 and were that:

1.1 In breach of either or both of Principles 2 and 7 of the SRA Principles 2011 ("the Principles"), he provided misleading information in an insurance proposal form dated 9 September 2011 about:

1.1.1 the firm's gross fee income; and

1.1.2 whether any fee earner had practised in a firm subject to an investigation by the Applicant.

1.2 In breach of either or both of Principles 2 and 7, he provided misleading information in an insurance proposal form dated 15 August 2014 about:

1.2.1 the firm's gross fee income;

1.2.2 the firm's dealings with the Applicant;

1.2.3 whether any fee earner in the firm had had an award made against him or her by the Legal Ombudsman;

1.2.4 whether any fee earner in the firm had entered into a Regulatory Settlement Agreement with the Applicant; and

1.2.5 whether any fee earner in the firm had ever been the subject of "an Independent Voluntary Arrangement (IVA) or other arrangement" (sic).

2. The Respondent submitted (or allowed to be submitted on his behalf) an application for judicial review dated 12 December 2011 in which it was misleadingly asserted that his client SMH was "out of funds and therefore it was impossible for him to instruct his representative. He has recently arranged the funds and gave instructions straightaway. The application is being filed at the first opportunity." He thereby breached any or all of Principles 1, 2 and 6.

3. It was alleged that the Respondent was dishonest in respect of the allegations at paragraphs 1.1 and 1.2 above, and that dishonesty was not an essential ingredient to prove those allegations.

Documents

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

Applicant

- Bundle for hearing on 16-17 April 2019 (comprising 736 pages) (containing the Rule 5 Statement dated 26 May 2016)
- Combined service and proceeding in absence bundle (comprising 680 pages)

- Supplemental service and proceeding in absence bundle (comprising an additional pages 681 to 751)
- Skeleton argument dated 15 April 2019
- Chronology and opening note
- Schedule of costs dated 10 April 2019

Respondent

- Letter to the Tribunal requesting an adjournment dated 8 April 2019
- Cover letter to the Tribunal dated 30 March 2019 enclosing correspondence dated 30 March 2019 sent to the Applicant's solicitors and enclosures relating to the Respondent's health.

Preliminary Matters

5. Application to adjourn by the Respondent

5.1 By letter dated 8 April 2019 the Respondent applied to adjourn the hearing. The application was made on the grounds of ill-health. The application was made by the Respondent's brother who stated that due to other commitments, he was also unable to attend, act as the Respondent's litigation friend or pay for alternative representation.

5.2 The application noted that the Respondent's earlier hearings were adjourned due to a mental health condition and that he had been assessed by an independent medical expert, Dr Garvey, instructed by the Applicant. Updated general practitioner ("GP") and medical records had been supplied to the Applicant and the Tribunal by letter dated 30 March 2019. It was submitted that cumulatively the evidence showed that the Respondent could not attend the hearing due to serious mental health issues.

5.3 It was submitted that it was incorrectly suggested by the Applicant that the Respondent had previously feigned illness. It was further submitted that in any event, even if that were accepted, there was no evidence that the Respondent's current medical condition was anything but serious and genuine. The application made reference to the judgment of Mr Justice Holman in Purcet v SRA [2018] EWHC 2879 (Admin) in which it was said to have been held that it was unjust and wrong for the Tribunal to proceed with a hearing in the absence of an individual with mental illness who was not present. In particular, reliance was placed in paragraph [42] in which Mr Justice Holman had stated:

> "I regret to have to say that, although I pay great respect to the discretionary decision of an expert tribunal, I myself am absolutely clear that they reached a decision which, on the facts and information that was available to them that day, was unjust and is wrong. They had medical evidence from a sufficiently qualified practitioner who had very recently examined the appellant. That evidence was clearly describing a significantly worsening situation in his very long diagnosed mental ill health. It clearly describes that his ability to participate properly in the hearing was impacted and impaired. It clearly states that having to participate in the hearing might indeed trigger a relapse in his major mental health condition, and clearly advises and recommends that a

> proper full assessment should take place to establish reliably what the situation was. I perfectly understand the pressures on a tribunal, who have themselves been booked for the hearing, to continue with it. I perfectly understand that there is inevitable delay, expenditure and a knock-on effect on other cases if an adjournment is granted for medical reasons. But we are all human beings. We are all to a greater or lesser extent vulnerable to medical problems. These can sometimes arise inconveniently before a hearing and have to be faced up to. In my view, this was a decision that was unjust, and is wrong. They should not have heard this case the following day. They should not have put themselves in a situation where, very predictably, the appellant was going to be neither present nor represented. This was particularly the case when the issue was one of dishonesty which, as Mr Tabachnik had himself submitted to them (see paragraph 18 of their later written judgment), was a serious matter."

5.4 The Tribunal was invited to review carefully the updated medical evidence and the earlier medical reports. It was submitted that it was not possible for a fair hearing to take place in the light of the Respondent's current medical condition. The Respondent was stated to be not currently working or able to look after his children due to his ill-health. The Respondent was stated to be in his brother's care.

5.5 It was further stated that the Respondent had no intention to return to work as a lawyer, and that he was already subject to a condition that he could not work without the Applicant's consent. It was submitted that there would be no prejudice to the Applicant from an adjournment.

5.6 Finally, it was submitted that if it was minded to proceed, the Tribunal should appoint a litigation friend to represent the Respondent.

<u>The Applicant's response to the Respondents adjournment application</u>

5.7 The Applicant opposed the application to adjourn on four bases:

- There was submitted to be a strong public interest in the expeditious resolution of Tribunal proceedings;
- The public interest was submitted to be even stronger in this case because the Respondent was alleged to have delayed the hearing for two years by making false claims about his health;
- The Respondent was submitted not to have provided evidence of the necessary quality that he was not fit to attend or participate in the hearing; and
- Such medical evidence as there was suggested that the Respondent had deceived, or sought to deceive, doctors by grossly exaggerating his symptoms.

5.8 Mr Dunlop, for the Applicant, provided background information considered by the Applicant to be relevant to the application to adjourn. On 26 May 2016 the SRA filed a Rule 5 statement alleging dishonesty by the Respondent and the other partner at the firm. On 20 July 2016, the Respondent attended his GP alleging loss of memory and for the first time his GP diagnosed him with anxiety and depression. The Tribunal

notified the Respondent that the hearing into the allegations against him would take place from 14 to 17 February 2017. On 8 February 2017, one week before the hearing was due to commence, the Respondent applied for an adjournment relying on a letter from his GP and a report from Dr Balu, each of which said that the Respondent was not fit to attend the hearing. The Applicant's solicitors emailed the Respondent to ask if he was still working, as Dr Balu's report referred to his being 'less attentive… when in the office seeing clients'. In a letter dated 9 February 2017 the firm replied alleging that the Respondent had been on sick leave since 2 January 2017. The letter enclosed a witness statement, dated 9 February 2017 and purportedly signed by OP (the Firm's COLP), saying that the Respondent had been on sick leave since 2 January 2017 and only attended the office for 3 days (from 10 to 12 January 2017) when he did not really work.

5.9 It was submitted that at the time the Applicant had no reason to doubt that the witness statement was genuine and so it did not oppose the application to adjourn the hearing. Much more recently, the Applicant was said to have received evidence that the statement was false. In particular, Mr Dunlop stated that the Applicant had now seen emails showing that the Respondent was working on 2 and 3 February 2017. Furthermore, OP was stated to have denied ever making the statement and told the Applicant that his signature was forged and that he was never told by the Respondent or the firm about the statement. The Tribunal adjourned the February 2017 hearing against the Respondent and the other partner from the firm. It was relisted to begin on 25 September 2017.

5.10 On 4 September 2017 the Respondent was examined by Dr Balu. The Respondent and his family were said to have told Dr Balu that the Respondent could not be left to go out of the house on his own as he would not find his way home, that he did not remember himself or family members, and that he did not know the day, date, month or even year. Dr Balu took these accounts at face value and gave the opinion that the Respondent was not fit to attend the hearing and it should be adjourned for 18-24 months for him to be treated. The Applicant's contention was that the symptoms the Respondent presented to Dr Balu were grossly exaggerated. It was alleged that the Respondent was not housebound or mentally impaired in the way he told Dr Balu and that he was constantly working at the firm throughout September 2017, even on the day of the Tribunal hearing he claimed he was too ill to attend.

5.11 Mr Dunlop submitted that at the time, however, the Applicant (and the Tribunal) had no evidence to contradict Dr Balu's report. As a result, the proceedings against the Respondent were severed from the proceedings against the Second Respondent and adjourned, with directions that allowed the Applicant to obtain their own report.

5.12 The emails the Applicant later retrieved were submitted to show that the Respondent was constantly working from September 2017 onwards. In various emails, to copies of which the Tribunal was referred, the Respondent stated that he had 'lots of things to do', complained about sitting in the office 'till midnight' and told colleagues he had to manage the business. On the basis of the emails retrieved by the Applicant following its intervention into the firm, it was alleged that the Respondent was seeing clients and giving detailed legal advice during the period of his asserted ill health. Mr Dunlop stated, and referred the Tribunal to documents in support of his

contention, that at the same time, even though he was working, the Respondent told his GP that he had not been back to work.

5.13 On 30 January 2018 the expert instructed by the Applicant, Dr Garvey, saw the Respondent at home. Dr Garvey's report recorded that the Respondent was in bed fully clothed and said he could not remember his date of birth or what area of law he practised in. He said he was not working as he was too sleepy and he did not go out much. His brother said he stayed in bed all day and did nothing. Dr Garvey said it was difficult to diagnose the Respondent but he was not fit to attend the hearing. It was submitted that what Dr Garvey did not know was that the Respondent and his brother were lying to him. The Respondent was not staying in bed all day and was clearly aware of what area of law he was practising in. He was sending work emails in January 2018 including sending one on the day he was examined by Dr Garvey, to which the Tribunal was referred. On 11 February 2018 Dr Garvey produced a report in response to his examination. At that time he had not seen the Respondent's medical records. After he saw the GP records, Dr Garvey wrote a further letter dated 28 February 2018 expressing concern that the Respondent may have been exaggerating his level of dysfunction.

5.14 On 12 March 2018 Forensic Investigating Officers engaged by the Applicant attended the firm on another matter. They met OP who told them that the Respondent attended work every day. He took an officer to the Respondent's office, where the Respondent was seen at his desk staring at a screen, surrounded by files. The officer left the room and, when he returned, he found the Respondent reading a newspaper. Dr M (who it was stated appeared to have run the firm with the Respondent) subsequently alleged that the Respondent had come into the office 'on medical advice'. Mr Dunlop stated that no such medical advice had ever been produced. Even after this encounter, the Respondent was said to have carried on working at the firm. On 18 April 2018 the Law Society intervened into the Firm and into the Respondent's practice.

5.15 On 19 August 2018 Dr Garvey visited the Respondent at home. The Respondent alleged that he could not remember the day or time and said, when asked if he used computer, 'the children use the computer'. In a report dated 23 August 2018, to which the Tribunal was referred, Dr Garvey said that if the Respondent was attending the office between February 2017 and March 2018, then he had been 'grossly exaggerating his degree of mental illness' and was fit to attend a further hearing.

5.16 At a Case Management Hearing on 27 September 2018 the Tribunal gave the Respondent just over 3 months to obtain his own updated medical evidence. It was submitted that the Respondent did not provide that evidence but that he did attend his GP on 4 October 2018. The Tribunal was referred to documents showing that the Respondent's nephew told the GP that the Respondent had stopped working 18 months to 2 years ago. That was stated to be untrue as the Respondent had only stopped working 6 months before when the firm was intervened into.

5.17 The Tribunal had listed the matter for a hearing on 16-17 April 2019. In a letter dated 30 March 2019 the Respondent's brother wrote to the Applicant and the Tribunal asking for the Applicant to withdraw the proceedings and attaching GP notes and other medical records. The GP notes suggested that that the Respondent was issued

with a sick note from his GP on 19 February 2019, saying he was not fit to work till 19 May 2019. The Respondent's brother did not produce the sick note itself.

5.18 Mr Dunlop referred the Tribunal to its Policy/Practice Note on Adjournments, which provides as follows:

> "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."

5.19 Mr Dunlop submitted that the authorities lay down the following principles on adjournments and allegations of ill-health. Firstly, it is in the public interest that allegations of professional misconduct be dealt with by regulatory tribunals in a fair, economical, expeditious and efficient manner. Adjourning hearings is disruptive and inconvenient and wasted costs. A culture of adjournment is to be deprecated (Adeogba v GMC [2016] EWCA Civ 162 at [17] & [61] and Maitland-Hudson v SRA [2019] EWHC 67 (Admin) at [94]).

5.20 Secondly, the onus is on a Respondent, who alleges that they are unfit to attend or take part in a hearing, to provide medical evidence to support their allegation. There is no duty on the regulatory tribunal to make further enquiries (GMC v Hayat [2018] EWCA Civ 2796 at [42] and [52]).

5.21 Thirdly, to found an adjournment, medical evidence must meet certain necessary conditions, which were set out in Hayat at [37]-[38]:

> "37. There are a number of authorities dealing with the nature and standard of the evidence necessary to found an application for an adjournment on the grounds of ill health. There must be evidence that the individual is unfit to participate in the hearing: see Governor and Company of the Bank of Ireland v Jaffery [2012] EWHC 724 (Ch) at [19]. That evidence must identify with proper particularity the individual's condition and explain why that condition prevents their participation in the hearing: see Levy v Ellis Carr [2012] EWHC 63 (Ch) at [36]. Moreover, that evidence should be unchallenged: see Brabazon-Drenning at [18].
>
> 38. Of particular importance in this context is the passage from the judgment of Norris J in Levy v Carr Ellis, which deals in detail with what sort of evidence is necessary. He said:
>
> > "36. Can the Appellant demonstrate on this appeal that he had good reason not to attend the hearing (as he would have to do under CPR 39.5)? In my judgment he cannot. The Appellant was evidently able to

> think about the case on 24 May 2011 (because he went to a doctor and asked for a letter that he could use in the case, plainly to be deployed in the event that an adjournment was not granted): if he could do that then he could come to Court, as his wife did. He has made no application to adduce in evidence that letter (and so has not placed before the court any of the factual material necessary to demonstrate that a medical report could not with reasonable diligence have been obtained before the hearing before the Registrar). But I will consider that additional evidence. In my judgment it falls far short of the medical evidence required to demonstrate that the party is unable to attend a hearing and participate in the trial. Such evidence should identify the medical attendant and give details of his familiarity with the party's medical condition (detailing all recent consultations), should identify with particularity what the patient's medical condition is and the features of that condition which (in the medical attendant's opinion) prevent participation in the trial process, should provide a reasoned prognosis and should give the court some confidence that what is being expressed is an independent opinion after a proper examination. It is being tendered as expert evidence. The court can then consider what weight to attach to that opinion, and what arrangements might be made (short of an adjournment) to accommodate a party's difficulties."

5.22 Fourthly, a standard GP's sick note, saying a Respondent is unfit to work, will not require an adjournment (Hayat at [41], [48] and [55]).

5.23 Mr Dunlop submitted that the Respondent's application to adjourn should be rejected for the four reasons summarised in paragraph 5.27 upon which he expanded. Firstly, the starting point was submitted to be the public interest in the economical and expeditious disposal of the proceedings against the Respondent. It was submitted that an adjournment would impair that public interest, be disruptive, inconvenient and waste costs.

5.24 Secondly, the public interest in refusing the adjournment was submitted to be even stronger in this case than in most because: (a) the hearing had already been delayed substantially – it was first listed to start on 14 February 2017; and (b) that two year delay was allegedly procured by the Respondent lying about his ill-health. The Respondent was stated to have told his own expert and the Applicant's expert that he was not working and pretended to be so ill that he could not leave the house and could not remember what area of law he practised in. It was submitted that in fact he was working throughout in a demanding job as managing partner of a busy law firm.

5.25 Thirdly, it was submitted that the Respondent had not produced independent medical evidence that met the necessary standards or could justify an adjournment:

- The Respondent's most recent report from Dr Balu was dated 7 September 2017. It was submitted that no weight could be given to that report because the Respondent was stated to be lying to Dr Balu. Even if weight could be given to Dr Balu's report, it was submitted that it would not help the Respondent as it was out of date. Dr Balu said in his report that the hearing should be adjourned for 18-24 months and it was now 19 months since that report.

- Despite being given the opportunity by the Tribunal to provide an updated report, the Respondent had not done so.

- The Respondent had provided medical records which did not meet any of the necessary tests in Levy v Ellis-Carr. There was a reference to a sick note, but the sick note had not been produced and, even if it were, it would not meet the necessary standards (Hayat at [41], [48] and [55]). Furthermore, no weight could be given to the diagnoses of the Respondent's GP as the GP had also been lied to about when the Respondent stopped working.

5.26 Fourthly, the most recent report, and the only medical report which took into account the evidence of the Respondent working, was stated to be the report of Dr Garvey dated 23 August 2018. Dr Garvey concluded that if the Respondent was attending the office between February 2017 and March 2018, then he had been 'grossly exaggerating his degree of mental illness' and was fit to attend the hearing. The evidence was submitted on behalf of the Applicant to be overwhelming that the Respondent was indeed working in that period. This was submitted to be based on: (a) the emails that the Respondent sent, (b) the evidence of OP and (c) the Forensic Investigation Officers who encountered the Respondent at his desk in his office.

The Tribunal's Decision

5.27 The Tribunal had regard to its Policy/Practice Note on Adjournments. This Policy/Practice Note states that the Respondent's ill health will not generally be regarded as providing justification for an adjournment '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.' The Tribunal reminded itself that this Policy/Practice Note was always subject to consideration of the circumstances of the specific case and the overriding objective, set out in Practice Direction Number 6, to ensure that cases are dealt with justly.

5.28 The Tribunal reviewed the medical reports of Dr Balu (produced following the examinations of the Respondent on 1 February 2017 and 4 September 2017) as a result of which the substantive hearing dates in February 2017 and September 2017 were both adjourned. The Tribunal also carefully reviewed the reports of Dr Garvey (produced following the examinations of the Respondent on 30 January 2018 and 19 August 2018) and his letter of 28 February 2018. The Tribunal noted that in his report of 23 August 2018 (the most recent report from a qualified consultant psychiatrist available) Dr Garvey had concluded that the Respondent would be 'unable to work in any capacity' if his presentation was genuine. The Tribunal noted that he reviewed previous reports, documents and GP records within his report. Dr Garvey also gave the opinion that:

> "[i]f then it is said to be the case that [the Respondent] has been attending his office between February 2017 and March 2018 and been engaged on work related matters, including dealing with client files and sending emails, then I would have to conclude that he is grossly exaggerating his degree of mental illness, and that by virtue of the fact he is able to deal with work related matters, he is also able to attend a hearing, give instructions to legal

representatives or to represent himself if legal representation is not instructed, fit to attend a hearing and fit to give evidence at a hearing."

5.29 The Tribunal was referred several emails which appeared on their face to have been sent by the Respondent. His name appeared in the 'from' line of the email header and as the 'signature' to the email. By way of example only, the Tribunal was referred to:

- an email dated 5 September 2017 in the Respondent's name and email account within which advice about the conduct of a first tier tribunal case was given.

- an email dated 5 September 2017 in the Respondent's name within which specific questions which indicated a detailed knowledge of the relevant case were asked of colleagues.

- an email dated 21 September 2017 in the Respondent's name in which advice about the conduct of a case was provided to a colleague.

- an email dated 28 September 2017 (three days after the substantive hearing had been due to start) in the Respondent's name which stated "… I am not sitting idle. i have (sic) lots of things to do."

- a separate email of the same date in the Respondent's name which stated that the Second Respondent 'has been fined £8000 and £28000 cost order by SDT and my matter remains pending' indicating that he had receive an accurate account of the proceedings from which his case had been severed.

- an email dated 4 October 2017 in the Respondent's name in which he stated "Clients are given me (sic) big headache".

- an email dated 14 October 2017 in the Respondent's name in which he stated to a colleague "… I have no time to sit in office till midnight to deal with issues created by you".

- an email dated 7 November 2017 in the Respondent's name in which it was stated 'I have to run the business' and reference was made to the writer being the owner of the business.

- an email dated 29 November 2017 in the Respondent's name in which detailed legal advice on an immigration case file was given.

- a brief email dated 30 January 2018 (the day the Respondent had first been assessed by Dr Garvey) in the Respondent's name which stated "Let me contact the Home Office and will get back to you ASAP."

5.30 The Tribunal was referred to an Interim Investigation Report dated 6 April 2018 prepared by two Forensic Investigators ("FIOs") engaged by the Applicant. The report included an account of a meeting with OP on 12 March 2018 during which he informed the FIOs that the Respondent 'attended the Firm every day, dealt with the management of the Firm and client matters from his office on the second floor'. This

account given by OP to the two FIOs directly contradicted the statement in OP's name, dated 9 February 2017, of which OP denied any knowledge, which had been used to support the Respondent's successful application to adjourn the Tribunal proceedings in February 2017. The report also contained a description of one of the FIOs meeting an individual during the visit who had been using a computer, had several files around his desk and office and who introduced himself as the Respondent.

5.31 The Tribunal was also referred to documents and emails dated in March 2018. A new client form dated 10 March 2018 identified the Respondent (by his initials) as the person dealing with a judicial review case for a new client who was described as having a 'very complicated immigration history'. An email dated 29 March 2018 from a client referred to meeting the Respondent at the firm's office on the following day.

5.32 The Tribunal was satisfied beyond reasonable doubt that the Respondent had been working between, at least, September 2017 and March 2018. This was based on the emails and other documents available, the account from the FIOs and the confirmation from OP (the firm's Compliance Officer for Legal Practice) in March 2018 that the Respondent was working and that he had no knowledge of the statement in his name from February 2017 which asserted the contrary.

5.33 Accordingly, the Tribunal was satisfied beyond reasonable doubt that when the Respondent informed his GP, Dr Balu and Dr Garvey that he was not working he had misled them. Given the information which had been presented to them by the Respondent the conclusion that the Respondent was not fit to attend the Tribunal hearing was understandable. As noted above, in paragraph 5.28, in his report of 23 August 2018 (the most recent report from a qualified consultant psychiatrist available) Dr Garvey had provided his medical opinion that the Respondent was fit to attend a hearing in the event that he had been working between February 2017 and March 2018. Having found that the Respondent had been working for an extended period between those dates, providing complex advice and attending the firm's office, and sending work emails on the day on which he was assessed by Dr Garvey, the Tribunal found that in light of Dr Garvey's medical opinion, the Respondent had been fit to attend a substantive Tribunal hearing as at the date of the relevant medical report, 23 August 2018.

5.34 The Tribunal did not find that the Respondent was not unwell, having read the available medical evidence. The Tribunal found beyond reasonable doubt that the fact he had worked in the period highlighted above, having provided such stark accounts to Dr Balu and Dr Garvey, including maintaining that he did not leave the house on his own, could not remember the day, date, month or year or what area of law he practised in, and had told his GP that he had not been attending work, necessarily meant that he had exaggerated his symptoms to a very considerable degree. In these circumstances, the Tribunal accepted the submission from Mr Dunlop that the public interest in an expedition resolution of the proceedings was heightened.

5.35 The Tribunal then considered events since the August 2018 report of Dr Garvey. Under cover of a letter dated 30 March 2019, sent by the Respondent's brother to the Applicant's solicitors, various GP and other medical records were disclosed. The Tribunal reviewed these documents carefully. In the absence of the Respondent the Tribunal sought to identify the high point of the current medical evidence upon which the adjournment application was based. The most recent GP consultation entry was dated 19 March 2019 and recorded 'Says he is feeling well'. Earlier entries in March 2019 made reference to appointments relating to continuing mental health treatment and medication. His GP had certified on 19 February 2019 that the Respondent was not fit to work between 19 February and 19 May 2019. Letters from a consultant psychiatrist to the Respondent's GP dated 9 November and 17 December 2018 diagnosed a major depressive disorder with severe psychotic features and set out a treatment plan.

5.36 The Tribunal noted that the diagnosis noted in the above paragraph was something to which Dr Garvey had made reference in both of his reports. Whilst the Tribunal, as noted above, had not found that the Respondent was not unwell, the medical information provided in support of the application to adjourn did not reveal any deterioration or new issues since the report of Dr Garvey in August 2018. The Tribunal referred itself to the test set out in Levy v Carr for the conditions that medical evidence must satisfy in order to warrant an adjournment. The Tribunal considered that the medical evidence supplied in support of the adjournment application fell well short of the standard required. A fit note in itself was insufficient (Hayat). The Tribunal did not consider that the evidence provided identified why any condition from which the Respondent was suffering meant that he could not participate in the hearing. Dr Garvey had been aware of the diagnosis included in the recent medical evidence when he had concluded in August 2018 that if the Respondent had been working he was fit to attend a hearing and give evidence. The Tribunal did not consider that evidence had been presented that the Respondent's health had deteriorated since that time.

5.37 The Tribunal noted that the Respondent had had ample time in which to arrange for appropriate medical evidence. At a case management hearing in September 2018 a different Division of the Tribunal had given him over three months to do so. The Tribunal also noted the judicial comment in Adeogba that a culture of adjournment was to be deprecated. The Tribunal did not consider that an adjournment would lead to an effective hearing being possible in the foreseeable future.

5.38 The Tribunal considered the case to which it was referred on behalf of the Respondent, Purcet. The Tribunal considered that that case in which it had been held that the Tribunal had erred by giving insufficient weight to the report of a qualified practitioner who had recently examined the appellant was not analogous to the Respondent's position. The historic evidence presented by the Respondent was tainted by him having misled the practitioners and the recent evidence was not from a qualified practitioner addressing the question of the Respondent's ability to participate in the proceedings.

5.39 Accordingly, the Tribunal did not consider that grounds to justify an adjournment had been presented and the Respondent's application was rejected. The Tribunal also rejected the suggestion that it should appoint a litigation friend for the Respondent.

This was not considered to be something which fell within the Tribunal's remit or was provided for within its rules.

6. Applicant's application to proceed in absence

6.1 The Applicant made an application for the case to proceed in the Respondent's absence. The Applicant relied upon and repeated the context and applicable principles set out above in opposing the Respondent's application for an adjournment.

6.2 Mr Dunlop stated that both letters notifying the Respondent of the dates for the substantive hearing (sent to his two known addresses) had been signed for and in light of the terms of the application for an adjournment there was no doubt that the Respondent had had notice of the hearing. He referred the Tribunal to copies of the relevant documents. Mr Dunlop referred the Tribunal to rule 16 of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR") which provided that if the Tribunal was satisfied that notice of the hearing was served on the Respondent it had the power to hear and determine the case in the Respondent's absence.

6.3 Mr Dunlop again referred to the case of Adeogba as authority for the proposition that there was a public interest in the matter being heard expeditiously. He submitted that applying Adeogba, the default position was that the matter should proceed unless there was a good reason not to. He submitted that fairness did not require that the Tribunal should not hear the case in the Respondent's absence. He submitted that the Tribunal should have no reservations about proceeding with a hearing against someone who had lied to doctors about their health in order to delay justice.

The Respondent's Position

6.4 Having submitted an application for an adjournment based on ill-health, the Respondent plainly did not wish the hearing to go ahead for the reasons summarised above. The application did not indicate that an alternative date in the future would allow the Respondent to participate; the thrust of the correspondence to the Applicant of 30 March 2019 was an invitation for the proceedings to be withdrawn on the basis of the Respondent's health, the fact he was not and had no intention of working as a lawyer, was content for his registration as a foreign lawyer to be revoked permanently and in the interests of costs. The application for an adjournment had requested that if the Tribunal was minded to proceed with the case, a litigation friend should be appointed to represent the Respondent's interests.

The Tribunal's Decision

6.5 The Tribunal was satisfied that the Respondent had had notice of the hearing and that accordingly it had the discretion to proceed in his absence if that was fair in all the circumstances.

6.6 The Tribunal considered the factors set out in R v Jones [2002] UKHL 5 in respect of what should be considered when deciding whether or not to exercise the discretion to proceed in the absence of the Respondent. The Tribunal also considered the case of Adeogba which applied the case of Jones in a regulatory context.

6.7 The Tribunal had already made a finding that the Respondent had been working at the time his case was severed from the Second Respondent's case due to his alleged ill-health in September 2017. It had found that he had misled Dr Balu, Dr Garvey and his GP. Based on the report of Dr Garvey from August 2018, the Tribunal had already concluded that the Respondent had been fit to attend the hearing listed in September 2017 and was fit to do so at the date of Dr Garvey's report. The Tribunal accepted the submission from Mr Dunlop that in these circumstances the public interest in the efficient and expeditious disposal of the serious allegations against the Respondent, as described in Adeogba, was heightened.

6.8 The medical evidence supplied was inadequate to demonstrate that the Respondent was unable to participate in the proceedings. The Respondent had had ample opportunity to procure further evidence. Given the terms of the application for an adjournment, which included no indication of when the Respondent may potentially be fit to attend an adjourned hearing, and the Tribunal's finding that he had misled medical experts by exaggerating his ill-health, the Tribunal had no confidence that an adjournment would secure the Respondent's attendance at a hearing in the foreseeable future.

6.9 Whilst the Respondent had not provided an Answer to the allegations, the Tribunal had extensive documentation including responses from the Respondent sent to the Applicant and the Legal Ombudsman on which to base its decision. The Tribunal was accordingly satisfied that it was able to fairly assess the Respondent's version of the key events.

6.10 The Tribunal decided that it should exercise its power under rule 16(2) of the SDPR to hear and determine the application in the Respondent's absence. The Tribunal concluded that the Respondent had voluntarily absented himself from the hearing and was unlikely to attend a future hearing if the matter was adjourned. The allegations were of serious misconduct and the Tribunal was satisfied that in all the circumstances it was appropriate and in the public interest for the hearing to proceed in the Respondent's absence.

Factual Background

7. The Respondent was born in 1967 and was granted Registered Foreign Lawyer status by the Law Society on 12 September 1997. At the relevant times he was a partner of Malik Law Chambers ("the Firm").

8. The Respondent had been investigated by the Applicant as a result of an undercover investigation by a journalist for the Sunday Times. He subsequently entered into a Regulatory Settlement Agreement dated 26 March 2009 in which he accepted a severe reprimand and agreed to pay the SRA's costs.

Witnesses

9. There was no live evidence during the hearing. The written evidence referred to in the Findings of Fact and Law below will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case. The absence of any

reference to particular evidence should not be taken as an indication that the Tribunal did not read or consider that evidence.

Findings of Fact and Law

10. 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 Respondent is a Registered Foreign Lawyer and owes the equivalent regulatory obligations in conduct to those of a practising solicitor. The Tribunal approached the case against the Respondent and its deliberations throughout on that basis. The Judgment should be read and construed accordingly where the context so admits.

11. **Allegation 1.1: In breach of either or both of Principles 2 and 7 of the Principles the Respondent provided misleading information in an insurance proposal form dated 9 September 2011 about:**

1.1.1 the Firm's gross fee income; and

1.1.2 whether any fee earner had practised in a firm subject to an investigation by the Solicitors Regulation Authority.

11.1 The SRA began an investigation of the Firm on 24 July 2013. This resulted in a Forensic Investigation report dated 17 January 2014. The inspection revealed that the Firm had provided inconsistent figures for its gross fee income over the period 2009 to 2012 to the SRA and to Bar Professions Limited in a professional indemnity insurance proposal form dated 9 September 2011 signed by the Respondent. The figures included in the insurance proposal form significantly understated the actual gross fee income as demonstrated by the Firm's profit and loss accounts for the same period. The figures disclosed were:

Year Ending	Insurance proposal form figure	Profit and loss account figure
2009	£324,000	£954,057
2010	£303,800	£1,081,976
2011	£430,950	£1,397,066
2012	£430,000	-

Mr Dunlop submitted that these were not small errors and that the purpose was to deceive the insurer and obtain lower cost insurance.

11.2 The Applicant relied on an email dated 30 July 2013, which was signed "Partners Malik Law Chambers", which explained that the above discrepancies were in the main explained by the fact they had provided estimated figures in the insurance proposal form. These were said to be based on their accountant's view at the time, because in the case of the 2010, 2011 and 2012 figures, the accounts were not finalised until October of the following year (so that the actual 2010 figure was not known until October 2011, i.e. after the signing of the proposal form). It was however accepted that there was a discrepancy as regards the figure for the year

ending 2009 into which it was said that the Firm was looking. The Applicant's case was that neither the Firm nor the Respondent subsequently explained this discrepancy. The Applicant's case was that at the date the proposal form was signed, the figures from the Firm's profit and loss account for 2009 were available. Further, it was submitted that it was unlikely that the Firm's accountant had got the 2010 figures wrong to the extent that their estimate was around a third of the final figure which was available just a month after the form was completed.

11.3 It was also alleged that under the heading "Practising Certificate and Regulatory Issues", the Respondent answered "No" to the question: "In the last 10 years has any fee-earner in the practice ... practised in a firm subject to an investigation ... by the Solicitors Regulation Authority." The Applicant's case was that this was plainly misleading as the Respondent himself had entered into a Regulatory Settlement Agreement with the Applicant after an investigation.

11.4 Mr Dunlop referred the Tribunal to the insurance proposal form and noted that the contact name given on the form was the Respondent's and that the email address given was one from which the Respondent routinely sent and received emails. The Respondent was listed on the form as one of two equity partners (although the Second Respondent subsequently disputed that she was an equity partner at the time). Mr Dunlop referred the Tribunal to correspondence in September 2011 between the Respondent and a director of the insurer to whom the proposal form had been sent, and submitted that the Respondent was aware of the proposal form and its submission.

11.5 It was submitted to be axiomatic that all parties to an insurance contract must deal in good faith, making a full declaration of all material facts in the insurance proposal. It was further submitted that solicitors must be scrupulously accurate in any document which they sign declaring it to be true. The proposal form contained a declaration to the effect that the particulars and statements given in the proposals were true and complete and that the respondents had informed the insurer of all facts which were likely to influence the insurer in the acceptance or assessment of the insurance. The Respondent had signed the proposal form.

11.6 It was submitted that in submitting the proposal form which contained significant and obvious inaccuracies, the Respondent was at least reckless as to the truth of statements made to the Firm's insurer, who relied on those statements. He therefore acted without integrity in breach of Principle 2. He was also submitted to have acted in breach of his legal and regulatory obligations in breach of Principle 7.

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

11.7 The partners of the Firm sent an email dated 30 July 2013 to a Forensic Investigation Officer of the Applicant who had asked various questions about the figures and other details included in the insurance proposal form dated 9 September 2011. The email was sent from the email account the Respondent had used extensively. For the years ending in October 2010, 2011 and 2012 it was stated that figures for gross fee income included in the form were based on estimates based on the Firm's accountant's view. The email confirmed that the Firm's accounts were finalised a year in arrears (giving the example that the gross fee income figures for the year ending October 2012 would be finalised in October 2013).

11.8 The figure for the year ending October 2012 included in the proposal form, £410,000 was said to be based on a projection of likely fee income for the year made by the Firm's accountant in September 2011. The email stated that it had been expressly recorded on the form that the figure was an estimate. A revised estimate of £996,000 was said to have been provided to the Applicant in December 2012.

11.9 The figure for the year ending October 2011 was similarly stated to have been based on an estimate (which had been made clear on the form). It was stated that again an estimate provided to the Applicant in January 2012 had been increased from the £410,950 in the form to £945,057. It was also stated that the Firm's accounts were not finalised (the form having been submitted in September 2011 and the accounts not finalised until October 2012).

11.10 The same was stated for the figure for the year ending in October 2010. The estimate provided on the form in September 2011 was £303,800 and the accounts which were finalised in October 2011 gave the actual gross fee income as £1,081,976. Again the estimated figure was said to have been provided by the Firm's accountant.

11.11 With regards to the figure for the year ending in October 2009, it was stated that there appeared to be an actual discrepancy. It was stated that the figure provided was 'obviously incorrect' and the email stated that the Firm was looking at this closely to find out the reasons for the apparent discrepancy.

11.12 The allegations of breaches of Principles 2 and 7 were denied.

The Tribunal's Decision

11.13 The Tribunal first considered allegation 1.1.1, which related to the inclusion of allegedly misleading figures for the Firm's gross fee income in the insurance proposal form dated 9 September 2011. The actual figures for the year ending 2009 (the year end for the purpose of the form was October of each year) were know by the date on which the form was completed. By the Firm's own account, provided in the email dated 30 July 2013, sent to the Applicant's Forensic Investigation Officer the Firm's annual profit and loss accounts were finalised a year in arrears. The accounts for the period ending 31 October 2009 would accordingly be finalised in October 2010. This was almost a year before the insurance proposal form was submitted. The Tribunal was referred to the Firm's profit and loss account for the period November 2008 to 31 October 2009. The figure of £954,057 included in the profit and loss account was plainly wildly different from the £324,000 included in the insurance proposal form for the year's income. Irrespective of when the accounts were published, which was not clear from the documents before the Tribunal, the Tribunal found beyond reasonable doubt that the figure included in the proposal form for the year 2009 was wrong. The Firm had acknowledged this without explanation in the email of 30 July 2013 mentioned above.

11.14 The figure for fee income for the year ending October 2010 was also very inaccurate. What was said to be an estimate from the Firm's accountant, £303,800.84, provided one month before the profit and loss accounts for the year were due to be finalised, contrasted with the actual figure from the profit and loss account of £1,081,976. The figure included in the insurance proposal form was, again, wildly wrong. The

Tribunal considered that the Respondent must have been aware that the figures for both the years ending 2009 and 2010 were wrong. The Tribunal rejected the explanation put forward by the Firm in the email of 30 July 2013 mentioned above, that figures provided by the Firm's accountant were relied upon. No evidence of the estimates was provided, and the figures for these two years were so wildly wrong that it was wholly implausible that the 2010 figure could have been based on a genuine estimate from a credible accountant. In the case of the 2009 figures, the actual figures were known and no explanation had been provided for the error.

11.15 The Tribunal noted that the insurance proposal form contained two warnings about the importance of the accuracy of the information being submitted. The Tribunal accepted the submission from Mr Dunlop that this was axiomatic and obvious for a solicitor (or as in this case a Registered Foreign Lawyer).

11.16 The Tribunal considered whether the Respondent had signed the proposal form such that he should be held responsible for the misleading information it contained. The Tribunal noted that the Respondent himself corresponded with the Firm's insurance broker in September 2011. An email from the Respondent, sent from the 'info@maliklaw.com' email address, dated 26 September 2011 made it clear he was dealing with the renewal of the Firm's professional indemnity insurance. His name was also included on the form itself as the contact. The email address included on the form was the email address from which the Respondent had sent, under his own name, the email referred to above. The Tribunal was satisfied beyond reasonable doubt that the Respondent had signed the form or allowed its submission. Given the extent of the inaccuracies in the figures, and for the reasons summarised above, the Tribunal found beyond reasonable doubt that the Respondent had done so knowing that information contained within the form was misleading.

11.17 The Tribunal then turned to consider allegation 1.1.2, which related to the answer on the form about whether any fee earner had practised in a firm subject to an investigation by the Applicant. The Tribunal reviewed the Regulatory Settlement Agreement that the Respondent had personally entered into with the Applicant. The first paragraph of the agreement referred to an investigation into the Respondent's professional conduct. The Tribunal found it implausible that an event which had been triggered by an undercover Sunday Times reporter and which culminated in accepting a severe reprimand from the Applicant would be forgettable for the individuals involved.

11.18 The proposal form had asked whether any fee-earner in the practice had practised in a firm subject to an investigation by the Applicant. By virtue of the investigation into the Respondent, an equity partner of the Firm, and the resulting Regulatory Settlement Agreement he reached, the Tribunal was satisfied beyond reasonable doubt that the answer 'no' was misleading and that the Respondent completed or allowed the submission of the form knowing that the answer was misleading.

11.19 The Tribunal referred to the case of Wingate and another v SRA [2018] EWCA Civ 366 when considering whether the above findings amounted to a failure to act with integrity in breach of Principle 2. The case confirmed that integrity required a steady adherence to the ethical standards of one's profession. The Tribunal considered that the ethical standards of the legal profession required solicitors to be scrupulously

accurate when entering into an insurance contract. A solicitor should be aware of this obligation and should have read the warnings contained within the form about the need for full and accurate disclosure of relevant information. Indemnity insurance is required in order to protect clients, and providing misleading information risks the insurance cover being voidable which in turn puts clients at risk. The Tribunal found beyond reasonable doubt that by providing misleading information in the insurance proposal form the Respondent had acted without integrity in breach of Principle 2.

11.20 It is a regulatory obligation that law firms regulated by the Applicant have appropriate professional indemnity insurance. Obtaining insurance under false pretences, by the provision of misleading information, inevitably means that the insurance may be voidable and clients put at risk. By providing misleading information and thereby seeking to procure insurance on a false basis, the Respondent did not comply with his regulatory obligations. The Tribunal was satisfied beyond reasonable doubt that the Respondent had thereby acted in breach of Principle 7.

12. **Allegation 1.2: In breach of either or both of Principles 2 and 7 the Respondent provided misleading information in an insurance proposal form dated 15 August 2014 about:**

1.2.1 the Firm's gross fee income;

1.2.2 the Firm's dealings with the SRA;

1.2.3 whether any fee earner in the Firm had had an award made against him or her by the Legal Ombudsman;

1.2.4 whether any fee earner in the Firm had entered into a Regulatory Settlement Agreement with the SRA; and

1.2.5 whether any fee earner in the Firm had ever been the subject of "an Independent Voluntary Arrangement (IVA) or other arrangement" (sic).

12.1 On 25 March 2013, the Respondent had notified the Applicant that he had been made bankrupt on 12 March 2013. The order for bankruptcy was annulled by District Judge Lambert sitting at Central London County Court on 14 June 2013. The Applicant had conducted further inspection visits at the Firm in 2014 and on 27 May 2015. The latter visit resulted in a further Forensic Investigation report dated 18 August 2015. The report again dealt with errors and omissions in a professional indemnity insurance proposal form prepared by the firm and sent to Hera Indemnity, an insurance broker. The form was dated 15 August 2014 and was signed by the Respondent.

12.2 The form was alleged to have contained a number of errors.

12.2.1 In response to the question "Please state the Gross Fees for the following years ... YEAR ENDING 31/10/2013" the answer provided was £772,157, when the practice accounts for that year showed fee income of £923,160.

The explanation offered by the Firm was again said to be to the effect that the actual accounts were not available at the time of submission of the form and

that the figure was an estimate by their accountant. However, it was submitted that the Firm must have been aware from its previous dealings with the Applicant about the same issue that this was potentially problematic. The response on the form was not qualified (it did not indicate that the figure was estimated) nor was it suggested that the broker was informed separately that the figure was an estimate.

12.2.2 In response to the question "Has any fee earner... over the past 10 years ever practised in a firm subject to an investigation by the SRA" the Firm answered "No". The Forensic Investigation Report dated 18 August 2015 was submitted to make clear that the Applicant had conducted forensic investigation visits in 2013 and 2014. It was further submitted that the previous investigation which led to the Respondent entering into a Regulatory Settlement Agreement should also have prompted the answer "Yes" and a declaration of the details of the investigation. The Firm was said to have provided no explanation of these omissions.

12.2.3 In response to the question "Has the firm ever been the subject of any visit ...from the Forensic Investigation Unit ... of the ... Solicitors Regulation Authority" the Firm answered "No". For the reason summarised above, this was submitted to be inaccurate and the Firm was said to have failed to explain this.

12.2.4 In response to the question "Has any fee earner ... over the past 10 years had an award made against him or her by the Legal Ombudsman ... or entered into regulatory settlement agreement with the SRA?" the Firm answered "No". However as at the date the form was signed (15 August 2014) it was alleged that:

- The Respondent had entered into a Regulatory Settlement Agreement with the Applicant on 26 March 2009;

- The Respondent had received a complaint from the Legal Ombudsman in 2012 relating to his client Mr SMH. By a letter dated 18 October 2012 the Ombudsman directed that the Firm repay the fees paid by Mr SMH and pay him the further sum of £500;

- The Firm had received a complaint from the Legal Ombudsman in 2013 relating to the Respondent's client Mrs HF. By a letter dated 22 January 2014, the Ombudsman directed that the Firm refund £750 of the fees paid by Mrs HF and pay her £300 in acknowledgement of distress and inconvenience caused by the poor service;

- The Firm had received a complaint from the Legal Ombudsman in 2013 relating to the Respondent's client Mr BK. By a letter dated 7 April 2014, the Ombudsman directed that the Firm refund Mr BK the £2,500 fees he had paid and pay him £400 in acknowledgement of distress and inconvenience caused by the poor service.

Mr Dunlop referred the Tribunal to the proposal form which did not disclose any of these matters. There was submitted to be a positive obligation on the Respondent (as signatory) to ensure that all material facts were declared to the insurers, something which was made explicit by the declaration on the proposal form.

12.3 In response to the question "Has any fee earner ... over the past 10 years been (or is currently) the subject of an Independent (sic) Voluntary Arrangement (IVA) or other arrangement?" the Firm answered "No". As noted above, the Respondent was made bankrupt on 12 March 2013 (and the bankruptcy was annulled on 14 June 2013). The Applicant's case was that while the form erroneously asked for details of any "Independent Voluntary Arrangement" (rather than any "Individual Voluntary Arrangement") it was submitted to be obvious that this question was seeking details of any insolvency proceedings against the Firm's fee earners. It was further submitted that in any case, the Respondent's subsequent representations to the Applicant indicated that he was in no doubt as to the meaning of the question.

12.4 The Respondent had told the Applicant's Forensic Investigation Officer at a meeting on 20 July 2015 that since the bankruptcy had been annulled "… it didn't exist" and there was no need to disclose it. A copy of a letter purporting to be from the Firm to their insurance broker dated 5 September 2014 declaring the Respondent's annulled bankruptcy and the Applicant's inspection was provided to the Applicant in June 2015. Mr Dunlop stated that both of these purportedly disclosed events predated the insurance proposal form and were the two specific matters about which the Forensic Investigator had asked questions earlier in June 2015. The broker had confirmed to the Applicant, in July 2015, that he had not received the letter and that the annulled bankruptcy and Applicant's Forensic Investigations were material facts. Mr Dunlop stated that the Firm had failed to provide the requested computer evidence showing when the letter was created.

12.5 Mr Dunlop repeated his points made in relation to allegation 1.1 that there was an axiomatic obligation on parties to an insurance contract to deal in good faith making full declarations of material facts on the proposal form. He also submitted again that a solicitor must act scrupulously when signing to declare the truth of the contents of a form. This second proposal form also contained a declaration that the particulars and statements given were true and complete. Again the Respondent was said to have signed the form. Mr Dunlop submitted that whilst the Respondent's signature appeared to vary on the available documents, it was clear that he had provided the information as his name was again included as the primary contact, the email address he used was included on the form and the form was signed in his name.

12.6 As with the previous allegation, these actions were submitted to have been at least reckless as to the truth of the statements made to the Firm's insurer, who relied on the statements. The Respondent was therefore submitted to have acted without integrity in breach of Principle 2 and in breach of his legal and regulatory obligations in breach of Principle 7.

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

12.7 An email replying to questions from a Forensic Investigating Officer about the 2014 insurance proposal form was sent from the Firm on 14 June 2015. The email was sent

from an account used extensively by the Respondent. In the email, in the context of the insurance proposal form for 2013/14 (which was not the subject of any allegation) it was stated that government changes to the immigration rules and the ability to rely on Article 8 outside the immigration rules was considered by the Firm likely to adversely affect its gross fee income. It was stated that the previous years reflected the peak of this type of work (which was said to constitute the bulk of the Firm's work in those years).

12.8 With regards to the discrepancies in the figures on the 2014/15 form (with which allegation 1.2 was concerned) it was stated that the Firm's accountant provided all of the gross fee income figures which were included in the proposal form. It was further stated that the actual accounts were compiled and submitted in January 2015.

12.9 The email stated that correspondence dated 5 September 2014 was attached which had been sent to the Firm's insurance broker (the proposal form having been submitted on 15 August 2014). The letter of 5 September 2014 informed the insurance broker of the bankruptcy order made against the Respondent, and its annulment. The letter also stated that the Firm had received two visits from the Applicant which had conducted forensic investigations involving checks of certain files, policies and financial information. This information was said to have been provided by way of an update and to provide clarity.

12.10 A further email, sent from the same account, was sent to the Applicant's Forensic Investigation Officer on 29 November 2015. The email denied, in the name of the partners of the Firm, any breach of Principles 2 or 7. It was stressed that the fee income figures included in the insurance proposal form for 2014/15 were provided correctly and honestly. It was stated that the figures were provided by the Firm's accountant and were estimates.

12.11 With regards to the Respondent's bankruptcy, the email invited the recipient to take into account the fact that the order had been annulled and was therefore 'immaterial'.

12.12 The email stated that the Forensic Investigation visits from the Applicant's Investigators had involved different officers repeatedly requesting the same information and documentation. The process was described as a continuing merry-go-round which had taken a considerable amount of time and caused unnecessary anxiety.

12.13 The email confirmed 'in absolutely clear terms' that the letter to the insurance broker of 5 September 2014 was posted on that date (notwithstanding the intended recipient stating it had not been received). The email also confirmed that the Firm had not been able to trace the electronic version of the letter as requested.

12.14 The alleged breaches of Principles 2 and/or 7 were denied.

The Tribunal's Decision

12.15 The Tribunal reviewed the insurance proposal form signed on 15 August 2014. The Respondent was listed on the first page as the 'primary contact'. His name was also included on the final page within the declaration section underneath the 'signature of

partner'. The Tribunal was satisfied to the requisite standard that the Respondent completed and/or submitted the form.

12.16 The Tribunal considered each of the subsections of the allegation in turn. Allegation 1.2.1 related to the gross fee figures included in the form. The Tribunal accepted, and the Applicant did not allege otherwise, that the figures for the years ending on October 2010, 2011 and 2012 were accurate and matched the Firm's profit and loss account. For the year ending October 2013 the form had a figure of £772,157 whereas the Firm's profit and loss account for this year has a figure of £923,160. The Tribunal noted that the figure included within the form for the year ending October 2013 was around half the (accurate) figure included for the previous year.

12.17 The Respondent's account, provided to a Forensic Investigation Officer by email dated 14 June 2015 was that the figure was based on an estimate provided by the Firm's accountant. For the previous year's insurance proposal form, as noted above, the impact of changes to the immigration rules on the Firm's anticipated fee income was set out. The Tribunal accepted that at the point the insurance form was completed the profit and loss account figures for the year in question were not available. The Firm's finalised profit and loss account subsequently showed a drop in fees of around 35% whereas the figure on the insurance proposal form represented a drop of around 50%. Given that the other figures in the form were accurate, and a significant drop in fee income was reflected in the finalised profit and loss account, the Tribunal was not satisfied to the requisite standard that the information about fee income had been misleading in this particular example rather than being merely an inaccurate estimate.

12.18 Allegation 1.2.2 related to allegedly misleading information about the Firm's dealings with the Applicant. The answer 'no' had been provided to the question had the Firm ever been the subject of any visit or enquiry from the Forensic Investigation Unit of the Law Society or the Applicant. The Tribunal reviewed a Forensic Investigation Report which made references to a visit by investigators to the Firm in July 2013. The Tribunal did not consider that such a significant visit could slip the mind of a regulated individual. The Tribunal also reviewed email correspondence from the Respondent to Forensic Investigation Officers. The answer provided in the form was plainly false. The Tribunal was satisfied beyond reasonable doubt that misleading information was included about the Firm's dealings with the Applicant.

12.19 Allegation 1.2.3 related to allegedly misleading information about whether any fee-earner in the Firm had had an award made against him or her by the Legal Ombudsman. Again the answer 'no' had been provided. The Tribunal reviewed documentation relating to three awards made by the Legal Ombudsman following complaints by clients of the Firm between 2012 and 2014 (prior to the signing of the insurance proposal form). One decision letter was addressed to the Respondent and two went to others at the Firm about which the Tribunal was satisfied that the Respondent must have had knowledge. The answer provided in the form was plainly false. The Tribunal was satisfied beyond reasonable doubt that misleading information was included about whether any fee-earner in the Firm had had an award made against him or her by the Legal Ombudsman.

12.20 Allegation 1.2.4 related to allegedly misleading information about whether any fee earner in the Firm had entered into a Regulatory Settlement Agreement with the Applicant. Again the answer 'no' had been provided. The Tribunal reviewed the Regulatory Settlement Agreement entered into with the Applicant by the Respondent himself on 26 March 2009. The Tribunal found it inconceivable that the Respondent had forgotten about this agreement or considered that 'no' was an accurate or acceptable answer to the question posed. The answer provided in the form was plainly false. The Tribunal was satisfied beyond reasonable doubt that misleading information was included about whether any fee earner in the Firm had entered into a Regulatory Settlement Agreement with the Applicant.

12.21 Allegation 1.2.5 related to allegedly misleading information about whether any fee earner had ever been the subject of an Independent Voluntary Arrangement (which the Applicant submitted was intended to read Individual Voluntary Arrangement). Again the answer 'no' had been provided. The Tribunal accepted that the form had been incorrectly worded and whilst it may have intended to ask about Individual Voluntary Arrangements, it did not do so. More significantly, the Tribunal did not accept that bankruptcy was inevitably and unambiguously an 'arrangement' such that it fell within the wording of the query on the proposal form. The Respondent's annulled bankruptcy could have been disclosable had the question been more precisely worded but as drafted the Tribunal was not satisfied that the answer provided on the form was misleading.

12.22 The Tribunal then turned to consider the alleged breaches of the Principles based on the facts alleged in 1.2.2, 1.2.3 and 1.2.4 having been found proved. A breach of Principle 2, acting without integrity, was alleged. For the reasons summarised above in paragraph 11.19, the Tribunal considered that acting in a manner consistent with the ethical standards of the profession required that a solicitor must be scrupulously accurate when providing information upon which a contract for insurance for the benefit of clients was concerned. The form contained two reminders of the importance of such accuracy, although it should be self-evident to any solicitor. The misleading information which had been included was blatantly wrong on straightforward issues. The Tribunal found beyond reasonable doubt that by providing such misleading information, the Respondent had acted without integrity in breach of Principle 2.

12.23 Principle 7 is the mandatory requirement for solicitors to comply with their legal and regulatory obligations and regulators. For the reasons summarised above in paragraph 11.20, the Tribunal considered that by providing misleading information and thereby seeking to procure insurance on a false basis, the Respondent did not comply with his regulatory obligations. The Tribunal was satisfied beyond reasonable doubt that the Respondent had thereby acted in breach of Principle 7

13. **Dishonesty alleged in relation to allegations 1.1 and 1.2**

The Applicant's Case

13.1 The Respondent's actions were also submitted to be dishonest in accordance with the test for dishonesty accepted in Ivey v Genting [2017] UKSC 67 as applying in the

context of solicitors disciplinary proceedings. The Respondent was submitted to have acted dishonestly by the ordinary standards of reasonable and honest people.

13.2 The Applicant submitted that in signing the declarations on both proposals to the effect that the particulars and statements given in the proposals were true and complete, the Respondent acted dishonestly by the ordinary standards of reasonable and honest people. It was submitted that reasonable and honest people would have understood that the questions about insolvency, about investigations by the Applicant, about any Regulatory Settlement Agreement and about awards by the Legal Ombudsman required the answer: "Yes". Had there been any doubt about any of the importance of any of those matters to the insurer, it was submitted that the reasonable and honest person would have answered the question "Yes", provided information and sought further clarification from the insurers if required.

13.3 It was submitted to be inconceivable that (in respect of the first proposal form) the Respondent had forgotten the Applicant's investigation which concluded in the Regulatory Settlement Agreement just over two years previously. Similarly, at the time of signing the second proposal form (15 August 2014), the Legal Ombudsman had made two awards against the Firm within the previous 7 months in cases handled by the Respondent. Further, on 7 July 2014 the Respondent had issued a claim for judicial review of the Legal Ombudsman's decision in relation to one of his cases which it was submitted was likely therefore to be relatively fresh in his mind at the time of signing the proposal form.

13.4 Mr Dunlop submitted that when the Respondent had completed the 2011 proposal form he must have known that the 2009 profit and loss account figures were much greater than he had claimed in the form and that he had been investigated by the Applicant. Mr Dunlop stated that the Respondent had never offered an innocent explanation for what were submitted to be misrepresentations. It was submitted that the only explanation was that he was lying to obtain lower cost insurance. He submitted that on any view, that was dishonest.

13.5 Mr Dunlop submitted that when the Respondent completed the August 2014 proposal form he must have remembered: the visits from the Applicant's Forensic Investigation Officers, the Legal Ombudsman awards, the Regulatory Settlement Agreement he entered into and his bankruptcy. He submitted that even if the subsequent letter sent to the insurance broker in September 2014 was genuine, that would not explain or justify the dishonesty in filling out the form with answers he knew to be false. Mr Dunlop further stated that this letter did not in any event cover the Legal Ombudsman awards or the Regulatory Settlement Agreement.

13.6 Mr Dunlop submitted that when considering whether the letter to the insurance broker in September 2014 was genuine the Tribunal could have regard to wider evidence of the Respondent's dishonesty and what was described as a history of forged documents produced to assist the Respondent. These were submitted to include dishonest claims about his own health, attendance notes relied on in response to client complaints not accepted as genuine by the Legal Ombudsman, a forged signature for the Second Respondent on the 2011 insurance proposal form and the forged signature for OP in the statement alleging that the Respondent was off work sick.

The Respondent's Case

13.7 On the same basis on which allegations 1.1 and 1.2 were denied, the Respondent's responses to the Applicant indicate that any allegation of dishonesty was denied. Relying on estimated figures provided by the Firm's accountant in both insurance proposal forms would necessarily mean no dishonesty on the Respondent's part was involved in the discrepancies between the estimated and actual gross fee income figures. A decent ordinary person would not consider someone who relied on figures from an appropriate accountant to be dishonest by virtue of any margin of error the estimated figures were subsequently shown to contain.

13.8 The Firm had denied any breach of Principles 2 and 7 by the Respondent and dishonestly was similarly denied by implication. The email to the Applicant's Forensic Investigator of 29 November 2015, referred to above, stated that the fee income information had been provided 'correctly and honestly'. The wider dishonesty relating to other omissions was also denied but without the same degree of specificity as the fee income figures.

The Tribunal's Decision

13.9 When considering the allegation of dishonesty, the Tribunal applied the test in Ivey. The test for dishonesty was set out at [74] of the judgment in that case and accordingly when considering the issue of dishonesty in allegations 1.1 and 1.2, the Tribunal adopted the following approach:

- firstly the Tribunal established the actual state of the Respondent's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held.

- secondly, once that was established, the Tribunal then considered whether his conduct was honest or dishonest by the standards of ordinary decent people.

13.10 For the reasons summarised above, the Tribunal had found that the Respondent had provided misleading information in the 2011 and 2014 insurance proposal forms. The Tribunal considered that the Respondent must have known that the 2009 profit and loss account figures, at least, were much greater than was claimed on the 2011 form. Similarly, the Tribunal accepted that the Respondent must have known when he completed the 2011 form that he had been investigated by the Applicant. With regards to the 2014 insurance proposal form, the Tribunal considered that he must have known that the Firm had been visited by Forensic Investigators from the Applicant, had been the subject of multiple Legal Ombudsman awards following client complaints and that he himself had entered into a Regulatory Settlement Agreement with the Applicant. The Tribunal considered that it would be fanciful to conclude otherwise. As a Registered Foreign Lawyer the Respondent must had known the importance of providing accurate information on such an official form intended to lead to an insurance contract.

13.11 The Tribunal accepted the submission from Mr Dunlop that even if the Respondent subsequently informed the Firm's insurance broker of some of the missing information, this would not excuse or explain the misleading information provided

when the form was completed. In those circumstances, the Tribunal did not consider that it was necessary for a finding to be made on whether the letter dated 5 September 2014 purportedly sent to the Firm's insurance broker was genuine. The fact that the letter did not cover all of the misleading information reinforced this conclusion.

13.12 The Tribunal was not persuaded by the submission from Mr Dunlop that it should have regard to the misleading claims that the Respondent had made subsequently about his health. Nevertheless, the Tribunal found beyond reasonable doubt that knowingly including blatantly misleading information in an insurance form would be regarded as dishonest by the standards of ordinary decent people.

14. **Allegation 2: The Respondent submitted (or allowed to be submitted on his behalf) an application for judicial review dated 12 December 2011 in which it was misleadingly asserted that his client SMH was "out of funds and therefore it was impossible for him to instruct his representative. He has recently arranged the funds and gave instructions straightaway. The application is being filed at the first opportunity." He thereby breached any or all of Principles 1, 2 and 6 of the SRA Principles 2011.**

14.1 The Firm acted for a Mr SMH in connection with a judicial review of a decision to refuse his application for leave to remain in the UK. Mr SMH first instructed the Firm on or about 3 October 2011 on which date the Firm wrote to him setting out their initial advice that he had grounds to apply for judicial review. The letter recorded the agreement that Mr SMH would pay a "fixed professional fee" of £1700 within a week and before the Firm started work. The letter stated: "We will accordingly start work on your file but will only be able to lodge the claim on receipt of £1700 as agreed'. The letter confirmed that the Respondent was responsible for the matter.

14.2 The time limit for issuing judicial review proceedings was at the latest 14 October 2011. Mr SMH was apparently unable to pay the sum in total by that date and instead made five separate payments to the firm, the last being on 9 January 2012. Mr SMH's account of the arrangement (recorded in a letter from the Legal Ombudsman to the Respondent dated 18 October 2012) was that he was to pay the fee by instalments. The Legal Ombudsman accepted this account was more likely than not to be the case.

14.3 The Respondent wrote to Mr SMH on 10 October 2011 reporting that the Firm had made pre-action protocol representations to the "UK Border Agency'. The Respondent also rang Mr SMH the same day asking him to pay the balance of the fee and advised him that if he was unable to do so "... then we have to apply for extension of time". Mr SMH made further payments on 13 October 2011 and 7 November 2011. The Firm wrote to Mr SMH on 29 November 2011 chasing the outstanding balance of £700. The Respondent stated to the Legal Ombudsman in a letter dated 31 October 2012 that on the basis that his client had not paid the entire fee, the Respondent did not issue the application for judicial review until 12 December 2011, having done so on his account because Mr SMH had contacted him on 12 December 2011 and "… it was decided upon firm's discretion to submit Judicial review due to Mr [SMH]'s financial situation".

14.4 The claim form was out of time when issued and so contained an application for extension of time which included the following statement:

> "It is submitted that the Claimant is privately paying for these proceedings. He was out of funds and therefore it was impossible for him to instruct his representative. He has recently arranged the funds and gave instructions straightaway. The application is being filed at the first opportunity ..."

14.5 The Applicant's case was that this statement was entirely misleading. It was submitted that Mr SMH was not out of funds having at that point paid the firm £1,000 of the £1,700 fee and the following day paying a further £350. The Applicant relied on the decision of the UK Border Agency to refuse Mr SMH's application for leave to remain which indicated that he had (unsuccessfully) claimed points under the Immigration Rules for previous earnings amounting to £48,013 and had been awarded maximum points in the category "Maintenance (funds)". It was submitted that it was clearly not impossible for Mr SMH to instruct his representative. Other than the initial meeting with the Respondent on 3 October 2011 (following which the Respondent advised that Mr SMH had grounds to bring a judicial review), it was alleged that the firm took no further instructions from him and that the claim form was prepared on the basis of the information already to hand.

14.6 It was submitted on behalf of the Applicant that Mr SMH had not "recently arranged the funds" or given instructions "straightaway"; the Firm had recently chased him to pay the outstanding balance and on the Respondent's own account the Firm had exercised its discretion to issue the application despite Mr SMH's financial situation. The Applicant's case was that Mr SMH did not make a further payment against the outstanding balance until the day after the claim was issued and that it was not apparent that Mr SMH had given any further instructions since the initial instructions. The Applicant relied on a letter of 3 October 2011 which confirmed that the Respondent felt able at that point able to issue proceedings:

> "You instructed us that are happy with the above and wishes to proceed. We will to draft the grounds and lodge claim as soon as we receive the promised £1700. Once done, we will send you a confirmation letter" (sic).

14.7 The Applicant also submitted that this cast doubt on the assertion that, "The application is being filed at the first opportunity" as it could have been filed within the 3 month time limit had Mr SMH paid the agreed fee or had the firm exercised its discretion in his favour earlier. His Honour Judge Raynor QC refused Mr SMH permission to apply for judicial review on the papers on 15 February 2012. As well as indicating that Mr SMH did not have an arguable claim, the judge also stated that the claim was issued well outside the 3 month time limit and that he was not satisfied there was any reasonable excuse for such failure given the Claimant's claimed prior earnings.

14.8 The Applicant summarised the basis of the application for an extension of time as being that Mr SMH was impecunious and he had therefore been unable to instruct the Firm at all (and was unable to progress the claim himself); he was able to provide funds eventually, but after the time limit had expired; and as soon as he put the Firm in funds, they issued proceedings at the first opportunity. It was submitted that this

was far from the real situation. It was submitted that litigators have an onerous duty to avoid misleading the Court in any circumstances and to fail in that duty is "a fundamental affront to a rule designed to safeguard the fairness and justice of proceedings" (Brett v Solicitors Regulation Authority [2014] EWHC 2974 (Admin)).

14.9 Though it was not clear from the claim form who signed the statement of truth the Applicant relied on the Respondent being responsible for the matter. He was submitted to be therefore responsible for the content of the claim form. The Applicant submitted that the Respondent's behaviour in submitting a misleading claim form for judicial review failed to uphold the rule of law and the administration of justice, in breach of Principle 1, lacked integrity in breach of Principle 2 and displayed conduct of the sort that undermined the trust the public places in solicitors and in the provision of legal services in breach of Principle 6.

The Respondent's Case

14.10 The allegation and breaches of the Principles were denied. The Firm had set out its response to the complaint from Mr SMH in a letter to him dated 27 April 2012. The letter listed the instalments paid which totalled £1,700 and which included £350 on both 13 December 2011 and 9 January 2012.

14.11 It was stated in the letter that, as recorded in the client care letter sent upon instruction, it had been agreed that Mr SMH would pay the full agreed fixed fee before the firm started work. The Firm had advised Mr SMH of the judicial review deadline but Mr SMH was said to have failed to keep to the mutual agreement and that it was this failure which caused delay. The letter stated that having received a promise from Mr SMH in December 2011 that he would pay the balance of the fee within a month, and due to his 'devastating financial situation', the Firm nevertheless submitted the judicial review claim.

14.12 A reminder letter from the Firm to Mr SMH dated 29 November 2011 was included in the documents before the Tribunal. The letter requested payment of 'your instalment' within 5 days of the letter.

14.13 A letter from the Legal Ombudsman to the Firm dated 18 October 2012 made reference to the Firm having provided telephone attendance notes dates 3 and 10 October 2011. The letter from the Legal Ombudsman made clear that the attendance notes were produced to, and did, corroborate the Firm's, and the Respondent's, account of the agreement with Mr SMH (i.e. that work would begin once the entire fee had been paid).

14.14 In the email dated 21 April 2015, sent from the Firm to the Applicant's Forensic Investigation Officer, it was stated that the details in the judicial review claim form about the late presentation of the claim 'were entirely accurate'. It was stated that whilst Mr SMH may have held money for other reasons, he was not able to pay the Firm's fees on time. On this basis the contents of the request for additional time for the claim to be brought were submitted to be accurate. It was accordingly denied that there had been any breach of Principles 1, 2 and/or 6.

The Tribunal's Decision

14.15 The Tribunal noted that the client care letter of 3 October 2011 stated that the Respondent would be responsible for the work for Mr SMH. The Tribunal was satisfied, by reference to the Court's reference number included in correspondence, that the judicial review claim form had been submitted by the Firm by 12 December 2011.

14.16 The Tribunal considered the Legal Ombudsman's conclusion that an arrangement had been reached with Mr SMH that he would pay the agreed fixed fee in instalments and the Firm would lodge his claim was persuasive. Whilst the Legal Ombudsman's conclusion was reached on the balance of probabilities, the Tribunal considered that any other arrangement was deeply implausible. The Tribunal did not accept that any client would instruct solicitors on the basis that a strict deadline for bringing an important claim would be missed. The Tribunal preferred the account of the arrangement provided by Mr SMH to the Legal Ombudsman to that set out by the Respondent as the Respondent's account did not make any practical sense. The Respondent's position as set out to the Legal Ombudsman was that it had been agreed that work would commence once the full fee had been paid.

14.17 Other than the inherent implausibility of such an arrangement, the Firm's actions were also at odds with it. The judicial review claim was in fact lodged on 12 December 2011 despite £700 of the fee remaining outstanding at that point and no payments having been received since 7 November 2011. As the Firm confirmed in its letter to Mr SMH of 27 April 2012, and also stated to the Legal Ombudsman, the Firm had exercised its discretion and had lodged the claim form before all of the fees had been paid.

14.18 The Tribunal noted that there was no indication that any additional instructions were provided to the Firm after the initial meeting. The client care letter of 3 October 2011 stated that its purpose was 'to confirm the instructions you gave to this firm along with our advice'. The later response to Mr SMH's complaint explained the delay in lodging the claim purely by reference to the fees outstanding rather than instructions required. Similarly, the Legal Ombudsman's decision letter of 18 October 2012 which summarised the Firm's representations referred solely to the non-payment of the fees as the reason why the lodging of the claim was delayed.

14.19 The wording which was alleged to be misleading in the judicial review claim form submitted by or with the knowledge of the Respondent was that Mr SMH was:

> "out of funds and therefore it was impossible for him to instruct his representative. He has recently arranged the funds and gave instructions straightaway. The application is being filed at the first opportunity."

14.20 Given that an instalment arrangement was entered into by a client on such an important matter as leave to remain in the country, the Tribunal accepted that the indication that Mr SMH was out of funds was essentially accurate in view of the necessity of the instalment arrangement. The Tribunal considered that the comment about Mr SMH consequently being unable to instruct his representative put a 'gloss' on this situation rather than misrepresented it.

14.21 The Tribunal considered the remainder of the statement to be clearly misleading however. As noted above, no payment had 'recently' been made to the Firm and no instructions had recently been given. It was not accurate to state that the application was being filed at the first opportunity. The Tribunal considered that, as had been set out in the Firm's letter to Mr SMH of 27 April 2012, what had happened was that the Firm had at that point elected to exercise its discretion to lodge the judicial review claim form notwithstanding the fact it had not received all of the fees. This was the Firm's own account of events. The Tribunal found that the Firm had had instructions to allow the claim to be lodged within time. Irrespective of the fact that the Tribunal considered that an initial agreement had been reached that the claim form would be lodged before the limitation date provided agreed instalments were being paid, on the Firm's own account of what happened, the Tribunal found that the statement included within the judicial review claim form was clearly and significantly misleading. It went beyond acceptable 'presentation' and clearly strayed into being misleading.

14.22 As the solicitor responsible for the work on the matter, the Tribunal was satisfied that the Respondent submitted the misleading wording. Given that the wording was included in a judicial review claim form with the effect that the judge reviewing the application would be misled as to the reasons for the late submission, the Tribunal found beyond reasonable doubt that this amounted to a breach of Principle 1 and that the Respondent had failed to uphold the rule of law and the proper administration of justice. Seeking to mislead the Court was inevitably serious misconduct for a solicitor as an officer of the Court. The Tribunal also found beyond reasonable doubt that such a finding must inevitably entail a failure to adhere to the ethical standards of the profession and amount to a failure to act with integrity in breach of Principle 2. The Tribunal considered that public trust in the provision of legal services and the reputation of the profession would inevitably be seriously undermined by knowledge that a solicitor had presented a misleading account to a Court. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent had breached Principle 6.

Previous Disciplinary Matters

15. There were no previous Tribunal disciplinary findings.

Mitigation

16. Notwithstanding the findings of the Tribunal that he had misled medical experts as to the extent of his ill-health, and had failed to provide satisfactory medical evidence, the Tribunal noted the evidence that the Respondent had experienced traumatic events in his personal life in 2011 which was a year which featured extensively in the allegations and underlying facts.

Sanction

17. The Tribunal referred to its Guidance Note on Sanctions (6th Edition) when considering sanction. The Tribunal assessed the seriousness of the misconduct by considering the level of the Respondent's culpability and the harm caused, together with any aggravating or mitigating factors.

18. In assessing culpability, the Tribunal considered that the Respondent's motivation for providing the misleading information on the insurance proposal forms was the financial advantage of obtaining cheaper insurance cover. The misleading statement on the judicial review application was motivated by a wish to cover for the poor service that the client had received. The actions were planned rather than spontaneous. Misleading information had been provided on three separate formal documents in different years. The Tribunal had found that the Respondent had provided or allowed the misleading wording to be provided, and considered that as the solicitor named as the principal contact or solicitor with conduct, he had control over the events. The fact that it was the Respondent who sought to explain the events after the event to the Applicant and the Legal Ombudsman supported the conclusion that he had control and responsibility for the circumstances of the misconduct.

19. The Tribunal then considered the harm caused by the misconduct. Mr SMH had lost the chance for his judicial review application to be heard and the insurance firms had been denied the opportunity to quote a premium which accurately reflected the risk represented by the Firm. There was also a very significant risk of harm to the reputation of the profession where the Court has been misled and there were also two instances of dishonest conduct relating to the insurance proposal forms.

20. The misconduct found to be proved was aggravated by the fact that the allegations included two instances of dishonest conduct. The misconduct involved three incidents over an extended period of time and was deliberate. The seriousness of the conduct was also aggravated by the fact that the Respondent knew, or ought to have known, that such actions were unacceptable and potentially harmful to the reputation of the legal profession.

21. The Tribunal noted the medical evidence about the Respondent's ill-health, and the events in his personal life in 2011. However, the Tribunal did not consider that any of the potential mitigating factors set out in the Sanctions Guidance applied. The Tribunal considered that the inescapable conclusion was that following the instigation of proceedings by the Applicant, the Respondent had made every effort through misleading the medical experts, as set out above, to avoid being held responsible for his misconduct. Given this extended and extreme lack of candour with, and deception of, his regulator by the Respondent, the Tribunal did not consider that any plausible mitigation could be advanced.

22. The Tribunal had regard to the case of SRA v Sharma [2010] EWHC 2022 (HC), and the comment of Coulson J that, save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck of the Roll. The Tribunal was not persuaded that any exceptional factors were present, such that the normal penalty would not be appropriate. There were repeated instances of dishonesty and other serious misconduct over a considerable time period.

23. Having found that the Respondent acted dishonestly the Tribunal did not consider that a reprimand, fine or suspension were adequate sanctions. The Tribunal had regard to the observation of Sir Thomas Bingham MR in Bolton v Law Society [1994] 1 WLR 512 that the fundamental purpose of sanctions against solicitors was:

> "to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth".

The Tribunal determined that the findings against the Respondent including dishonesty required that the appropriate sanction was strike off from the Register of Foreign Lawyers.

Costs

24. Mr Dunlop applied for costs on behalf of the Applicant in the sum of £35,667.05 as set out in the Schedule of Costs dated 10 April 2019. Mr Dunlop submitted that the costs were modest, particularly given the additional work which had been necessitated by the repeated adjournments. The fixed-fee arrangement under which the case was conducted meant that the Applicant's solicitors had absorbed the costs of briefing counsel for the adjourned hearing with the result that a loss would be made by them on the case.

25. The Tribunal assessed the costs for the hearing. The Tribunal considered that the costs were reasonable given the complexity of the case. The Tribunal had regard to paragraph [58] of its Sanctions Guidance and the requirement for supporting evidence if a Respondent wishes to claim that they are impecunious and unable to meet a costs order. The Respondent had provided no evidence as to his means. In all of the circumstances the Respondent was ordered to pay the costs of and incidental to this application and enquiry fixed in the sum of £35,667.05.

Statement of Full Order

26. The Tribunal Ordered that the Respondent, Imtiaz Ali, Registered Foreign Lawyer, be STRUCK OFF the Register of Foreign Lawyers and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £35,667.05.

Dated this 29th day of May 2019
On behalf of the Tribunal

E. Nally
Chairman