SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11595-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

MANSOOR ALI Respondent

Before:

Miss T. Cullen (in the chair)
Mr J. Evans
Mr M. Palayiwa

Date of Hearing: 27 -28 June 2017

Appearances

Marianne Butler, counsel of Fountain Court Chambers, Fountain Court, Middle Temple Lane, London EC4Y 9DH (Instructed by Shaun Moran of Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham, B1 1RN), for the Applicant

Soraya Pascoe, counsel of 1 Gray's Inn Square Barristers' Chambers, Gray's Inn, LondonWC1R 5AA (Instructed by Habib Rahman of Alison Law Solicitors LLP, Second Floor, 135 Wilmslow Road, Manchester M14 5AW), for the Respondent

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JUDGMENT

Allegations

1. The allegations against the Respondent made by the Applicant were set out in a Rule 5 Statement dated 6 January 2017 (as amended on 21 June 2017). The allegations were that:-

1.1 Whilst in practice as a principal at One Source Solicitors, the Respondent continued to act on behalf of a client (Mr A), notwithstanding that Mr A expressly informed the Respondent of facts which meant that any appeal based on his continuing in education would be disingenuous on (or about) 27 February 2014 and/or 4 March 2014. This was contrary to Principle 2 and/or 6 of the SRA Principles 2011 ("the Principles").

1.2 Despite being expressly informed by a client (Mr A) of facts which meant that any appeal based on continuing in education would be disingenuous, the Respondent commenced an appeal to the Upper Tribunal on 28 February 2014, failing at any stage subsequently to withdraw from acting and/or ensure the Court was not misled. This was contrary to Principle 1 and/or 6 of the Principles and in breach of Outcome 5.1 of the SRA Code of Conduct 2011 ("SCC").

Documents

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

Applicant

- Application dated 13 January 2017 and Rule 5(2) Statement dated 6 January 2017 with exhibit SM1
- Forensic Investigation Report of Lisa Bridges dated 18 February 2016
- Witness Statement of Lisa Bridges dated 1 June 2017
- Amended Statement pursuant to Rule 5(2) (undated but received on 21 June 2017)
- Note of Opening/Skeleton Argument of the Respondent dated 22 June 2017
- Applicant's Statements of Costs dated 5 January 2017 and 22 June 2017
- Webb v Solicitors Regulation Authority [2013] EWHC 2078 (Admin)
- Williams v Solicitors Regulation Authority [2017] EWHC 1478 (Admin)
- Scott v Solicitors Regulation Authority [2016] EWHC 21256 (Admin)

Respondent

- Response to Allegations dated 6 March 2017
- Response to Allegations dated 18 April 2017 with exhibit MA01
- Witness Statement of the Respondent dated 18 April 2017 with exhibits MA01 to MA08
- Respondent's Statement of Costs dated 23 June 2017

Factual Background

3. The Respondent was born in January 1978 and was admitted as a solicitor in November 2012. His name remained on the Roll. At all material times the Respondent was a partner at One Source Solicitors ("the Firm"). At the time of the hearing, the Respondent held a current Practising Certificate free from conditions and remained at the Firm.

4. Both allegations concerned the Respondent's conduct in acting for a client, Mr A in relation to his application to extend his leave to remain in the UK as a Tier 4 (General) Student Migrant.

5. The Solicitors Regulation Authority ("SRA") received a referral from the Legal Ombudsman. An inspection of the Firm's books of account and other documents commenced on 2 December 2015 and the Respondent was interviewed by an Investigation Officer, Lisa Bridges, ("FIO") on 3 December 2015. A Forensic Investigation Report ("FIR") was produced at the conclusion of the investigation and was dated 18 February 2016.

6. On 23 May 2016 a letter was sent to the Respondent by the SRA Supervisor requesting an explanation and warning him as to the prospect of disciplinary proceedings. The Firm replied on 7 June 2016 and denied the allegations put to the Respondent by the Supervisor. On 29 June 2016 an Authorised Officer of the SRA decided to refer the conduct of the Respondent to the Tribunal.

Background to the Mr A Matter

7. On or about 3 January 2014, the Respondent was instructed by Mr A to assist with Mr A's application for further leave to remain in the UK. Mr A was from Pakistan. As summarised by the Home Office he was first granted leave to enter the United Kingdom as a Student on 9 July 2005 until 1 September 2006. He was granted further leave to remain in the United Kingdom as a student several times. On 29 November 2010, Mr A was granted further leave to remain in the United Kingdom as a Tier 4 (General) Student until 12 April 2013. On 12 April 2013 he made a combined application for leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant under the Points Based System.

8. Pursuant to section 3C of the Immigration Act 1971, where an application for leave to remain is made before the applicant's existing leave to remain expires, their leave to remain is extended until either the determination of their application, or until any appeal or application for permission to appeal from a rejection of that application (which is made within time) has been determined. Thus, Mr A's leave to remain was extended beyond 12 April 2013 and did not cease until that application was refused and any appeals he made from the initial refusal (that were made within time) were dismissed.

9. The Immigration Rules in force on 12 April 2013, which included the Points Based System, relevantly provided as follows:

(1) The purpose of the Tier 4 (General) Student migration route was for migrants aged 16 or over who wish to study in the UK (rule 245ZT).

(2) It was a condition on those seeking entry into the UK through this route that the entry clearance officer was satisfied that the migrant was a genuine student (rule 245ZV(k)).

(3) To qualify for leave to remain as a Tier 4 (General) Student, the migrant was required to meet the following conditions (among others):

(i) An applicant must have been applying for leave to remain for the purpose of studies which commence within 28 days of the expiry of the applicant's current leave to enter or remain or, where the applicant has overstayed, within 28 days of when that period of overstaying began (rule 245ZX(l)).

(ii) The applicant must have a minimum of 30 points under paragraphs 113 to 120 of Appendix A (rule 245ZX(c)), where 30 points were awarded for having been issued a valid Confirmation of Acceptance for Studies reference number ("CAS Number") (paragraphs 113-115 of Appendix A).

An applicant from Pakistan (among many other countries) was required to provide 'specified documents' in support of their application, which included the original certificates of qualification relied on by the educational institution (Sponsor) in issuing the CAS Number (paragraphs 118 and 120-SD of Appendix A).[1]

10. On 12 April 2013, when Mr A made his application for leave to remain, it appeared that Mr A had a CAS Number issued by Bradford Regional College ("Bradford College") for study in the course 'Level 8 Diploma in Strategic Direction and Leadership (QCF)' to commence on 7 May 2013 and with an expected end date of 7 May 2015. In order to obtain that offer, Mr A had relied on the following qualifications (among others): TOEIC ETS Certificate; Level 7 Diploma in Management from AABPS, obtained on 12 April 2013; Foundation Degree from the University of Bolton, obtained in 2010; and Bachelor of Science from the University of the Punjab, obtained in 1999.

11. On 23 July 2013, the Secretary of State for the Home Department rejected Mr A's application for leave to remain because his application did not include the TOEIC Certificate for Writing which he was required to provide under paragraph 120-SD of Appendix A of the Immigration Rules.

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[1] The Amended Rule 5 Statement stated that , in 2013, an application for Tier 4 (General) Student leave to remain required a CAS number, which was obtained from a Home Office approved educational institution and signified an applicant's enrolment in a course at that institution. In previous years, the Home Office had instead required educational institutions to provide a letter confirming enrolment, sometimes described as a CAS certificate or letter. As it is stated and is uncontroversial that there is no material difference between a CAS certificate or letter and a CAS number, the terms are used interchangeably in this Judgment (as they were in the underlying papers).

12. On or about 21 August 2013, W Solicitors, on behalf of Mr A, filed an appeal to the First Tier Tribunal against the Secretary of State's decision. The Respondent was at that time a solicitor at W Solicitors and had conduct of Mr A's matter. The Respondent subsequently moved to the Firm. On 3 January 2014, Mr A instructed the Firm to take over conduct of this appeal, and the Respondent resumed responsibility for the day-to-day conduct of the matter.

13. The Respondent represented Mr A at the appeal which was heard by the First Tier Tribunal on 10 February 2014 before Judge V A Osborne. On 24 February 2014, Judge Osborne dismissed Mr A's appeal on the grounds that no TOEIC Certificate for Writing had been included with Mr A's application and that Mr A's explanations for why this document had not been included lacked credibility.

14. More specifically, Mr A had provided three inconsistent explanations: (i) in his grounds of appeal he asserted that he had included the Certificate for Writing in his application and his case was an example of the Secretary of State's 'inability to read the application and see the evidence provided properly'; (ii) in his witness statement Mr A said that he did not have the Certificate for Writing when he applied because he had taken the test on 6 March 2013 and did not yet have the certificate; and (iii) finally in his oral evidence provided a further explanation. Judge Osborne's conclusion was that Mr A's explanations were "inconsistent to the extent that I find that they lack credibility" such that he could not be satisfied that Mr A satisfied the requirements of the Points Based System. Mr A was entitled to apply for permission to appeal on a point of law from this decision to the Upper Tribunal within five days. Such applications for permission to appeal had to be made to the First Tier Tribunal.

15. By letter dated 25 February 2014 the Firm notified Mr A of the First Tier Tribunal's decision. On 27 February 2014, the Respondent met with Mr A to discuss the dismissal of his appeal. It appeared that Mr A decided to seek to obtain a new CAS Number from another college with a view to issuing a new application to remain but in the meantime, Mr A instructed the Respondent to apply for permission to appeal against the decision of the First Tier Tribunal and on 28 February 2014 the Respondent filed this application on Mr A's behalf.

16. Mr A's application for permission to appeal was refused by the First Tier Tribunal on 15 April 2014. However (and as recorded in the decision of the Legal Ombudsman dated 5 May 2015), the Firm did not notify Mr A of this decision and Mr A did not discover the outcome until 10 November 2014 when he called the United Kingdom Border Agency himself. No further work was undertaken by the Respondent on behalf of Mr A although they remained in contact afterwards regarding unpaid fees. The Firm maintained that it did not receive any notification from the First Tier Tribunal but, dissatisfied with that response, Mr A made a complaint against the Firm to the Legal Ombudsman on 4 March 2015.

17. On 5 May 2015, a Recommendation Report was produced by an investigator for the Legal Ombudsman which found that the Firm had provided a poor service to Mr A in failing to chase up the matter with the First Tier Tribunal and recommended that the Firm pay Mr A £100. The investigator also referred the Firm to the SRA for its handling of Mr A's matter in light of the fact they appeared to know that he was not, and never had been, a genuine student in the UK. The Respondent accepted the

Recommendation Report and duly paid the compensation awarded by the Legal Ombudsman to Mr A.

18. The Recommendation Report produced by the Legal Ombudsman primarily focused on service issues however the Report considered similar issues as those before the Solicitors Disciplinary Tribunal and its findings are relevant and persuasive. In the Recommendation Report the Legal Ombudsman found that:-

> "Further as an additional point, I consider it necessary to note my criticism of the firm for assisting [Mr A] with his immigration matter in the knowledge that he was never a genuine student in the UK, as recorded in the attendance notes of 27 February 2014 and 4 March 2014. Having been told by [Mr A] that his historical applications and current appeals to the UKBA were disingenuous, I take the view that it would have been reasonable for the firm to stop acting once they had this information; indeed, they had an overriding duty to the court - to not mislead them. I am critical of the firm for their handling of the matter."

Witnesses

19. The following witnesses gave written and oral evidence:

- Lisa Bridges – FIO
- The Respondent

20. The Tribunal did not find the Respondent to be a credible witness. In his oral testimony the Respondent had a tendency not to answer the question he had been asked and appeared to answer the question he had wanted to be asked. At times the Respondent's recall was patchy and at times it was not. The Respondent put forward a number of explanations and his story changed. This made his evidence hard to believe. An example of new evidence which was not (in the Tribunal's opinion) credible, was the Respondent's testimony that he asked the receptionist to make typed attendance notes on the basis of what the Respondent told the receptionist rather than the content of his notebooks.

21. Where there was a conflict of evidence between the Respondent and the FIO the Tribunal preferred the evidence of the FIO who they found to be a credible witness. The FIO's evidence was based on her investigation. The Respondent's evidence reflected his own vested interests when facing allegations of serious professional misconduct.

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

Findings of Fact and Law

23. 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.

24. **Allegation 1.1 - Whilst in practice as a principal at One Source Solicitors, the Respondent continued to act on behalf of a client (Mr A), notwithstanding that Mr A expressly informed the Respondent of facts which meant that any appeal based on his continuing in education would be disingenuous on (or about) 27 February 2014 and/or 4 March 2014. This was contrary to Principle 2 and/or 6 of the Principles.**

The Applicant's Case

24.1 Allegation 1.1 was concerned with the decision by the Respondent to continue acting for Mr A (including by way of filing an appeal in respect of his application for leave to remain) in the light of his instructions from Mr A, and allegation 1.2 was concerned with what, specifically, was said to the Court by the Respondent in the course of that appeal.

24.2 On 3 January 2014 the Respondent was instructed to act on Mr A's behalf concerning an immigration matter in which Mr A was appealing a decision by the UK Border Agency (UKBA) not to extend his leave to remain in the UK as a Tier 4 (General) Student Migrant. The Respondent advised Mr A that his prospects of success were low. Mr A's appeal was heard at the First Tier Tribunal on 10 February 2014 and was dismissed, however the option remained for him to apply for leave to appeal to the Upper Tribunal. The Firm notified Mr A of the Tribunal's decision and his appeal options in a letter dated 25 February 2014.

24.3 On 27 February 2014, the Respondent met with Mr A to discuss the dismissal of his appeal to the First Tier Tribunal. The Respondent created a file note of that meeting which relevantly stated:

> "He asked me about the merits of further permission to appeal to upper tribunal. I informed him that apparently there is no arrear (sic) of law.
>
> H (sic) requested me to submit further appeal on his behalf. He asked me if I did not submit an appeal he will be illegal in this country. I asked him try to get admission in a college and submit fresh application if you want to continue further education.
>
> ...
>
> He told me while discussing that since the day first he never went to college. He always have been paying money to agents to get certificates and admissions and this is how he has been getting extensions for the last ten years.

He told me now a day's home office people are very tight. He requested me to do something for him. He told me that he is interested to complete his ten years so that he could apply for ILR [Indefinite Leave to Remain] on the basis of ten years.

I told him if you have no intention to continue your study in this country go back to your country. It's not too late go and join your father's business.

I have told him that only favour I could do is that I would charge 720.00 pounds our fee of permission to appeal to tribunal in two instalments.

He agreed that he would pay first instalment on 15th of March 2014 and second instalment on 15th of April because now a days he is working full time somewhere in the grocery shop.

He further posed a question if he was caught by Home Office people while working in the grocery shop then he could ask that he was not working he was just completing his training. He further told me that his employee has already been fined by the Home Office because another guy was being caught while working illegally. I told him the consequences of aforementioned.

Client asked not to disclose his address to the Tribunal or Home Office because he is scared that if Home Office know his address he will be deported by Home Office people."

24.4 The Applicant explained that in 2013, an application for Tier 4 (General) Student leave to remain required a CAS number, which was obtained from a Home Office approved educational institution and signified an applicant's enrolment in a course at that institution.

24.5 The Respondent was made aware by his client, Mr A, that his applications for CAS certificates/numbers were made disingenuously. Instead of being based on genuine CAS certificates issued by educational institutions at which Mr A had studied entitling him to UK residence, the inference was that the applications (both in the preceding years and in respect of the application that was the subject of the appeal) were predicated on CAS certificates that Mr A had purchased illegitimately in circumstances in which Mr A was not in fact studying at those educational institutions.

24.6 The attendance note prepared by the Respondent was clear and unambiguous. Mr A could not (on the basis of the information recorded by the Respondent) be deemed a lawful and proper appellant to the Upper Tribunal on the basis of his educational ambitions, given the startling disclosures concerning his pattern of purchasing CAS certificates notwithstanding that "... he never went to college". Pursuant to the Immigration Rules in force at the material time, to qualify as a Tier 4 (General) Student, the applicant was required (amongst other things) to be applying for leave to remain for the purpose of studies (Rule 245ZX(1)). The application for leave to remain by Mr A, however, was either (i) based on improperly or fraudulently obtained documents; and/or (ii) was not being pursued for the purposes of studying in the UK.

In those circumstances a solicitor could not properly advance an appeal before the Court. The Respondents advice to Mr A, as recorded in the note, was clear:

> "I told him if you have no intention to continue your study in this country go back to your country."

24.7 The Respondent recognised and noted that it would be improper for his client to rely on his educational status if he did not intend to study and advised him as such. Despite correctly recognising that it would be inappropriate for his client to pursue this course of action the attendance note continued:

> "I have told him the only favour I could do is that I would charge 720.00 Pounds our fee of permission to appeal to tribunal in two instalments..."

24.8 The Respondent indicated that in order to accommodate his client's financial circumstances he would allow payment of his professional fees in two instalments. Ms Butler submitted that the inference was that provided Mr A paid his fees, the Respondent would progress the appeal and that is precisely what he did. In his attendance note the Respondent recorded the instalment arrangement and Mr A's residency/employment status. He also recorded his client's concerns at being caught by the authorities while carrying on in employment without entitlement and noted his client's proposed excuse/defence should this transpire. The Respondent was therefore further on notice of the dubious nature of his instructions and of his client's immigration and employment status (which bore the indicia of fraud) and he should, consequently, have exercised extreme caution in continuing to act for Mr A.

24.9 The inference from the attendance notes prepared by the Respondent was that Mr A was residing in the UK ostensibly on the basis of being a student when in fact he was in full time employment. The Applicant did not make any comment or invite any conclusions concerning the immigration status of Mr A, the focus rather was on the Respondent's knowledge and the actions he took in continuing to act on behalf of his client notwithstanding the issues he quite correctly detailed in the attendance notes.

24.10 According to the Applicant, the Respondent should have withdrawn immediately if his instructions caused him to mislead the Court or compromise his integrity. Alternatively if he had any reason to believe that his client had not been truthful concerning his disingenuous applications (and if therefore the Respondent believed for whatever reason that Mr A was a legitimate appellant) it was incumbent upon the Respondent to undertake checks and evidence the position on his file demonstrating why he decided to continue acting given Mr A's worrying and startling disclosures to the Respondent concerning his applications. It was also incumbent on the Respondent to evidence how he arrived at the view that Mr A was a fit and appropriate appellant to the Upper Tribunal given the admissions by Mr A. Solicitors were not entitled to manipulate or abuse the Court system, even where to do so would benefits their clients. In R (Madan) v Secretary of State for the Home Department [2007] 1 WLR 2891 the Court of Appeal confirmed that professional misconduct could arise if an application were made with a view to postponing the implementation of a previous immigration decision where there were no grounds for so doing.

24.11 The 27 February 2014 file note recorded Mr A's instructions to the Respondent that Mr A:

- Had not attended or studied at any college since he first arrived in the UK (which by necessary implication would include Bradford College where he was supposed to be studying);
- Had purchased CAS Numbers through agents to use as the basis for applications for leave to remain in the UK; and
- Was working full time in the grocery shop.

24.12 Accordingly by implication, Mr A's application for leave to remain had not been made and/or was not being pursued, for the purpose of allowing him to study in the UK; and was based on improperly or fraudulently obtained documents. It was also clear from the file note that the Respondent recognised that in these circumstances it would not be appropriate for Mr A to pursue an application for leave to remain.

24.13 The file note also recorded the Respondent's advice to Mr A that in his opinion there was no error of law in the decision of the First Tier Tribunal on which to base an appeal (in circumstances in which appeals are limited to errors of law) and that:

> "He requested me to submit further appeal on his behalf. He asked me if I did not submit an appeal he will be illegal in this country. I asked him try to get admission in a college and submit fresh application if you want to continue further education".

24.14 Notwithstanding his advice that there was no error of law, the Respondent agreed to file an application for permission to appeal to the Upper Tribunal. The Applicant's position was that in continuing to act for Mr A and in filing the application for permission to appeal the Respondent breached Principles 2 and 6 of the Principles.

24.15 On or about 28 February 2014, the Respondent filed an application for permission to appeal. The grounds for permission to appeal relevantly stated as follows:

> "The Immigration Judge issued a very short order without appreciating and incorporating all the submissions and thus erred in law by not resolving all the averments.
>
> The first Tier- tribunal could not comprehend the submissions and conclude the same on the basis of law.
>
> The appellant submitted that the English proficiency certificates were not submitted to Home Office in one go as the writing test certificate was submitted later on which was not entertained by the same.
>
> Without prejudice to above, the appellant further submit that his case also need to be considered under Article 8 [of the European Convention on Human Rights] or he would be put to great hardship…

...

> If the appellant is not allowed to continue his study, which is incumbent for his personal development and for which he has paid fee and college has duly issued a CAS. The appellant has been living in UK since 8 years and he has developed personal ties and relationships here. At this juncture of life when he is more assimilated in this society it would cause great chaos in this personal life and mentally disturb him which is totally against the spirit of article 8 as explained in the preceding paragraphs." (Original emphasis)

24.16 These grounds for permission to appeal clearly asserted that Mr A's application should be granted so that he could continue to study in the UK at the institution which had provided a CAS Number and to which he had paid fees (namely Bradford College). Aside from the fact that the Respondent did not believe that the First Tier Tribunal had committed an error of law, he had been instructed: (i) that Mr A was not studying at Bradford College, or anywhere else; and (ii) that the application to remain was based on improperly or fraudulently obtained documents.

24.17 The Respondent created a further file note on 4 March 2014, which contained the following record of events:

> "Received a text from the Client that the college won't be able to issue the CAS so he don't have much options now. I called the client and he was so disappointed he told me that he tried his level best to purchase CAS letter but now a days there not too many colleges left. There is one college who is ready to give CAS but they are demanding 3000.00 Pounds and on top of that they are asking that it is necessary to attend college. The client further told that he can't afford to attend the college on Full Time basis because he has a job in a Grocery Shop and he do it during the night time."

24.18 Thus, the further instructions provided by Mr A were that he had been unable to purchase a CAS letter/number from another college on which to base a fresh application for leave to remain; and the requirement by the prospective college that he attend college was a problem for him due to his job. These instructions were consistent with Mr A's instructions given on the 27 February 2014.

24.19 The Applicant's case was that the Respondent breached Principles 2 and 6 of the Principles in continuing to act for Mr A after 27 February 2014. In circumstances in which the Respondent had been expressly instructed by his client that his application for leave to remain was either (i) based on improperly or fraudulently obtained documents; and/or (ii) was not being pursued for the purposes of studying in the UK (as required by the Immigration Rules), the Respondent knew that the appeal was disingenuous.

24.20 Ms Butler submitted that the appeal was disingenuous because the Respondent had been expressly instructed by Mr A that his application for leave to remain was (i) based on improperly or fraudulently obtained documents; and/or (ii) was not being pursued for the purposes of studying in the UK. Pursuant to the Immigration Rules in force at the material time, to qualify as a Tier 4 (General) Student, the applicant was required (amongst other things) to be applying for leave to remain for the purpose of

studies (Rule 245ZX(1)). In those circumstances where the Respondent had these express instructions from his client the Respondent knew that the appeal was disingenuous and an abuse of the Court's processes for the benefit of his client.

24.21 Ms Butler submitted that further or alternatively, on the basis of his instructions, Mr A's application for leave to remain was a 'dubious' application (in the sense that it bore the indicia of fraud). In those circumstances, no reasonable solicitor could continue to act for Mr A in relation to his application without at least carrying out sufficient inquiries to satisfy themselves (acting reasonably) that the application was not, in fact, fraudulent. On either basis, such conduct demonstrates a lack of integrity and undermines the trust the public places in the Respondent and the provision of legal services.

24.22 Whilst dishonesty was not alleged in this case Ms Butler drew the Tribunal's attention to the case of Bryant and Bench v the Law Society [2007] EWHC 3043 (Admin) in which it was stated by Richards LJ at paragraphs 172 and 236 that:

> "172. It seems to us that this part of the case against the appellants was put in practice on the basis that one or more of the transactions was "dubious" in the sense that they bore the indicia of fraud or possible fraud, although not necessarily of fraudulent investment schemes. Therefore, it was professional misconduct for the appellants to act or to continue to act in relation to them without at least carrying out sufficient enquiries to satisfy themselves that the transactions were not, in fact, fraudulent. That, broadly, is how Mr Williams expressed it when summarising the Law Society's position on allegation one before us. Much the same philosophy can be seen in the submission of Mr Treverton-Jones, in response to a question from the court, that a "dubious" transaction means, in the context of an allegation of professional misconduct against a solicitor, one in which no reasonable solicitor would act."
>
> "236. In summary, our conclusions on the allegations are as follows:
>
> i) In relation to allegation 1, as a matter of law the tribunal adopted the wrong test on "dishonesty". Therefore, its finding that Mr Bryant was guilty of dishonesty cannot stand and must be set aside.
>
> ii) The tribunal did not hold that the six transactions were fraudulent in fact. Nor did it find that the transactions specifically bore the hallmarks of fraudulent investment schemes. We approach allegation one on the premise that the tribunal found that the transactions were "dubious" in that they "bore the hallmarks" or indicia of fraud, without finding that they were fraudulent.
>
> iii) The tribunal did not expressly address the issue of what comprised "knowing participation" by the appellants in these "dubious" transactions. "Knowing participation" in this context

would involve a finding that the appellants took part in one or more of the transactions knowing that it or they had the indicia of fraud. We are not prepared to infer that this was the conclusion of the tribunal, given the lack of any express finding on this aspect.

iv) We hold that the tribunal was correct to conclude that each of the six transactions was "dubious" in the sense that no reasonable solicitor who had properly investigated the matter would act for his client in respect of them. We also hold that the tribunal was correct to conclude that both appellants were incompetent in failing to appreciate that these transactions were "dubious" in that sense, but went on acting for NIC/Mr Alonso long after they should have stopped doing so....."

24.23 The Respondent acknowledged, in his Explanation of Conduct, that he had a duty to stop acting for Mr A if Mr A was not a 'genuine student'. However, the Respondent asserted that he did not have sufficient reason to believe Mr A was not a genuine student either when he decided to continue acting for him on 27 February 2014 or by the time he filed the application for permission to appeal on 28 February 2014. However the Applicant's case was that even if the Respondent did not believe Mr A's instructions (which it is submitted were not credible for the reasons given below), it was not open to the Respondent simply to ignore the express instructions that he had been given by his client and to reach a contrary conclusion (and to continue acting and pursue an appeal on that basis). The Applicant accepted that the Respondent was required to advance his client's case as presented by that client (subject to his duties to the Court and other legal obligations). In so far as those instructions presented a conflict with his duties to the Court and other legal obligations, he was required to cease to act.

24.24 The Respondent claimed that Mr A retracted his instructions prior to the Respondent deciding to continue acting for him on 27 February 2014, or prior to the Respondent filing the application for permission to appeal on 28 February 2014, and assured him that his current application was genuine. The Applicant submitted that this claim was not credible. There was no (or no credible) evidence that the Respondent challenged Mr A's instructions or that Mr A retracted his instructions prior to 28 February 2014. The 27 February 2014 file note made no reference to either matter. In circumstances in which the Respondent claimed that he was very concerned about Mr A's assertion that he was not a genuine student it was not credible that the Respondent would make a file note of his conversation with Mr A on 27 February 2014 which included his initial instructions but omitted the fact that he had also retracted those instructions. In support of his claim on this point, the Respondent sought to rely upon a handwritten note dated 27 February 2014 ("the handwritten February note") which was provided for the first time with the Response. It appeared to read as follows:

"M Anwar arrived and discussed abt
Tribunal decision, told less chances
Demand fee/agreed
Excuses of client / Purchased/ Bribed about
Educational docs / No money / poor / started crying

> Didn't believe on [A] cos of his strong Edu background / confirmed [?] [U] he is story maker otherwise he was good and genuine student all time"

24.25 The Applicant challenged the authenticity of that note (and the handwritten one dated 4 March 2017). The FIO's evidence was that she had not seen the note at the time of the inspection. She explained that she would have looked at the file and seen what was on it. She would have asked the Respondent if he had other attendances notes and he had said no. The FIO denied that the Respondent had told her that he had additional handwritten notes and that she had declined to look at these. The FIO had recorded the position in respect of attendance notes in her typed notes of the meeting with the Respondent. The typed notes specifically recorded the following:

> "Attendance Notes 27/02 and 04/04 (sic)
>
> Why continue to act? – he told me about his previous applications. I told him 'don't bother, don't do it'
>
> So you had concerns about the claim being genuine? – Yes but prior to acting on this. It was merely his discretion. There was no proof on the matter file that what he said was true. So continued to act. 'I was very confused about what to do but I asked him if most recent certificate was genuine, he assured me it was'.
>
> Submitted appeal on assurance of client that it was now a genuine claim.
>
> No attendance note of this."

24.26 The FIO did not recall seeing the Respondent's handwritten notebooks at the time. Ms Butler had seen these for the first time immediately prior to the start of the hearing. On looking at the books the FIO agreed that they covered a length of time. Ms Butler submitted that the Respondent had been asked for any such document on a number of occasions and had not produced the handwritten notes until his Response. Although the Respondent now disputed that he was the author of the typed February attendance note the FIO recorded the fact that during the meeting on 3 December 2014 the Respondent had confirmed to the FIO that he was the author of the note.

24.27 The handwritten note, however, (even if it was genuine) did not suggest that the Respondent challenged Mr A about the truth of his instructions or that Mr A retracted his instructions. In any event, the evidence pointed to the handwritten February note not being genuine. In particular: (i) the first time the Respondent produced it, or even referred to it, was when he provided his Response on 18 April 2017. He did not refer to it or produce it when the FIO interviewed him in December 2015. He did not refer to it or produce it when the Firm provided its detailed response in June 2016 (notwithstanding that he was facing allegations of dishonesty and was expressly asked for evidence supporting his assertion on this point); (ii) he had not provided any explanation for the failure to refer to it, or produce it, at any earlier stage; (iii) he in fact expressly told the FIO that there was no attendance note evidencing the assurance

that the claim was genuine. In the FIR at paragraph 23 it stated "Ms Bridges noted that there are no attendance notes on the client matter file to confirm that Mr Ali had challenged Mr A as to the validity of his claim nor that he had been assured that the most recent application was genuine. Mr A confirmed that he had not recorded these conversations on an attendance note". Further the FIR was sent to the Respondent on 23 May 2016 and he was asked to provide comments as to what he disagreed with. He did not dispute the contention that there was no attendance note.

24.28 The Applicant argued that there were oddities surrounding the February handwritten note (and further note of 4 March 2014). In particular, there was a reference to U, which was presumably said to be a reference to the Respondent having obtained confirmation from Mr U (another client of the Firm) as to Mr A being a genuine student (as contended by the Respondent in his witness statement and the email from Mr U exhibited to that statement). The Respondent made no reference to the enquiries that he allegedly made of Mr U at any time prior to providing his Response. Likewise, if Mr A retracted his instructions on 27 February 2014, the Applicant queried why there was a further attendance note purporting to record a conversation on 4 March 2014 in which Mr A seemingly again retracted his instructions.

24.29 In any event even if Mr A retracted his instructions prior to the appeal being lodged on 28 February 2014, such a retraction would have been insufficient to satisfy a reasonable solicitor in the Respondent's position that Mr A's application was genuine given (i) on the Respondent's account Mr A only retracted his instructions after Mr Ali made clear to him that he would not act for him if he was not a genuine student (and thus Mr A had an obvious motivation to change his instructions even if they had been correct); (ii) there was no logical reason for Mr A to falsely claim to the Respondent that he was not a genuine student (contrary to the Respondent's account, it did not make sense that Mr A would tell such a lie as an excuse for not paying the Respondent's fees and on the contrary, the obvious excuse if Mr A could not afford to pay fees was to contend that he was poor because he was unable to work given that he was studying all the time.

24.30 Further the Applicant submitted that the Respondent knew that Mr A was willing to say whatever it took to obtain leave to remain, as he had done in relation to his appeal to the First Tier Tribunal (as had been found by Judge Osborne). Moreover, the reasons the Respondent had given for not believing Mr A's instructions were weak. The Respondent claimed that Mr A had a strong educational background at independent institutions and that such institutions would not provide false qualifications or improperly issue CAS Numbers. However, the Respondent made no investigations at the time. The Respondent made enquiries only with the University of Bolton and only in March 2017. Nor did the Respondent know how Mr A had gone about obtaining his CAS Numbers fraudulently and, in particular, whether the institutions had themselves been the subject of a fraud.

24.31 The Respondent claimed that he made enquiries with a friend of Mr A, Mr U, who confirmed that Mr A was a genuine student. In support of this claim he cited the handwritten note dated 27 February 2014 and an email purportedly from Mr U. However, there was no evidence of the source of Mr U's information, nor whether he was himself an independent, credible source in relation to Mr A's educational background. Further, Mr U did not say that Mr A was currently studying at Bradford

College, or anywhere else. Nor were these enquiries referenced at any time prior to the Response.

24.32 The Respondent claimed that he relied on the fact that the Home Office did not question the authenticity of the evidence submitted to it. However, the question which the Respondent needed to ask himself was whether Mr A was or might be defrauding or misleading the Home Office in relation to his application for leave to remain. Merely noting that the Home Office had not discovered any fraud was not an inquiry which would satisfy a reasonable solicitor, especially in circumstances in which a client has expressly asserted that he had been misleading the Home Office. Nor was it implausible that Mr A could have misled the Home Office. As noted above, at the relevant time decisions as to whether an applicant was granted leave to remain were based on the documentary evidence supplied by the applicant in relation to past qualifications. There was nothing to suggest that investigations were, or even might, have been made to determine whether Mr A was in fact attending at Bradford College or any other education institution that may have provided a CAS Number. Further, contrary to the Respondent's assertion in his Response, Mr A's instructions did not imply that he had bribed the Home Office to obtain a 'CAS letter'. The Secretary of State for the Home Department does not, and did not, issue CAS Numbers or CAS letters – the relevant educational establishment did.

24.33 In those circumstances, if the Respondent did not believe Mr A's instructions, he formed that belief unreasonably and continued to act in circumstances in which no reasonable solicitor would act. In fact, on the Respondent's own case, he accepted that he did not believe Mr A, saying that he 'could not disregard the comments made by Mr [A]' and therefore drafted the application for permission to appeal so as not to 'give much emphasis to Mr [A]'s studies as I did not wish to breach my duties' (Respondent's Response dated 18 April 2017 at paragraph 25; and also stated in the Firm's Response dated 7 June 2016). In circumstances in which there was an obvious risk that the application was being made disingenuously, and the Respondent recognised that risk, his approach plainly did not remedy the problem.

24.34 In his Response, the Respondent emphasised that he received no financial benefit from assisting Mr A. Although a motive may often assist in establishing that misconduct has taken place, it is not necessary to establish a motive for a finding of either lack of integrity to be made (Webb v Solicitors Regulation Authority [2013] EWHC 2078). Solicitors can, and do, cross the line for their clients notwithstanding the absence of clear motive. In any event, the Applicant's case was that the Respondent did receive remuneration for filing the application for permission to appeal and was acting to assist a long standing client who was obviously desperate to find a way to obtain leave to remain in the UK. By filing the application, Mr A's leave to remain was extended, which at the very least provided him further time to find another route to apply for leave to remain.

24.35 In response to an inquiry from the SRA, Mr A stated in his letter dated 8 October 2016 that the Respondent's typed file notes of 27 February 2014 and 4 March 2014 were 'not correct and misleading' as he was not 'trying to purchase a CAS letter' and 'he was not working in a grocery shop'. Mr A's letter took matters no further and did not assist the Respondent. Mr A does not appear to deny those parts of the February file note that record Mr A as saying that (i) he was not studying and had

never attended college, or (ii) he had obtained either his past qualifications, or the CAS Number he relied on for his application, or both, improperly. Mr A and the Respondent's positions were inconsistent as between one another (i.e. the Respondent said that Mr A retracted his instructions as to his being a genuine student, whereas Mr A's position was that he never gave such instructions in the first place). Mr A plainly has reason not to admit that he was not a genuine student at the material times given the impact this may have on his ability to remain in the UK.

24.36 For the reasons above it was the Applicant's case that the Respondent breached Principles 2 and 6 of the Principles 2011 in deciding, on 27 February 2014, to continue to act for Mr A in relation to his application for leave to remain and, on 28 February 2014, in filing the application for permission to appeal. Principle 2 requires a solicitor to act with integrity and Principle 6 requires a solicitor to behave in a way that maintains the trust that the public placed in him and in the provision of legal services. When the Respondent's conduct was considered objectively, by continuing to act on behalf of Mr A and progressing his appeal to the Upper Tribunal notwithstanding Mr A expressly informing him that his appeal was disingenuous, the Respondent failed to act with integrity and/or failed to behave in a way that maintains the trust the public placed in him and in the provision of legal services.

24.37 The Applicant invited the Tribunal to adopt the approach to integrity as set out in the case of Scott. Ms Butler submitted that there were two approaches to integrity. Scott had endorsed the approach taken in SRA v Chan and ors [2015] EWHC 2659 (Admin) where Davis LJ, with whom Ouseley J agreed, said:

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

24.38 The other was the approach taken in Hoodless and Blackwell v. FSA [2003] UKFTT FSM007 (3 October 2003) which stated:

> "In our view 'integrity' connotes moral soundness, rectitude and steady adherence to an ethical code. A person lacks integrity if unable to appreciate the distinction between what is honest or dishonest by ordinary standards. (This presupposes, of course, circumstances where ordinary standards are clear. Where there are genuinely grey areas, a finding of lack of integrity would not be appropriate.)"

24.39 Ms Butler invited the Tribunal to adopt what she described as the "you know it when you see it test". This was an objective test and there was no requirement for a subjective element. She submitted that the decision in Malins was wrong and highlighted the recent decision of Williams in which Sir Leveson stated:

> "I would reject Mostyn J's description of the concept of want of integrity as second degree dishonesty. Honesty, i.e. a lack of dishonesty, is a base standard which society requires everyone to meet. Professional standards, however,

rightly impose on those who aspire to them a higher obligation to demonstrate integrity in all of their work. There is a real difference between them."

24.40 The Applicant considered that the Respondent's explanation was not credible and was contrary to the evidence. It specifically highlighted a number of areas. Firstly in respect of the Respondent's assertion that he was aware of Mr A's educational background and the fact that the Home Office never questioned whether the evidence of Mr A's qualification was genuine, the Applicant's position was that it should be noted that Mr A explicitly told the Respondent he intended to purchase a CAS Certificate which made his pursuit/attainment of previous qualifications irrelevant. Likewise it was not clear how Mr A's TOEIC ETS score could have led the Respondent to form the view that Mr A was a legitimate student or was not being truthful given Mr A stated the precise opposite to the Respondent during their meeting and again subsequently after the appeal had commenced. There was no evidence, either on the client's file or presented by the Respondent during the investigation, that he undertook any due diligence to satisfy himself that his client was a legitimate appellant and the Court was not being misled between the meeting with his client on 27 February 2014 and submitting the application for leave to appeal on 28 February 2014.

24.41 The Home Office's stance in respect of Mr A's documents was not relevant for several reasons. Firstly the Respondent could not abrogate his professional responsibility to ensure the Court was not misled, particularly in circumstances where he was explicitly told by his client that it would be. Secondly the Home Office was not aware of the full facts concerning Mr A's applications, the Respondent on the other hand had been made aware and therefore he could not claim that further checks and due diligence were not needed because of the Home Office's role as gatekeeper. The responsibility remained with the Respondent, it would have done even had Mr A not informed him of the full facts concerning his applications. However taking the admissions made by Mr A into account, it was inconceivable that the Respondent could view his responsibility abrogated to the Home Office for ensuring his client was a legitimate appellant and the Court was not being misled.

24.42 The Respondent's belief that his client would not have been able to purchase certificates from independent universities was at best a guess. In fact this belief could not have been reasonably held in the absence of checking his client's certificates for the preceding years. A standard and, in view of his clients admissions, necessary step by way of due diligence would have been asking Mr A for copies of his previous CAS certificates and then checking if these certificates were legitimately issued by institutions at which Mr A had studied. In the absence of any due diligence whatsoever all the Respondent had to base his belief on was the information provided to him by his client and recorded in the attendance notes.

24.43 If there was evidence that the Respondent considered (i.e. case history, evidence and supporting documents) which caused him to believe that his client was a legitimate student this had not been disclosed to the SRA during the investigation when the Supervisor wrote to the Firm setting out her concerns and inviting a response. Furthermore the Respondent's circular argument that there was no evidence to prove Mr A was not a legitimate student flies in the face of logic and reason; his client told

him he had purchased CAS certificates and on 4 March 2014 told him he had attempted to do so again.

24.44 The attendance note dated 27 February 2014 did not reflect that fees were being discussed when Mr A stated that he had never been a genuine student. If the Respondent was of the view that his client was not being truthful with him concerning his educational/employment status, this was not recorded in the attendance note. Nor does the Respondent set out the basis or rationale for not believing his client's admissions in the attendance note. On receiving such serious information during the meeting on 27 February 2014 concerning his client's disingenuous applications for UK residence and his future intentions to remain and appeal the UKBA's decision notwithstanding his employment status (which the Respondent was aware of) it was not credible that the Respondent, if he did not believe his client, would fail to explicitly record this in what was otherwise a detailed attendance note. Indeed the Respondent recorded the position in some detail (i.e. that his client told him he had purchased CAS certificates, did not actually attend the issuing colleges, was working in a grocery shop and was concerned about being discovered by the authorities) all of which the Respondent later claimed he believed to be untrue.

24.45 The application submitted to the Court by the Respondent was predicated on Mr A's status as a student and stated:

> "If appellant is not allowed to continue his study, which is incumbent for his personal development and for which he has paid fee and college has duly issued a CAS."

therefore the position stated by the Respondent did not withstand scrutiny. Furthermore the explanation that the Respondent attempted to hedge his bets in not putting too much emphasis on Mr A's educational status in the application, just in case his client was not telling the truth was equally concerning. On the Respondent's own case this was reckless (Brett v SRA [2014] EWHC 2974 (Admin)) as to the Court being misled given he has admittedly here foreseen the risk of his client being disingenuous and it was therefore, in the circumstances known to him, unreasonable to take the risk of commencing Mr A's appeal on this basis. The fact that the Respondent did rely on Mr A's continuing education and CAS certificate in the application to Court made this point in the Respondent's explanation a fallacy in any event.

24.46 The Firm stated that Mr A later withdrew the remarks he had made. In light of these comments regarding Mr A the SRA Supervisor wrote to Mr A on 31 August 2016 requesting that he contact her. On 6 September 2016 Mr A telephoned the Supervisor confirming his contact details and on 12 September 2016 the Supervisor sent a detailed letter to Mr A enclosing copies of the attendance notes prepared by the Respondent. In a letter dated 8 October 2016 Mr A stated that having considered the attendance notes he regarded the information recorded by the Respondent as incorrect and misleading. Mr A denied that he was trying to purchase a CAS letter. He also denied that he was working in a grocery shop.

24.47 There was a conflict of evidence between the three versions presented by the Respondent and Mr A. Firstly there was the version recorded by the Respondent in the attendance notes. These notes unambiguously record, inter alia, that Mr A informed the Respondent that he had purchased prior CAS letters and was in full time employment. Secondly there was the version of events presented on the Respondent's behalf by the Firm in its response to the Supervisor. In that version the Respondent accepted the accuracy and content of the attendance notes but stated that he did not believe what his client told him at the meetings and therefore believed he could continue with Mr A's application unconstrained by what he been told. The fact that the Respondent did not believe his client was not recorded in what were otherwise detailed attendance notes though. Nor was the basis on which the Respondent decided that Mr A was not being truthful. The Respondent offered no credible explanation as to why he recorded something he believed was untrue without stating so in his attendance notes, which is incredible given the seriousness of the disclosure by his client and the position it placed the Respondent in professionally. Finally there was the version of events provided by Mr A who stated in his letter to the Supervisor dated 8 October 2016 that the attendance notes prepared by the Respondent were not accurate and were misleading. Mr A stated that he did not inform the Respondent he was trying to purchase a CAS certificate/letter and that he was not in employment at a grocery shop.

24.48 The SRA's case was put on the basis of what the Respondent knew in advising and then acting on behalf of Mr A. The attendance notes were detailed and unambiguous in recording what the Respondent recollected had been discussed with Mr A during their meeting of 27 February 2014 and then subsequently over the telephone which led to the attendance note dated 4 March 2014. There was nothing to suggest the attendance notes were intended by the Respondent as anything other than an accurate record. The Respondent maintained that they were an accurate record. Despite Mr A's assertion that he did not mention purchasing CAS certificates/letters or his employment at the grocery shop to the Respondent, in the circumstances, it was not credible that the Respondent either fabricated this information or recorded it in error in the attendance notes.

24.49 The Respondent did not seek to resile from the content in the response to the Supervisors letter, instead adopting an approach that:- the notes were accurate but for reasons unknown he omitted the fact that he did not actually believe what he recorded his client had said. The Respondent therefore maintained that they were accurate, just not comprehensive of his belief regarding the truthfulness of Mr A's disclosure concerning the CAS Letter and employment status. Furthermore the position of Mr A should also be noted. Clearly the status of Mr A's CAS certificate/s and employment would have (and may still) have a bearing on his residency in the UK and placed him in a difficult position were he to accept the Respondents evidence. Mr A had no knowledge of the existence or content of the attendance notes until the SRA invited his comments on them. The content of the notes could be problematic for Mr A if he accepted them as accurate and they were subsequently considered in the course of a public hearing.

24.50 The weight of the evidence supported the position that the Respondent recorded what was said between him and Mr A accurately in the attendance notes and on that basis the material determination was whether the Respondent's latter position, believing

what Mr A had said to him at their meeting was not truthful at the time he made the attendance notes, was tenable or not. The SRA maintained that it was not credible that the Respondent did not believe Mr A's claims concerning the CAS certificate/letter and his employment status and yet wrote detailed attendance notes which made no mention of this. In recording these serious allegations disclosed by Mr A, the Respondent failed to make any mention of his alleged skepticism and any basis for it. In any event having been put on notice, at the latest by 4 March 2014 when Mr A told the Respondent of his renewed attempts to purchase a CAS certificate/letter, this position of not believing his client was rendered completely untenable in the context of the allegations. The SRA's case was that given the Respondents knowledge of his clients' circumstances (which he recorded in detail) and his subsequent actions in continuing to act for his client commencing an appeal and failing to cease to act prior to the Court dismissing the case; he acted without integrity and compromised public trust in the profession.

The Respondent's Case

24.51 Mr A was a long standing client of the Firm having been recommended to the Firm by his friend and one of the Firm's clients, Mr U. The Firm had assisted him for a period of time with his immigration matter and as such the Firm were and are familiar with the facts of his case. Mr A raised a complaint against the Respondent in respect of his dissatisfaction with the level of service he received. Mr A made a complaint to the Legal Ombudsman. The Firm received a letter from the Applicant dated 23 May 2016 requiring the Firm to explain its conduct in respect of Mr A. The Firm provided a response to the Applicant. In respect of the response, the Firm had considered the Forensic Investigations Report dated 18 February 2016 and its exhibits.

24.52 The Respondent denied that he breached Principle 2 and 6 of the SRA Principles 2011. In his witness statement the Respondent stated that as was evident in the FIR, the FIO attended the office in November 2015 and conducted a thorough search of Mr A's file in addition to other files which were selected at random. It was clear from the FIR that the FIO throughout her research failed to find any resemblance to Mr A's case. As per the report:

> "During the course of her investigation, Ms Bridges reviewed ten other immigration files, whereby Mr Ali was the fee-earner. No similar circumstances to those on the matter of Mr [A] were identified on any of the files."

24.53 In his oral evidence the Respondent stated that the FIO had only raised Mr A's matter with him at the end of her visit and that she had spent very little time, perhaps five minutes, looking at the file. The FIO had asked for permission to photocopy parts of Mr A's file and had only copied the two attendance notes. The FIO had been sitting in front of the Respondent and he had shown her that he kept handwritten notebooks but she had not wanted to see the handwritten notes. The Respondent's position was that it was for the FIO to ask to see documents not for him to offer to show her documents. He considered that the FIO should have told him on the first day of the inspection that she was there in respect of the Mr A matter. The FIO had not asked for the handwritten notes so he had not provided them. The Respondent now understood that he should have produced the handwritten files notes at the time but maintained

that they were authentic. He had not understood the notes to be important. The Respondent said that the FIO had told him that she was satisfied He had told the staff this too. He was very surprised when he received the case against him. It was the FIO's responsibility to pose the questions.

24.54 Allegation 1.1 referred to allegations made by Mr A, the file note and conversation dated 27 February 2014 and the Respondent's representation and conduct in respect of Mr A. The Respondent, in his witness statement, asserted that the file note and conversation dated 27 February 2014 and referred to in the Rule 5 Statement was taken out of context. No attempt was or had been made by the Applicant to familiarise itself with the facts of the case, without which the file note and conversation would be difficult to understand and would lead the Applicant to take the information contained in the file note out of context. Further, the mere fact that the Respondent made a file note in respect of Mr A's case demonstrated the fact that at no point did he believe the facts that Mr A had informed the Respondent of, meaning that any appeal made on his continuing in education was genuine. In fact it was the Respondent's practice to make rough handwritten notes in his own handbook which he had in his office and thereafter he would make formal file notes. On 27 February 2014, the Respondent made the same notes in his handbook however, he forgot to make formal notes on the very same day. The Respondent made formal notes after some days which were inside the file. As a matter of fact, the Respondent "did not write/make complete formal file notes in rush". It was an honest mistake on his part therefore, the Applicant had taken those notes out of context.

24.55 In his oral evidence the Respondent stated that his practice in 2013 and to date was to make handwritten notes when the client came in and then give the notes to the receptionist to prepare a typed attendance note for the file. This normally happened on the same day as he saw the client but sometimes it would be the second or third day when the Respondent got the time. The Respondent's error here had been that he had not checked the typed notes that went on the file. The Respondent's evidence was that the typed notes told half the story and the handwritten notes told half the story and they needed to be read together. There was no need for the Respondent to fabricate it. He was a sensible person he could not expect himself that he would do anything like that The Respondent did not write down everything in detail. He would write down the main points and then ask the receptionist to make a file note. Here the receptionist had not understood what they were told. There was no bad intention. The Respondent denied that he had fabricated the two handwritten notes to plug the holes in his case.

24.56 The Respondent went on to state that he would tell the receptionist that he had seen the client and what they had discussed so that the receptionist could prepare the note but the receptionist would not have the Respondent's notebook just what the Responded told them. In his oral evidence the Respondent's position was that he had not made the typed attendance notes himself. He denied telling the FIO that he was the author of the 27 February file note despite the FIO stating in the FIR "During the meeting on 3 December 2015, Mr Ali confirmed to Ms Bridges that he was the author of the file note." He maintained that the FIO did not specifically ask him about this file note but asked him about how he made file notes generally. He explained that it was his fault that he had not read the file note on file. Had he done so he would have noticed the clear discrepancies between the handwritten file note and the one on file. Ms Butler asked the Respondent whether it was his position that he had not read the

FIR? He responded that he read it when the SRA brought forward the case against him. However the issue at that stage had been whether Mr A was a genuine student not the issue of the file note.

24.57 The Respondent had represented 836 clients from 2013 to date. There had been no complaints made against the Respondent. When he had received the SRA's letter he had been really scared. He had not known what to do. He had not been worried when the Legal Ombudsman said it was going to refer the matter to the SRA as the Respondent had known he was right and when you are right there was no need to worry. The Respondent maintained that he was not reckless and he had not done anything wrong.

24.58 When he received the proceedings, he had sought legal advice but had been told that there would be significant costs for that representation. He had not been able to work for the last five months but did have solicitors. If the Respondent had been doubtful he would not have acted for Mr A but he was not doubtful. Mr A had been allowed to work so he would not have been concerned about the fact he was working. The typed note was not his note. The Respondent had not believed that Mr A was working full time as he was a full time student at the University of Bolton. He would need to spend time studying otherwise how would he complete his studies?

24.59 The Respondent noted that the Applicant's concern arose out of a complaint made by Mr A concerning the service provided by the Firm and the Respondent to Mr A and the fact that Mr A informed the Firm that he had never been a genuine student. Given the Respondent's long standing representation of Mr A, he was not convinced that this was the case but rather a ploy by Mr A to avoid paying legal fees. The mere fact that Mr A made statements or remarks concerning his educational background being disingenuous, when discussing the Firm's fees supported the Respondent's assertion that Mr A was seeking to avoid paying the Firm's legal fees. Furthermore, in respect of the Respondent's conversation with Mr A, Mr A began the conversation by stating that he did not have much money and had arrived in the UK without any financial support from his parents. Mr A stated further that he was having issues making payments given that he had paid his way to remain in the UK and all his money went towards his study applications.

24.60 When considered independently, the file note by itself did little to clarify the context of the matter. Given that the Firm had known Mr A for a period of time, it was the Respondent's belief that Mr A was a genuine student and it was highly unlikely in the Respondent's experience that an applicant with the educational background of Mr A, would attempt to mislead the Home Office for over eight years continuously.

24.61 In his oral evidence the Respondent stated that he had knowledge of Mr A's father who was well-respected in Pakistan. He knew Mr A's educational background and had seen the original education documents. He had not made copies of these but he had seen the original documents from the University of Bolton and had the bundle of documents provided by the Home Office including the CAS letter. He had personally presented Mr A's case to the First Tier Tribunal. All of these factors meant that the Respondent did not believe what Mr A had told him. At no time was the Respondent doubtful as to the fact that Mr A was a genuine student. The Respondent maintained that Mr A had said what he had said because he did not want to pay the Respondent's

fees. He also maintained that Mr A had retracted his comments about the documents both on 27 February 2014 and 4 March 2014. The Respondent could not explain why if Mr A had retracted his comments on 27 February he would also have needed to retract them on 4 March 2014.

24.62 The Respondent's case was that Mr A told him on 27 February that he bribed his way to getting the CAS letters, then the Respondent advised Mr A of the consequences of what he had said and Mr A retracted those statements and the Respondent put in the application to appeal. The Respondent had not believed Mr A. A week later (on 4 March 2014) Mr A said the same thing again and again the Respondent concluded it was a fabrication. He thought he was making up stories to avoid paying his fees again. There was no risk that he was not a genuine student. The Home Office had provided the CAS letter that was in the bundle of documents before the Tribunal. The Respondent asked why in light of this he would suspect. The Respondent disputed that the word 'purchased' meant purchased. He said that this was reference to paying the fees despite having used the words 'purchased/Bribed' in the handwritten note of 27 February 2014. It was impossible for anyone to get a CAS letter without a valid visa. The Respondent reiterated that Mr A had a habit of telling stories and the Respondent did not believe what Mr A told him.

24.63 Mr A had a Foundation Degree (Arts) 2010, from the University of Bolton; a Bachelor of Science 1999, from the University of Punjab and TOEIC ETS awarded on 29 March 2013. The documents pertaining to Mr Anwar's educational background were from well-established and respectable institutions. As such, it was the Respondent's belief that for Mr A to claim that he had purchased said documents would be difficult for a reasonable person to believe. The Universities were independent institutions who took great care concerning issues of ethics, particularly in respect of the issue of bribery in return for services such as those claimed by Mr A and/or inferred from his statement. In oral evidence the Respondent told the Tribunal that he had seen the original certificates for these qualifications but had not retained copies.

24.64 The Respondent considered it of note that the Home Office had never questioned the authenticity of the evidence and he relied on this fact to demonstrate the point that Mr A's educational background was genuine. Rather, the issue in Mr A's case was that he failed to provide the TOEIC certificate for writing in support of his application.

24.65 The Respondent made enquiries to the University of Bolton regarding Mr A and on 6 March 2017 received confirmation via e-mail from the University of Bolton regarding Mr A's Foundation Degree. The Respondent also relied on a CAS Letter in respect of Mr A issued by the Home Office stipulating that Mr A was awarded TOEIC ETS on 29 March 2013 in addition to AABPS Level 7 Diploma in Management issued on 12 April 2013.

24.66 The Respondent was aware of Mr A's case history and had dealt with the case based on the evidence provided. Mr A provided no evidence which was in contravention of his status as a genuine student. Further, the context in which he disclosed the information gave the Respondent the impression that he was being honest. As a result of the issue which arose, the Respondent made it abundantly clear to Mr A that if he

did not have a genuine case the Respondent would be unable to assist him further. Therefore, Mr A was advised in relation to his statements to ensure that he was able to satisfy the condition that he had a genuine matter. Further, the Respondent made Mr A aware, in no uncertain terms of the seriousness of his allegation and that the Respondent would be unable to assist him if he intended and/or attempted to mislead the Court. The Respondent felt it incumbent on him to say this to Mr A in the event that he submitted false documents and to make him aware of the fact that if he took that course of action, he did so on the understanding that neither the Respondent nor the Firm would assist him further, irrespective of Mr A's long standing relationship with the Firm as a client.

24.67 It was made clear to Mr A and for his part, Mr A was aware of the fact that the Respondent would not take a small amount of money in good faith, act illegally or advise Mr A of any means of method by which he could circumvent the law to remain in the UK (i.e. sham marriage). Further, the Firm's accounts were checked and no issue arose or was raised which linked and/or would link the Firm or the Respondent with any financial benefit directly. Mr A went on to state that he in fact did have a genuine case and that the only issue was paying the Firm's costs. Therefore, the Respondent's suspicion was confirmed, that being that Mr A did have a genuine case and was making false statements in order to avoid legal costs. Although Mr A withdrew the statements referred to above, at the material time, the Respondent failed to make a file note of the same.

24.68 In his oral evidence the Respondent explained that he had not prepared Mr A's case to the First Tier Tribunal but he had gone to represent him at the hearing. The permission application was related to Judge Osborne's decision, without seeking permission the appeal could not be argued.

24.69 The Respondent, in his witness statement, explained that he agreed to set up an instalment plan for Mr A to pay and therefore continued to act for Mr A on the basis that he was satisfied that Mr A was not misleading the Court or acting in contravention of the Code. Further, the Respondent belief that Mr A had a genuine case and that he possessed authentic documents in respect of his educational background was reinforced by his conversation with Mr A's friend, Mr U who confirmed that Mr A had a genuine case as well as his educational background owing to the fact that Mr U and Mr A were friends and Mr U had recommended the Respondent and the Firm to Mr A. The Respondent had provided an email from Mr U dated 3 March 2017 which confirmed that the Respondent and Mr U had discussed Mr A's educational background in February 2014 and that Mr U had confirmed to the Respondent that he had known Mr A for ages and he was "genuine student all the time".

24.70 In his oral evidence the Respondent said that he could tell from the face of a client whether they were telling the truth or not. He had believed Mr A was a genuine student. He had not taken what he said seriously. However the Respondent had not entirely disregarded what Mr A had said which is why he had made enquiries of Mr U and had worded the application for permission to appeal as he did. However the Respondent said he had believed the documents in front of him over what Mr A said to him.

24.71 The Respondent had not produced anything from Bradford College as they had told him that they would need something in writing from Mr A and by the time the Respondent was requesting this information he did not think that Mr A would give that consent. The Respondent accepted that he had had the details of Bradford College and had not made enquiries at the time. This was because the Home Office had the CAS number/letter and it was sufficient for the Home Office why would the Respondent need to investigate?

24.72 The Respondent described Mr A's educational background as equivalent to his own. He said that Mr A had millions of properties and he was making up a story to avoid paying the Respondent's fees. If the Respondent considered that a client was lying then the Respondent would stop acting for that client and would refund any fees he had been paid.

24.73 Ms Pascoe submitted that the Tribunal needed to objectively look at the circumstances the Respondent found himself in. The allegations were based on a small matrix of events. The Respondent had taken the view he did as Mr A was a long standing client, the Respondent had seen the original certificates and Mr A had the CAS, which the Home Office had issued. The Respondent weighed the documentary evidence against what Mr A stated (and then retracted) and sought information from Mr U before lodging the application for permission to appeal. The Respondent took the view that he could continue to act. He believed that the certificates were real and genuine. He also made enquiries of the University of Bolton who confirmed that Mr A had been awarded a degree in 2010. Further Mr A himself had told the SRS that the attendance notes of 27 February and 4 March 2014 were not correct and were misleading. Mr A denied trying to purchase a CAS letter.

24.74 The application for permission to appeal was primarily based on Article 8 grounds rather than Mr A's studies. Ms Pascoe submitted that the paperwork from the Home Office demonstrated that Mr A had been in the UK for ten years and this was the main ground for the application.

24.75 Ms Pascoe further submitted that the Respondent had acted properly in all of the circumstances. The Respondent had received no remuneration for this matter, Mr A was a client and there was no personal or family connection. The Respondent had no interest in misleading the court in any way. He had no motive to do so.

24.76 The Respondent did not consider that the FIR was particularly comprehensive. The FIO had only looked at the Mr A matter late in the investigation. She had looked at ten other files first and had not found any cause for concern.

24.77 Ms Pascoe explained that the notebooks that had been handed up to the Tribunal with the two original handwritten attendance notes flagged demonstrated the Respondent's contemporaneous record keeping over several years. The handwritten notes were in the notebook and could be relied upon.

24.78 Ms Pascoe submitted that the Applicant had not made out the case against the Respondent to the appropriate standard and invited the Tribunal to dismiss the case against the Respondent. If the Tribunal was against her on that and did not dismiss the

case she accepted the position in respect of the law as set out by Ms Butler was accurate, including in respect of the case of Malins.

The Tribunal's Findings

24.79 The allegation that the Respondent faced was that he continued to act on behalf of Mr A, notwithstanding that Mr A expressly informed the Respondent of facts, on (or about) 27 February 2014 and/or 4 March 2014, which meant that any appeal based on his continuing in education would be disingenuous It was alleged that this was contrary to Principle 2 and/or 6 of the Principles.

24.80 The Tribunal had not found the Respondent to be a credible witness for the reasons set out above. The Tribunal considered the question of the notebooks and the authenticity of the handwritten notes produced. The Tribunal accepted that the Respondent's practice was to keep notebooks and to make brief handwritten notes. The Tribunal did not accept that these notes were written up by the receptionist based on what the Respondent told them without access to the handwritten notes. The Tribunal noted that these handwritten notes had not been produced to the SRA until very recently despite the Applicant asking for supporting documentation on a number of occasions. There was a direct conflict of evidence between the FIO and Respondent as to whether the Respondent offered to show the notebooks to the FIO and she declined to look at them. The Tribunal preferred the evidence of the FIO on this point.

24.81 The Tribunal could not be sure whether or not the handwritten notes as presented were authentic. It was possible that they could have been altered or added to since they were originally made. In any event this was irrelevant as setting aside the discrepancies between the typed and handwritten notes the handwritten notes did not help the Respondent. In respect of Mr A's letter this had no evidential weight as Mr A was not going to make admissions to the SRA because to do so would be self-incriminating. The Tribunal placed no reliance on that letter. The Tribunal also noted that the Legal Ombudsman had been very critical of the Respondent's actions in lodging the application for permission to appeal and there was no evidence that the Respondent had refuted what the Ombudsman had said.

24.82 The Tribunal found that the Respondent had been given information by his client that he had 'purchased' documents. The typed attendance note of the 27 February stated:

> "He told me while discussing that since the day first he never went to college. He always have been paying money to agents to get certificates and admissions and this is how he has been getting extensions for the last ten years."

24.83 There was no reference in the typed note to Mr A retracting that statement. The handwritten note referred to "Purchased/Bribed about Educational docs" and stated that the Respondent did not believe Mr A because of his strong educational background. It did not explicitly state that Mr A had retracted the statement although the Tribunal understood this to be the Respondent's case.

24.84 The Respondent was directly put on notice of Judge Osborne's concerns about Mr A's credibility. The Respondent had represented Mr A in that application and had received the Judgment. Despite the concerns raised by Judge Osborne and the statements made to the Respondent by Mr A on 27 February 2014 the Respondent submitted the application to appeal the decision on 28 February 2014. The Respondent did not make any contemporaneous enquiries with the University of Bolton and in any event that would have been irrelevant. It was Bradford College referred to in the CAS documents.

24.85 The Respondent claimed to have made enquiries of Mr U and there was an email from Mr U confirming his recollection of a conversation with the Respondent in February 2014 about Mr A. This email was dated 3 March 2017. Although the email refers to Mr A being a genuine student the handwritten note of 27 February 2014 referred to Mr U telling the Respondent that Mr A was a story maker.

24.86 The application for appeal that the Respondent submitted referred to Mr A having lived in the UK for eight years not ten. There was reference to Article 8 but there was also reference to Mr A continuing his studies and the appeal stated in respect of his studies that he had "paid fee and college has duly issued a CAS." The fact that Article 8 was also referred to did not mean that the appeal was not based on Mr A continuing in education.

24.87 On 4 March 2014 (after the application for permission to appeal had been lodged) there was a further conversation between the Respondent and Mr A. The typed note stated Mr A told the Respondent "that he tried his level best to purchase CAS letter but now a days there are not too much colleges left." There was no reference to Mr A redacting that statement. The handwritten note of 4 March 2014 referred to there being a discussion about Mr A's remarks about the educational documents and bribery and the fact that if the comments were true the Respondent would not be able to pursue further. The note records the fact that Mr A then withdrew his remarks and said he had made them as he had no ability to pay the fees.

24.88 On the Respondent's own case by 4 March 2014 Mr A had twice told him that he had tried to purchase CAS letters and had twice retracted these statements. If it was accepted that the Respondent contacted Mr U and discussed Mr A with him this did not assist the Respondent. Mr U was another client of the firm he was not the educational institution where Mr A was meant to be studying. There was no evidence before the Tribunal that the Respondent had contacted Bradford College. The Respondent had produced a document that appeared to be a CAS check on the Home Office/UKBA website that confirmed that Mr A had a CAS assigned and that the current CAS status date was 12 April 2013. The date of this document was not known. The fact that the Home Office had accepted the CAS from Bradford College and assigned it to Mr A was irrelevant in respect of the matters that the Tribunal had to determine. The Respondent did not seek to withdrawn the application for permission to appeal following the second conversation he had with Mr A.

24.89 The Tribunal was not satisfied that it was reasonable for the Respondent on the information that he had been given by Mr A to lodge and continue an appeal based on Mr A continuing in education. The question for the Tribunal was whether Mr A having expressly informed the Respondent of facts which meant that any appeal based

on his continuing in education would be disingenuous on (or about) 27 February 2014 and/or 4 March 2014 the Respondent had breached Principle 2 and/or 6 of the Principles.

24.90 The Tribunal adopted the approach to determining integrity as set out in Chan and endorsed in Scott. The Tribunal was an experienced Tribunal and it knew integrity when it saw it. The Tribunal did not consider that a solicitor who was told one thing on 27 February 2014 (even if the statement was retracted) and lodged an appeal the very next day knowing the concerns Judge Osborne had raised about Mr A's credibility acted with integrity. The two conversations must have put the Respondent directly on notice that there was a doubt as to the provenance of Mr A's qualifications. The enquiries allegedly made at the time were insufficient and the Respondent could not rely on subsequent enquiries to seek to justify his actions. Further once the conversation on 4 March 2014 took place the Respondent should have ceased acting for Mr A but he did not do so. Again the Tribunal did not consider that these were the actions of a solicitor acting with integrity.

24.91 The Respondent was required to behave in a way that maintained the trust that the public placed in him and in the provision of legal services. In lodging the application and continuing to represent Mr A despite what he had been told the Respondent did not act in a way that maintained the trust that the public placed in him and in the provision of legal services. The public would expect a solicitor to ensure that any application for permission to appeal was based on true information and if it subsequently came to light that there might be any question over the basis on which that application had been made the public would expect that solicitor to cease acting and inform that court accordingly.

24.92 The Tribunal found that the Respondent had breached Principles 2 and 6 and allegation 1.1 was proved beyond reasonable doubt.

25. **Allegation 1.2 - Despite being expressly informed by a client (Mr A) of facts which meant that any appeal based on continuing in education would be disingenuous, the Respondent commenced an appeal to the Upper Tribunal on 28 February 2014, failing at any stage subsequently to withdraw from acting and/or ensure the Court was not misled. This was contrary to Principle 1 and/or 6 of the Principles and in breach of Outcome 5.1 of the SCC.**

The Applicant's Case

25.1 Principle 1 requires a solicitor to uphold the rule of law and the proper administration of justice. Principle 6 requires a solicitor to behave in a way that maintains the trust the public places in him and in the provision of legal services. Outcome 5.1 states as a solicitor "You do not attempt to deceive or knowingly or recklessly mislead the court".

25.2 Mr A expressly informed the Respondent on 27 February 2014 that he had been purchasing CAS certificates and not actually attending the issuing institutions for the purposes of education in line with his status as a Tier 4 (General) Student Migrant. The Respondent did not cease acting but instead on 28 February 2014 issued an application for leave to appeal the UKBA's decision not to extend his leave to remain

as a Tier 4 (General) Student Migrant. In the intervening period of one day the Respondent undertook no (or no adequate) due diligence to satisfy himself that Mr A was a legitimate appellant in the light of Mr A's frank admissions on 27 February 2014, prior to submitting the application.

25.3 On 28 February 2014, the Firm wrote to Mr A to confirm that they had submitted his application for permission to appeal. Receipt of the application was sent from the Tribunal Service on 6 March 2014. The application for permission to appeal to the Upper Tribunal stated:-

> "If appellant is not allowed to continue his study, which is incumbent for his personal development and for which he has paid fee and college has duly issued a CAS. The appellant has been living in the UK since 8 years and he has developed personal ties and relationships here."

25.4 Mr A's application for permission to appeal was therefore pleaded by the Respondent on the basis that Mr A was a legitimate student in that: (i) the application was being made in order that Mr A could continue studying; and/or (ii) the CAS number issued by the college had been properly obtained by Mr A. However, the Respondent was on notice that, in fact: (i) at the very least any CAS certificate which Mr A had obtained ran a substantial risk of being illegitimate in light of his comments at their conference of 27 February 2014; and (ii) at the very least there was a substantial risk that Mr A was not studying in the UK and did not intend to continue to study in the UK if he was granted leave to remain.

25.5 An attendance note dated 4 March 2014 stated:-

> "Received a text from the Client that the college won't be able to issue the CAS so he don't (sic) have much options now. I called the client and he was so disappointed he told me that he tried his level best to purchase CAS letter but now a days there are not too many colleges left. There is one college who is ready to give CAS but they are demanding 3000.00 Pounds and on top of that they are asking that it is necessary to attend college..."

25.6 The Applicant submitted that it was apparent on the plain meaning of the words that "...he tried his level best to purchase CAS letter but now a days there are not too many colleges left" referred to Mr A attempting to once again purchase a CAS certificate (as he claimed to have done in the preceding years during his conference with the Respondent on 27 February 2014) but that he had been unsuccessful on this occasion as the one college who could oblige were demanding "...3000.00 Pounds. and on top of that they are asking that it is necessary to attend college...".

25.7 The fact that the college's insistence on attendance (in and of itself a perfectly normal corollary of being a student) was noted as a problem again adds weight to the Respondent's state of knowledge, being fully aware that Mr A was in employment and not applying to the Court for leave to appeal the UKBA's decision on the basis of being a genuine student. Even if the Respondent was not aware that his client's appeal was disingenuous and capable of misleading the Court prior to submitting the application on 28 February 2014 (which the SRA did not accept in light of Mr A's comments at their conference of 27 February 2014), it was inconceivable that the

Respondent did not know following the exchanges with his client which led to the attendance note dated 4 March 2014. This was because Mr A explicitly informed him he had tried and failed to purchase a CAS certificate from another college, despite the fact that he had no intention of attending that college. The Respondent was therefore in a position whereby to continue acting would mislead the Court. Indeed having made the application by this stage the Respondent was duty bound to cease acting and ensure the Court was not misled by any action he had taken. The Respondent did not cease acting at any stage prior to the appeal being dismissed.

25.8 These facts demonstrate that after the Respondent being expressly informed by Mr A that his appeal was disingenuous, both prior to commencing it and afterwards (evidenced by the attendance note of 4 March 2014), the Respondent continued to act and advance Mr A's case. This appeal misled the Court as to the legitimacy of the appellant's educational status. The Respondent thereby failed to uphold the rule of law and the proper administration of justice. In making and pursuing this application on behalf of Mr A, the Respondent was reckless as to misleading the Court. Furthermore in circumstances where a solicitor files a misleading document before the Court and fails to amend it or highlight the discrepancy at the earliest opportunity, it was submitted that they risk a significant disciplinary penalty.

25.9 As set out in respect of allegation 1.1 above, Mr A's application for permission to appeal was put forward on the basis that Mr A was a legitimate student in that: (i) the application was being made in order that Mr A could continue studying; and/or (ii) the CAS number issued by the college had been legitimately obtained by Mr A. However, the Respondent was on notice that, in fact: (i) at the very least any CAS number obtained by Mr A ran a substantial risk of being illegitimate in the light of the conversation on 27 February 2014; and (ii) at the very least there was a substantial risk that Mr A was not studying in the UK and did not intend to continue to study in the UK if he was granted leave to remain. In filing the application for permission to appeal on 28 February 2014, it was alleged that the Respondent recklessly misled the Court. In Brett Wilkie J stated:

> "I remind myself that the word "recklessly", in criminal statutes, is now settled as being satisfied:
>
> > "with respect to (i) a circumstance when he is aware of a risk that it exists or will exist and (ii) a result when he is aware that a risk will occur and it is, in circumstances known to him, unreasonable for him to take the risk" (See R v G [2004] 1AC 1034 Archbold para 11-51.)
>
> I adopt that as the working definition of recklessness for the purpose of this appeal."

25.10 Further, upon receipt of yet further evidence on 4 March 2014 both that (i) the CAS Number had been improperly obtained; and/or (ii) that Mr A was not studying in the UK and did not intend to continue to study in the UK if he was granted leave to remain, the Respondent failed to correct the Court or to withdraw from acting when he should have done. The Respondent was aware that there was a risk that the Court would be misled and knew of circumstances which made it unreasonable for him to take that risk. Indeed, the Respondent expressly acknowledged that he was aware of

that risk but sought (unsuccessfully) to mitigate it. That risk only increased after 4 March 2014 but the Respondent took no steps to correct the Grounds of Appeal and continued to act. The duty not to mislead the Court included a duty to correct any misrepresentation if it was subsequently discovered that the Court may have been misled (Re Solicitor CO/2047/2000 (unreported), 21 November 2000 (QB)). In the circumstances, there was a breach of Principles 1 and/or 6 of the SRA Principles 2011 and Outcome 5.1 of the SRA Code of Conduct 2011.

25.11 The handwritten file note dated 4 March 2014 ("the March handwritten note") and produced for the first time by the Respondent with his Response) did not assist him. That note appeared to read as follows:

> "M Anwar / discussed abt his
> Serious Remarks [about?] Edu documents / Bribery
> If it's true won't be able to Pursue further
> Withdrew Remarks / Reason no fee / Excused
> Cried"

25.12 For broadly the same reasons as the February handwritten note, the authenticity of this document (and the conversation that it purported to record) were disputed. In any event on the Respondent's case Mr A only retracted his instructions after the Respondent had told him that he would not continue to act for him if he had obtained educational documents by bribery (and so he had an obvious incentive to retract the instructions). The purported explanation that he had claimed to obtain documents by bribery in order to avoid paying the Respondent's fees was wholly nonsensical.

25.13 The fact that Mr A had new solicitors acting for him on a similar matter, if that was indeed true, did not provide an answer to the allegations. The Respondent had provided no evidence of the application the new solicitors had made, the representations made within the application, the instructions those solicitors have received from Mr A or the documents on which the application was based. In those circumstances no inferences at all could be drawn about how the conduct of Mr A's solicitors related to the conduct of the Respondent. In any event, whatever course Mr A's new solicitors have taken had no bearing on the propriety of the Respondent's behaviour as a matter of professional conduct.

25.14 The SRA's case was that given the Respondents knowledge of his clients' circumstances (which he recorded in detail) and his subsequent actions in continuing to act for his client commencing an appeal and failing to cease to act prior to the Court dismissing the case; he failed to uphold the rule of law and proper administration of justice, compromised public trust in the profession and recklessly caused the Court to be misled.

The Respondent's Case

25.15 Having considered Mr A's case history, evidence and supporting documents and in light of his conversation with Mr U in respect of Mr A's educational background, and only once the Respondent was convinced that Mr A had a genuine case, he submitted an application to the First-Tier Tribunal on the basis of Mr A's Article 8 rights pursuant to the ECHR.

25.16 In his witness statement the Respondent referred to paragraphs 24-27 of the Rule 5 Statement, where the Applicant sought to rely on the attendance note as evidence to suggest that the Respondent believed Mr A's appeal was disingenuous. It was the Respondent's belief that the attendance note had been misconstrued by the Applicant and taken out of context. Any reference to the term "purchase" referred to the admission fee for college and was not to be taken to mean that Mr A intended to buy admission into an educational institution and/or buy a CAS letter from the Home Office. A CAS letter was issued by the Home Office and therefore, the allegations raised would seem to implicate the Home Office and suggest that Mr A intended to buy the CAS letter from the Home Office.

25.17 The Respondent went on to explain that needless to say, he could not disregard the comments made by Mr A therefore in the application he did not give much emphasis to Mr A's studies as he did not wish to breach his duties, despite his genuine belief to the contrary, this being that Mr A had a genuine case. At the time of submitting the application, Mr A was allowed to work in the UK and this did not affect his application.

25.18 Further, the Respondent did not receive any financial benefit to support Mr A, as previously stated, and a check of the Firm's account by the FIO confirmed the same. The Respondent confirmed that on previous occasions where he had been in the position where he had held the belief that a particular client or clients did not have a genuine case the Respondent had made it abundantly clear to such clients that he would not act for them. Further, the Respondent had refunded to such clients any fees paid if he found that they did not possess a genuine case. To that extent, the Respondent's conduct in respect of dealing with clients and cases where he believed the client or the case was not genuine had been satisfactory. If an issue in respect of misleading the Court or the Home Office had arisen, it had been the Respondent's practice and that of the Firm's to stop acting for the client and/or clients. It had been and remained the Firm's position to notify the relevant authorities if it was found that the Firm has acted in breach of its duty. The Firm has always discontinued to act before any breach or violation could occur.

25.19 It was the Respondent's contention that had Mr A submitted evidence alongside his statement to show that he was misleading the Court, he would have stopped acting for Mr A. Further, if the Respondent had not dealt with Mr A's matter for a period of time and had Mr A been a fairly new client, the Respondent would have at that point stopped acting. It was important to note that the Home Office found Mr A to have a genuine case and therefore the Respondent contended that given that he solely relied on evidence and statements made from Mr A, and that not unlike the Home Office, he had no reason to suspect Mr A.

25.20 When the Respondent made the application to the First-Tier tribunal on behalf of Mr A, he applied pursuant to and on the basis of Article 8 and applied only once Mr A had convinced him that the only issue he had was payment of costs. The Respondent held a genuine belief that Mr A was not misleading the Home Office and had made assertions in order to avoid legal fees. In this case, the Respondent could not reasonably bring this to the Court's attention owing to the fact that he had no evidence to support such allegations and also due to the fact that Mr A himself withdrew these remarks and clarified his position. Accordingly, it was the Respondent's firm belief

that neither he nor the Firm were in breach of or had acted in contravention of the Principles or the Code.

25.21 The Firm refuted the allegation(s) that it had failed to uphold the rule of law (Principle 1) and that they had failed to act in good faith and in a manner which did not compromise public trust (Principle 6). It was the Respondent's assertion that neither he nor the Firm had misled the Court or any legal and/or professional body in respect of this matter. The Firm had managed to balance client confidentiality alongside ensuring that it did not breach its duties to the Court. If a clear and evidential breach was present, the Firm would have notified the SRA and the Court and ceased to act for Mr A. The Respondent had made every effort to act in the best interests of Mr A whilst being conscious of and compliant with his duty to the Court and his obligations to the SRA Rules.

25.22 The Respondent had advised Mr A of the legal ramifications, in the event that his allegations were true. These were reflected in file notes between Mr A and the Respondent. The FIO had conducted a full and thorough investigation of the Firm's files around November 2015 and found no such correlation with Mr A's case. The FIO accepted that the Firm could not inform Mr A in a timely manner as correspondence from the Tribunal was not received. Further, in accordance with the recommendation the Firm complied with the request to pay Mr Anwar £100.00. The Firm and the Respondent had acted in accordance with the SRA Rules. The Respondent would not place the Firm in jeopardy or place its future at risk for the sake of one client. Furthermore, having accounted for the fees during the relevant period, it was clear that the Firm received no benefits of any kind to indicate that it had acted illegally. It had never been the case that the Respondent received and/or accepted some form of benefit whether on behalf of the Firm or independently. Further, the Respondent had no intention, reason or incentive to mislead the Court or the Home Office. Taking account of the implications that the allegations would have on the Firm, the allegations seemed unrealistic. The Respondent respectfully invited the Tribunal to consider the context, as outlined above, in which this matter arose and to take the evidence as a whole in an attempt to understand the Respondent's actions throughout Mr A's case. The Respondent believed that he had acted reasonably and in line with his duties imposed under the Code.

25.23 In his witness statement and oral evidence the Respondent referred to the fact that Mr A was now represented by another firm of solicitors in respect of his immigration matter. It was his understanding that that firm had made an application on behalf of Mr A to the First Tier Tribunal. Further, the application made by that firm was said to be the same or similar to the application made by the Firm and the Respondent on behalf of Mr A, which was the root of the allegations that the Respondent faced. The Respondent stated that it would be reasonable to expect that firm to have carried out due diligence on Mr A, his previous history, his case file and supporting documents, not least of which his educational background and evidence of the same. Further, it would be reasonable to expect that firm to have made the application on behalf of Mr A only once it was satisfied that Mr A had a genuine case and authentic documentation in support of his case. In light of this the Respondent questioned the allegations made against him given that Mr A's current solicitors had made the same application on his behalf and used the same educational documents in support of Mr A's application without facing any allegations and/or repercussions.

25.24 Ms Pascoe's submissions are set out above in respect of allegation 1.1. The submissions are not repeated here but were taken by the Tribunal to apply equally to both allegations and were considered in respect of both allegations.

The Tribunal's Findings

25.25 Allegation 1.2 was that despite being expressly informed by Mr A of facts which meant that any appeal based on continuing in education would be disingenuous, the Respondent commenced an appeal to the Upper Tribunal on 28 February 2014, failing at any stage subsequently to withdraw from acting and/or ensure the Court was not misled. The Applicant alleged that in doing so the Respondent had acted contrary to Principle 1 and/or 6 of the Principles and in breach of Outcome 5.1 of the SCC.

25.26 The Respondent was an officer of the Court. He was under a duty to ensure that the Court was not misled. He was required to uphold the rule of law and the proper administration of justice. The Tribunal had already found that the Respondent had lacked integrity and breached Principle 6 by continuing to act for Mr A given what Mr A had told him. The Tribunal had addressed the making of the application in respect of allegation 1.1 as the factual matrices for both allegations was intertwined. The Tribunal was sure that the appeal was based at least in part on Mr A continuing in education. Given this and given the Respondent's knowledge he should not have lodged the appeal and having done so after 4 March 2014 he should have withdrawn from acting and/or ensured the Court was not misled. In not doing so he had not upheld the rule of law and the proper administration of justice. Nor had he behaved in a way that maintained the trust the public placed in him and the in the provision of legal services. The Tribunal's reasons for finding Principle 6 breached in respect of allegation 1.2 were the same as its reasons for finding Principle 6 breached in respect of allegation 1.1.

25.27 Outcome 5.1 prohibits a solicitor from attempting to deceive or knowingly or recklessly misleading the Court. The allegation was that the Respondent had recklessly misled the Court. The Tribunal considered the established definition of recklessness as set out in Brett. The Tribunal found that the Respondent acted in a circumstance when he was aware that a risk existed and that in all the circumstances known to him it was unreasonable for him to take the risk. What Mr A said to him on two occasions when combined with Judge Osborne's concerns placed the Respondent on notice of the risk. He may well have seen documents but he did not know whether or not the documents were genuine. That was irrelevant. What he thought he knew about Mr A's family was also irrelevant. Mr A had told him, for whatever reason, that his educational documents were not genuine. No solicitor who was not reckless would proceed to make an application for that client.

Previous Disciplinary Matters

26. There were no previous matters.

Mitigation

27. Ms Pascoe made the following submissions by way of mitigation. The Respondent had been admitted as a solicitor in 2012 and had assumed the role of partner since that

time. He had not come before the Tribunal before and these events took place in 2014. At the time he only had two years post qualification experience and was hugely inexperienced. Supervision was provided by the senior partner but was irregular and was conducted via telephone or skype calls. There was no face to face supervision. The Respondent was by and large responsible for doing case work. He had been very junior.

28. This was a huge stain on someone so new to the profession. The Respondent had co-operated fully and this was his first "offence". He accepted the findings of the Tribunal and that he had made an error of judgement. He was shocked and apologised for all these matters.

29. The Respondent was taking some medication for sinus problems. This medication and a lack of sleep had effected the way he conducted himself day to day. He had GP notes (which had not been disclosed to the Applicant until the second day of the hearing). The Respondent had not been able to work since December 2016 and was rapidly running into debt. He was the sole breadwinner for his family, his wife was a medical student and they had a young son. The Respondent had been through very difficult times which Ms Pascoe described as "hell and high water".

30. Ms Pascoe submitted that Mr A's actions had been in part deceitful. The Respondent had made a real error of judgement in accepting the documentary evidence rather than what had been said to him. Mr A was now represented by another firm and his case was being pursued. He had not suffered any direct harm. Mr A had not paid the Respondent.

31. Ms Pascoe invited the Tribunal to allow her client to continue to practise. He would seek a role where he was properly supervised and where he would not be put in this position again. Ms Pascoe suggested that the appropriate sanction was a Restriction Order.

32. Whilst Ms Butler would not normally comment as to mitigation and sanction she pointed out that it was not clear how a nasal condition would have affected the Respondent's judgement. The SRA had not previously seen the medical notes. The Respondent had not produced a statement of means. He had been a partner in the Firm at the time of the misconduct.

Sanction

33. The Tribunal referred to its Guidance Note on Sanctions (5th Edition-December 2016) when considering sanction. Given the fact that the two allegations arose out of the same set of facts the Tribunal considered it appropriate to impose one sanction in respect of all matters.

34. The Respondent's culpability was high. The Respondent's motivation for the misconduct was not clear. The Tribunal did not need to find that the Respondent had a motive for the misconduct. The fact that the Respondent was not paid did not detract from what he did. The Respondent had submitted that he was very inexperienced. However, he considered himself experienced enough to be a partner. In any event it was not a complicated question that the Respondent had had to resolve. His client had

lied to him and he should not have continued acting for him. You did not need to be an experienced solicitor to be able to understand the issue.

35. The Tribunal considered that the Respondent's actions were planned. He submitted the application for permission to appeal despite what his client had told him and despite being on notice of the concerns expressed by Judge Osborne, When the Respondent had received the text and discussed the matter with Mr A on 4 March 2017 he had the opportunity to reconsider his position but did not take any action. He was an officer of the Court and had acted in breach of a position of trust. The Respondent had direct control of or responsibility for the circumstances giving rise to the misconduct. There was harm to the reputation of the profession. The public should be able to trust an officer of the Court. The Respondent had misled the regulator, he had carried on with his story up to and including at the hearing. The Tribunal had not found him to be a credible witness.

36. Given what the Respondent did and the position he adopted to justify his actions his misconduct was bound to have had a negative impact upon those directly or indirectly affected by the misconduct, the public and the reputation of the legal profession. Although there was only one finding of lack of integrity on the facts of the case the Respondent's conduct was a complete departure from the complete integrity, probity and trustworthiness expected of a solicitor. The fact that the Respondent had misled the Court meant that at the very least significant harm might reasonably have been foreseen to be caused by the misconduct, especially to the reputation of the profession.

37. The Respondent's misconduct was deliberate and calculated. The Respondent and Mr A had two conversations, one before and one after the Respondent submitted the application for permission to appeal and to this extent the misconduct was repeated and continued over a period of time. The Respondent must have known (or ought reasonably to have known) that the conduct complained of was in material breach of his obligations to protect the public and the reputation of the legal profession. The impact on those affected by the misconduct was predominantly limited to the public perception of the profession given that a solicitor and officer of the Court would not be expected to behave as the Respondent had behaved. These were all aggravating factors.

38. In terms of mitigating factors there may well have been deception of the Respondent by Mr A. However the Respondent decided to make the application despite knowing what his client had said to him and despite knowing what Judge Osborne had found in respect of Mr A's credibility. The Legal Ombudsman had informed the regulator of the misconduct, the Respondent had not done so. The Respondent had had a previously unblemished career and the episode was one of relatively short duration. The Respondent had not shown any insight and had not made open and frank admissions at an early stage. There was very little or nothing to mitigate the seriousness of the misconduct alleged and found proved. For an officer of the Court to mislead the Court was a very serious matter.

39. Having assessed the seriousness of the misconduct the Tribunal considered whether or not to make an order and what sanction to impose starting with No Order. The seriousness of the misconduct was not low and the Respondent's culpability was high.

No Order was not an appropriate sanction. For the same reasons a reprimand was not a sufficient sanction. The protection of the public and the reputation of the profession required a greater sanction.

40. The protection of the public and the reputation of the profession required a greater sanction than a fine. A fine would not reflect the seriousness of the misconduct. If officers of the Court could not be trusted then the whole system would collapse. Various flags had been waved and the Respondent had ignored them. This was a very serious matter.

41. A Restriction Order was not appropriate. Such an order was more geared to situations where there was management chaos and/or financial issues. Conditions could be placed on the Respondent's ability to practice but the Tribunal could not identify conditions that would protect the reputation of the profession and the public from a potential repetition of what had happened in this case given the Respondent's complete lack of insight.

42. The gravity and the seriousness of the misconduct and the fact that the Respondent had been found to have acted recklessly and to lack insight meant that no lesser a sanction than suspension was appropriate. The Tribunal considered a suspended suspension or fixed term suspension but decided that neither of these sanctions would proportionately contain the risk of harm to the public and the reputation of the profession. The need to protect both the public and reputation of the profession from future harm meant that the Respondent's ability to practise needed to be removed.

43. The Tribunal recognised that an indefinite suspension marked the highest level of misconduct that could appropriately be dealt with short of striking off the Roll. This was a very serious matter where the Respondent misled the Court. He made a grave error of judgement and the Tribunal was concerned at his lack of insight. In the circumstances of this case an indefinite period of suspension was fair and appropriate. The seriousness of the misconduct was so high that striking off was the most appropriate sanction however the Tribunal took into account the fact that the Respondent had been inexperienced at the time of the misconduct which had occurred some three years previously. Whilst he lacked insight the Tribunal hoped that the Respondent would be able to reflect on the Tribunal's findings and learn from these events. Accordingly, in all of the circumstances of the case the most appropriate sanction was one of indefinite suspension.

44. Whilst in no way fettering the discretion of any future Division of the Tribunal considering an application to determine the period of indefinite suspension this Division of the Tribunal considered that for any such application to succeed the Respondent would need to demonstrate a period of reflection, provide some evidence of work in a quasi-legal setting where he was properly supervised and provide evidence of the fact that he had kept up to date with the law. The period of indefinite suspension would enable the Respondent to have an opportunity to reflect on his grave error of judgement in making the application for permission to appeal and in so doing recklessly misleading the court.

Costs

45. The Applicant applied for its costs in the sum of £19,481.17. This sum reflected a deduction of £36 for Mr Moran's time in dealing with the Amended Rule 5 Statement. Ms Butler had amended the statement as part of her brief fee and there were no additional costs for her time. Ms Butler submitted that the SRA's costs were manifestly reasonable. The investigation and Rule 5 Statement had effectively been done on a "shoe-string". Ms Butler's brief fee included three days of preparation, the Skeleton Argument and the first day of the hearing.

46. The Respondent alleged, through his counsel that he had not been served with the schedule of costs and that he was in a "bit of a state of shock". The Applicant had served its costs schedule on the solicitors representing the Respondent on 22 June 2017 and those solicitors had in turn served the Respondent's schedule of costs on the Applicant one day later on 23 June 2017.

47. Ms Pascoe submitted that the costs were excessive, this was a case with a narrow factual matrix and the brief fee was not justified. She invited the Tribunal to hear from the Respondent as to means. The Respondent had not complied with the direction to file a statement of means. Despite being sent the Memorandum that contained this direction by his solicitors and having read that document he maintained that he was not aware of the requirement and had been reliant on his solicitors.

48. The Tribunal retired to consider this request which was subsequently refused. The Respondent had not complied with the Tribunal's direction. If the Respondent was allowed to give evidence as to his means the Applicant would have no opportunity to make enquiries as to what was said. There was no documentary evidence to support what the Respondent might state and he had already been found to be an unreliable witness.

49. The Tribunal considered the application for costs carefully. It had heard the case and it was appropriate for the Tribunal to assess the costs. The case had been properly brought and both allegations had been found proved. There had been no admissions from the Respondent and the Applicant had had to prove its case at a two day hearing. The FIO had had to attend to give evidence. There was no evidence of duplication between the SRA's internal legal costs and Ms Butler's fees. Ms Butler had had to prepare for a contested hearing. Ms Butler's fees were proportionate given the small amount of the SRA's own internal legal costs. The Tribunal determined that the Respondent should pay the Applicant's costs in the sum of £19,481.00.

50. There was no statement of means from the Respondent and there had been no application for costs not to be enforced without leave of the Tribunal. In the circumstances it was not appropriate to make such an order and enforcement of the costs order would be a matter for the Applicant bearing in mind that the Respondent would not be able to practise as a solicitor.

Statement of Full Order

51. The Tribunal Ordered that the Respondent, MANSOOR ALI, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 28 June 2017 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £19,481.00.

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

T. Cullen
Chair