SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11644-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

ANDREI LIAKHOV — Respondent

Before:

Mr J. A. Astle (in the chair)
Mrs A. Kellett
Mrs C. Valentine

Date of Hearing: 28 September 2017

Appearances

Shaun Moran, solicitor, of The Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The Allegation against the Respondent was that:

1.1 On or around 24 July 2015, the Respondent created a false document, being an email that purported to be from an SRA Authorisation Officer when it was not ("the email"). The Respondent subsequently sent the email to another firm of solicitors representing it as a genuine email. In so doing he breached:

(i) Overseas Principle 2 of the SRA Overseas Rules 2011 ("the Overseas Rules"); and/or

(ii) Overseas Principle 6 of the Overseas Principles.

It was also alleged that the Respondent had acted dishonestly.

The Respondent admitted the allegation.

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent which included:

Applicant:

- Application dated 27 April 2017 together with attached Rule 5 Statement and all exhibits
- Witness statement of Emma O'Brien (Authorisation Officer at the Solicitors Regulation Authority ("SRA") dated 1 September 2017
- Witness statement of Virag Martin (Policy Adviser at the Law Society) dated 7 September 2017
- Letters dated 21 September 2017 and 25 September 2017 from Mercantile Barristers to the Applicant
- Email dated 22 September 2017 from the Applicant to Mercantile Barristers
- Applicant's Statement of Costs dated 20 September 2017

Respondent:

- Respondent's Statement in Response to the Rule 5 Statement dated 29 May 2017

Service of Proceedings

3. Notice of the substantive hearing had been sent to the Respondent on 2 May 2017 together with a number of Standard Directions. The Notice had been delivered on 3 May 2017. In addition, the Respondent had filed a Response to the Rule 5

Statement on 29 May 2017 and a Certificate of Readiness on 2 June 2017 as required by the Standard Directions.

4. The Tribunal also had before it copies of letters dated 21 September 2017 and 25 September 2017 from the Respondent's Counsel to the SRA which both made reference to the substantive hearing date. The Tribunal was satisfied the Respondent had been properly served with Notice of the substantive hearing and was aware it was due to take place on 28 September 2017.

Proceeding in Absence

5. There was no attendance by or on behalf of the Respondent. Mr Moran, on behalf of the Applicant, referred the Tribunal to the letters from the Respondent's Counsel dated 21 September 2017 and 25 September 2017. In the first letter dated 21 September 2017, the Respondent's Counsel stated that he was without instructions. He stated his Clerk had made contact with the Respondent that day and had been informed that the Respondent wished to retain representation by that particular Counsel but would not be able to give instructions for at least another week. The letter requested the Applicant to agree to an adjournment of the hearing on 28 September 2017 for a period of 21 days on the grounds of the Respondent's ill-health. The letter provided brief details of the Respondent's illness.

6. Mr Moran then referred the Tribunal to his email to the Respondent's Counsel dated 22 September 2017 which requested further details of the Respondent's health, confirmation as to when he had instructed Counsel and confirmed that any application for an adjournment would be opposed in the absence of an appropriate medical report. Mr Moran confirmed the Applicant received a further letter from the Respondent's Counsel dated 25 September 2017. That letter confirmed the Respondent's Counsel was initially instructed on a limited basis in August 2017 but had been without instructions since 23 August 2017. The letter stated the Respondent was unable to provide Counsel with substantive instructions due to his health, but once his condition improved, Counsel stated the necessary medical evidence would be obtained. However, Counsel confirmed this would be impossible prior to the hearing on 28 September 2017 and once again requested an adjournment of that hearing.

7. Mr Moran confirmed he had tried to contact the Respondent's Counsel that morning to ascertain whether he/they would be attending the hearing. He had been informed by Counsel's Clerk that Counsel was driving and could not take the call. However, Counsel's Clerk indicated he would check the position and contact the Tribunal to confirm. The Deputy Clerk to the Tribunal confirmed Counsel's Clerk had subsequently contacted the Tribunal to confirm Counsel had not been instructed to attend or represent the Respondent at the substantive hearing.

8. Mr Moran further confirmed that, at the Tribunal's request, he had managed to contact the Respondent by telephone that morning. The Respondent had informed Mr Moran that he had suffered severe food poisoning and had been in hospital for a period of time, the exact details of which were not clear. Mr Moran stated the Respondent sounded very ill but had made it clear he wanted to attend the hearing and participate. The Respondent had informed Mr Moran that he had been paralysed due to the food poisoning and had been unable to speak until about the

22/23 September 2017. The Respondent informed Mr Moran that he would like to provide a medical report from his consultant in the fullness of time.

9. Mr Moran stated that it had been difficult to understand the Respondent clearly but as he now had some knowledge of the Respondent's ill health, he would remain neutral on whether the Tribunal should proceed in the Respondent's absence. Mr Moran stated that the Respondent appeared to be a very ill man as he was having difficulty speaking on the telephone. Mr Moran referred the Tribunal to the cases of R v Jones [2002] UKHL 5 and GMC v Adeogba [2016] EWCA Civ 162 which contained the criteria the Tribunal should use to decide whether it was appropriate to proceed in the Respondent's absence.

The Tribunal's Decision on Proceeding in the Respondent's absence

10. The Tribunal was mindful that it should only decide to proceed in the Respondent's absence having exercised the utmost care and caution. The Tribunal was also mindful of the Tribunal's Practice Note on Adjournments, a copy of which had been drawn to the Respondent's Counsel's attention by the Applicant in his email dated 22 September 2017.

11. Although the Respondent's Counsel had asked the Applicant to agree to adjourn the substantive hearing in the letters to the Applicant dated 21 September 2017 and 25 September 2017, there was no formal application before the Tribunal, by or on behalf of the Respondent requesting such an adjournment. Indeed, neither the Respondent nor the Respondent's Counsel had contacted the Tribunal direct and conversations had only taken place with Mr Moran that morning as the Tribunal had directed him to make contact with the Respondent and/or his Counsel to ascertain whether they were on their way to the hearing.

12. It appeared from Mr Moran's telephone conversation with the Respondent that he had been in hospital for a period of time and the Tribunal found it difficult to understand why, in such circumstances, some medical evidence, even if only a short hospital letter had not been provided to confirm the position. It was clear the Respondent had been in ill health since at least 21 September 2017 as his representative had made reference to his symptoms in his letter of that date. The Respondent had therefore had plenty of time to obtain and provide some medical evidence. The Tribunal had no independent supporting evidence from an appropriate medical adviser to indicate the Respondent was unable to participate in the hearing due to ill-health. Under the Tribunal's Practice Note on Adjournments, a reasoned opinion from an appropriate medical adviser was generally required before an adjournment could be granted on medical grounds.

13. The Tribunal accepted that as a result of the Respondent's telephone conversation with Mr Moran, the Respondent had not voluntarily waived his right to attend the hearing, although there was no supporting medical evidence to confirm his absence was due to his ill health. The Tribunal also accepted that if an adjournment were to be granted, it appeared more likely than not that the Respondent would attend a future hearing.

14. However, whilst the Respondent indicated he would like to be legally represented at the substantive hearing, he had instructed Counsel in August 2017, albeit on a limited basis, yet he had not instructed Counsel to attend today's hearing. Further, in his Certificate of Readiness dated 26 May 2017, the Respondent had stated he would be representing himself.

15. The Tribunal had a Response from the Respondent confirming he admitted the allegations and the facts relevant to the case. It appeared therefore that his submissions would relate principally to the issue of mitigation. He had had plenty of time to prepare his case and file a witness statement but had not done so. The Tribunal did however have copies of his emails to the SRA dealing with the allegations. These would be taken into account in due course.

16. This case involved conduct that took place in 2015 and there was an allegation of dishonesty, which was a very serious matter. The Applicant had attended the hearing with witnesses who were ready to give evidence and inconvenience would be caused to them by an adjournment. The Tribunal had no information as to how long the length of any adjournment was likely to be and noted that Tribunal cases were currently being listed in April 2018.

17. Although it was not at the forefront of the Tribunal's mind, it was relevant that the Respondent could apply for a re-hearing under Rule 19(1) of the Solicitors (Disciplinary Proceedings) Rules 2007 within a period of 14 days. This would allow the Respondent to apply for a re-hearing if he so wished with the appropriate supporting documents.

18. The Tribunal concluded that a telephone conversation between the Respondent and the Applicant's representative was not sufficient evidence to warrant an adjournment of the substantive hearing. There was no independent supporting medical evidence before the Tribunal and it was clear the Respondent had been able to instruct Counsel at some point during the course of his ill health as Counsel had made specific reference to the nature of the Respondent's ill health in his letters dated 21 September 2017 and 25 September 2017. It seemed therefore that the Respondent could have obtained some medical evidence and provided it to the Tribunal.

19. The Tribunal was satisfied, having referred to the guidance in the cases of R v Jones [2002] UKHL 5 and GMC v Adeogba [2016] EWCA Civ 162 and taking all the circumstances into account, including the serious nature of the allegation, that it was appropriate and in the public interest for the hearing to proceed in the Respondent's absence, and that matters should be concluded without any further delay.

Factual Background

20. The Respondent, born in 1961, was admitted to the Roll of Solicitors on 2 May 2006.

21. At the relevant time, the Respondent was a practising solicitor, working as a partner in a Ukrainian law firm called Sayenko Kharenko at its London office at Office 21, 17 Clarges Street, Mayfair, London, W1J 8AE ("the Firm"). The Firm had its head office in Ukraine at 10 Muzeynyi Pereulok, Kiev, Ukraine, 01001. It was therefore classed as a Foreign Law Office. The Overseas Rules apply to regulated individuals

practising overseas. As the Respondent had been permanently based in a Ukrainian law firm since 2010, the Overseas Rules applied to him.

22. On 24 July 2015, the Respondent created a false document, being an email that purported to be from an SRA Authorisation Officer in relation to the proposed admission to the Roll of AP. On 25 July 2015 the Respondent forwarded the email he had created on 24 July 2015 to JB of J Ltd, representing this to be genuine correspondence with the SRA.

23. The Respondent was a partner in the Firm and AP was an employee of the Firm, as well as the Respondent's wife. In or around 2011/2012 the Respondent entered into discussions with an English law firm, J Ltd, for AP to undertake a training contract with that firm. A training contract was registered with the SRA for AP at J Ltd to run from 29 August 2012 to 28 August 2014.

24. It became apparent from correspondence that AP was based in the Ukraine and it had been intended that a working visa would be obtained to allow her to work in England for J Ltd. However, J Ltd was unable to secure the necessary visa.

25. On 9 January 2015, a letter from the Firm to the Law Society was sent in support of AP becoming a solicitor. A copy of this was forwarded to the SRA. On 28 January 2015, an email was sent to the Respondent by the SRA Authorisation Unit explaining that AP would have to make an application to the SRA. On 4 February 2015 an SRA Authorisation Officer sent an email to the Respondent giving general information about the admissions process.

26. On 5 February 2015, the SRA Authorisation Officer wrote to AP, copying in the Respondent, providing AP with further information and forms relevant to the application process. On the same day, the Respondent also provided the Authorisation Officer with another letter from the Firm in support of AP.

27. On 9 February 2015, a personal assistant from the Firm wrote on behalf of AP to AB of J Ltd, seeking his assistance with the application form. AB replied, stating amongst other things that:

> "I had previously discussed this position with Andrei many months ago. Because we were unable to secure a visa for [AP] to practice [sic] from our London office we will be unable to sign off on the entirety of her training contract."

28. On 12 to 14 May 2015 further correspondence took place on the issue between the Respondent (and his assistant) and J Ltd based on the email of 5 February 2015 from the SRA Authorisation Officer. By this time, JB was dealing with the matter on behalf of J Ltd. On 9 June 2015, JB wrote to the SRA Authorisation Department providing clarification that: (i) J Ltd had been unable to secure a visa for AP; (ii) the Respondent's firm had agreed to supervise AP; (iii) the Respondent's firm was not a SRA regulated practice but the Respondent (who it said supervised AP) was a solicitor.

29. The SRA Authorisation Department sent an email to JB on 10 June 2015 which was forwarded to the Respondent and AP on 11 June 2015. The email of 10 June 2015 provided guidance concerning AP's training contract. On 11 June 2015, the Respondent wrote to JB and stated:

> "...As I have now a very good working relationship with the relevant SRA department would it help if I try to achieve that the SRA waives this condition (i.e. Visa)?
>
> If I manage to achieve this it would become possible to reinstate her TC with [J Ltd] and complete the training on that basis, Ce est nes pas? (sic)".

30. No further email correspondence took place in 2015 between the Respondent and the SRA concerning AP and her application. However, on 24 July 2015, the Respondent sent himself an email that forwarded purported email correspondence between himself and the SRA in July 2015, concluding with a false email dated "21 Jully 2015" (sic) that claimed to be from an SRA Authorisation Officer. That email stated:

> "I can confirm that we have updated our records to show that [AP] completed a Training Contract with [J Ltd]. The formal visa requirement waiver letter will be issued in due course to [J Ltd]. I can confirm that she satisfied all other training requirements.
>
> I would recommend that you liaises (sic) with [J Ltd] to coordinate further steps."

31. On 25 July 2015 the Respondent forwarded the email he had created on 24 July 2015, absent the top section sending the document to himself, to JB of J Ltd. In the email of 25 July 2015 the Respondent made reference to the email he had created on 24 July 2015 stating:

> "Apologies for the silence. We have not been idle and it seems (from the forwarded message) that we have managed to persuade the SRA to waive visa (sic) requirement. Can you please let me know when the formal letter reaches you so that we can move things forward."

32. Nothing further was received by the SRA Authorisation Officer in relation to this matter until 31 May 2016. On this date, it was recorded that the Respondent and AP spoke to an Authorisation Officer and AP was asked to send in correspondence. On 1 June 2016 AP sent the Authorisation Officer an email attaching a genuine email dated 5 February 2015 from the Respondent to the SRA Authorisation Officer and the email created by the Respondent on 24 July 2015.

33. On 22 September 2016 a report was submitted by the SRA Authorisation Officer to the relevant SRA Assessment Team regarding the email created by the Respondent on 24 July 2015. On 5 October 2016 a SRA Supervisor wrote to AP asking her how she came to be in possession of the email of 24 July 2015 as it did not originate from the SRA. On the same day AP replied stating she had no idea about the origin of the email. The Respondent also replied that day, following up a telephone call, stating amongst other things that:

- The email in question originated from him and was "a cut and paste from several emails";

- It was a summary of various conversations he had had with the SRA and the Law Society.

34. A formal letter raising allegations was sent to the Respondent by the Supervisor on 18 October 2016. The Respondent replied on the same day by email stating:

> "Further to our telephone conversation I fully admit the allegations listed in your letter. I apologise for an ill-conceived attempt to speed up [AP] application which for a variety of reasons was taking an unusually long time. No real harm was really intended."

35. The Respondent also wrote to the SRA on 20 February 2017 and 24 February 2017 confirming the email was created on or around 24 July 2015 and that it had been sent to J Ltd. The Respondent stated in his email of 20 February 2017:

> "...it was done as a desperate attempt to restart [AP's] admission process which at that time was stalling..... I still believe that in telephone discussions preceding the creation of this email it was agreed that [AP] was no longer required to have a work visa to complete her training ..... This email had no effect whatsoever on her admission process and related discussions."

36. In his email of 24 February 2017, the Respondent stated that he had taken it upon himself to liaise with J Ltd to find out what was going on in relation to AP's training position and was:

> ".....initially told by [J Ltd] that they would not be able to continue as further training required AP to get a work permit in the UK. We offered to cover the cost of obtaining one, but were told that [J Ltd] had taken up all of its immigration quota and they could not help."

37. The Respondent stated he thought it was possible to seek derogation from the visa requirement and believed he had a lot of discussion about this in early 2015 with the Law Society, J Ltd and the SRA. He thought it was agreed that completion of AP's training with J Ltd was agreed without the need for AP's physical presence in the UK and he had:

> ".....designed this email in hope to get all participants to have a conference call (or other joint communication) to finally agree on this point and move on with completion of her training and application to the Roll. However, this e-mail was not auctioned (sic) on by anyone, did not result in a conference call it was designed to provoke and was completely ignored."

Witnesses

38. No witnesses gave evidence.

Findings of Fact and Law

39. The Tribunal had carefully considered all the documents provided and the Applicant's submissions. The Tribunal confirmed that all allegations had to be proved beyond reasonable doubt and that the Tribunal would be using the criminal standard of proof when considering the allegation.

40. **Allegation 1.1: On or around 24 July 2015, the Respondent created a false document, being an email that purported to be from an SRA Authorisation Officer when it was not ("the email"). The Respondent subsequently sent the email to another firm of solicitors representing it as a genuine email. In so doing he breached:**

(i) Overseas Principle 2 of the SRA Overseas Rules 2011 ("the Overseas Rules"); and/or

(ii) Overseas Principle 6 of the Overseas Principles.

It was also alleged that the Respondent had acted dishonestly.

40.1 The Respondent, in his Response to the Rule 5 Statement dated 29 May 2017, stated he confirmed the facts and matters relevant to the case were true and correctly reflected. He also confirmed that he admitted the allegation of dishonesty.

40.2 Overseas Principle 2 of the Overseas Rules 2011 stated:

> "You must act with integrity".

40.3 Overseas Principle 6 of the same Rules stated:

> "You must not do anything which will or will be likely to bring into disrepute the overseas practice, yourself as a regulated individual or, by association, the legal profession in and of England and Wales."

40.4 The Tribunal considered carefully the email of 24 July 2017 which purported to be from Emma Foster, an Authorisation Officer at the SRA, to the Respondent. The Tribunal particularly noted that the date given on this email was "21 Jully (sic) 2015". The spelling error in the month itself was an indication that this email was false as the date would have been automatically generated on a true email and would not have contained a spelling error.

40.5 The Tribunal's attention had been drawn to a witness statement from Emma O'Brien (née Foster), an SRA Authorisation Officer, dated 1 September 2017 and a witness statement from Virag Martin, a Policy Adviser at the Law Society, dated 7 September 2017. The Respondent had not challenged these statements and indeed a Civil Evidence Act Notice dated 7 September 2017 had been served on the Respondent to which he had not responded. The Tribunal accepted these statements as evidence of the matters referred to.

40.6 Mrs O'Brien confirmed in her statement that she had not written or sent the purported email of 24 July 2015 to the Respondent. She also stated that whilst she recalled speaking to the Respondent on the telephone in late spring/summer of 2015, she would not have given any information or assurances over the telephone about visa requirements, or the waiver of a visa as these were not issues the SRA was involved in or had control over.

40.7 Ms Martin confirmed in her witness statement that she would not have given any advice about visas or training contracts to the Respondent as these were regulatory issues not within her remit as a policy adviser. She stated she would have referred the matter to the SRA.

40.8 The Tribunal was satisfied on the evidence before it that the Respondent had created the email of 24 July 2015, indeed he admitted to doing so, and that it was a false email.

40.9 The Tribunal also considered an email dated 25 July 2015 from the Respondent to JB at J Ltd which attached the email of 24 July 2015 claiming this to be an email he had received from the SRA. The Tribunal was satisfied that the Respondent had sent the false 24 July 2015 email to J Ltd on 25 July 2015 representing it as a true email when it was not genuine.

40.10 The Tribunal was satisfied that a solicitor acting with integrity would ensure all emails and the content of emails being sent by that solicitor were accurate and genuine. A solicitor acting with integrity would not forward a false email to a third party claiming it to be genuine. The Respondent had done so and had acted with a lack of integrity thereby breaching Overseas Principle 2 of the Overseas Rules 2011. Furthermore such conduct was likely to bring the overseas practice, the Respondent and the legal profession of England and Wales into disrepute. The Respondent had also breached Overseas Principle 6 of the Overseas Rules 2011.

40.11 The Tribunal then considered the issue of dishonesty. The Tribunal had been referred to the case of Twinsectra Ltd v Yardley & Others [2002] UKHL 12 which set out the test to be applied when considering the issue of dishonesty. Firstly, the Tribunal had to consider whether the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people. Secondly, the Tribunal had to consider whether the Respondent himself realised that by those standards his conduct was dishonest.

40.12 The Tribunal was satisfied that reasonable and honest people would consider creating a false email and then sending it to a third party presenting it as genuine to be dishonest conduct.

40.13 The Respondent had been trying to engineer an outcome for AP which would allow her to complete her training contract with J Ltd and ultimately be admitted to the Roll of Solicitors in England. He knew there had been issues with her visa arrangements and this had had an effect on her ability to complete her training contract with J Ltd. He was an experienced solicitor who had made a conscious decision to create a false email and then send it to J Ltd indicating it was genuine. He knew that email was false notwithstanding any discussions he claimed to have had with the SRA or the

Law Society (which were in any event denied). Even if such discussions had taken place, this was still no excuse for creating the email. The intention had been to secure an advantage for AP and the outcome of relying on the false email was to conceal the true position in that the SRA records had not been updated as claimed by the false email. Accordingly, the Tribunal was satisfied that the Respondent knew his conduct was dishonest by the ordinary standards of reasonable and honest people.

40.14 The Tribunal found the allegation proved both on the Respondent's admissions and on the documents provided.

Previous Disciplinary Matters

41. None.

Mitigation

42. In the Respondent's emails dated 5 October 2016, 18 October 2016, 20 February 2017 and 24 February 2017 to the SRA and in his Response to the Rule 5 Statement dated 29 May 2017, he provided some mitigation.

43. In his email of 5 October 2016, the Respondent stated the distress and problems he had caused to AP were unintentional and he apologised for the misunderstandings and problems caused to her and to the SRA. He stated he was "happy to be sanctioned by the SRA".

44. In his email of 18 October 2016, the Respondent apologised for his "ill-conceived attempt to speed up [AP]'s application" and stated "No real harm was really intended."

45. In his email of 20 February 2017, the Respondent stated that his action was done as a desperate attempt to restart AP's admission process which at that time was stalling. He stated the email had no effect whatsoever on AP's admission process and related discussions and he still believed that the content had been true in that AP was no longer required to have a work visa to complete her training.

46. In his email of 24 February 2017 to the SRA the Respondent stated that following AP's time on secondment for training with J Ltd in 2012, she continued her training programme with them on a remote basis for some time. Following her Training Principal's departure from J Ltd, AP's training was effectively suspended and this came to the Respondent's attention during her 2015 appraisal interview. The Respondent stated he took it on himself to liaise with J Ltd to ascertain what was going on and how they could restart, and complete AP's training contract. The Respondent stated that after he was told by J Ltd that they would not be able to continue as further training required AP to get a work permit in the UK, his firm offered to cover the cost of obtaining one but were informed that J Ltd had taken up all of its immigration quota and could not help.

47. The Respondent stated at some point he thought it was agreed that having regard to AP's work experience, qualification and previous training, completion of her training contract with J Ltd was agreed without the need for her physical presence in the UK.

He then stated he "designed" the 24 July 2015 email in the hope to get all participants to have a conference call, or other joint communication, to finally agree on the point and move on with the completion of AP's training and application to the Roll. The Respondent stated no action took place as a result of the email, and whilst it had been designed to provoke, it was completely ignored.

48. In the Respondent's Response to the Rule 5 Statement dated 29 May 2017, the Respondent stated his misconduct had had no effect whatsoever on the progress of AP's application to be admitted to the Roll of Solicitors. He also apologised for his conduct.

Sanction

49. The Tribunal had considered carefully the Respondent's various emails to the SRA. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also 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.

50. The Tribunal firstly considered the Respondent's level of culpability. His motivation had been to assist AP, his wife, with completing her training contract. His conduct had been planned and he was in a position of trust as a solicitor whose firm employed AP. As such J Ltd would have trusted an email from him. The Respondent had direct control over his actions. He was an experienced solicitor who had intended to mislead J Ltd in order to achieve his desired outcome. The Tribunal found the Respondent's level of culpability was high.

51. The Tribunal was mindful that the Respondent's conduct could potentially have led to the admission of AP to the Roll as a solicitor on the wrong basis. Fortunately this did not happen but harm had been caused to the reputation of the profession. Such harm could reasonably have been foreseen by the Respondent.

52. The Tribunal then considered the aggravating and mitigating factors in this case. The Respondent had acted dishonestly and his conduct had been deliberate. He ought to have known that his conduct was in breach of his obligations to protect the public and the reputation of the legal profession. Whilst the Respondent stated in his emails to the SRA that no real harm had been caused by his conduct, this displayed a lack of insight, particularly into the seriousness of his conduct and the effect it had had on the reputation of the legal profession. These were all aggravating factors.

53. The Respondent did have a long unblemished record and he had cooperated with the regulator, making open and frank admissions to his behaviour. This had been an isolated incident and the Respondent had made some apologies, although had not demonstrated any real insight. These were mitigating factors.

54. The Tribunal considered carefully all the sanctions available to it. The misconduct in this case was serious. The Respondent had deliberately forged an email and had he succeeded in relying on this when submitting it to J Ltd as genuine, he would effectively have allowed AP to bypass all the proper checks that were in place by the regulator to ensure those admitted to the Roll had been admitted having followed an

appropriate procedure and process. The Tribunal considered the Respondent was a risk to the public as he could not be trusted. A member of the public would not trust a solicitor who went to such lengths to achieve their desired aim.

55. The Tribunal concluded that it was not appropriate to make No Order or impose a Reprimand or a Fine as these would not be sufficient to reflect the seriousness of the misconduct, the Respondent's high culpability and the damage caused to the reputation of the profession.

56. Imposing conditions on the Respondent's practising certificate was not appropriate as it would be difficult to formulate appropriate workable conditions which would adequately address dishonest conduct whilst also reflect the serious nature of the conviction. Nor would conditions protect the public.

57. The Tribunal then considered whether to impose a Suspension. However the Respondent had not displayed any real insight into the consequences of his dishonest conduct and this called into question his continued ability to practise appropriately. The Tribunal had already determined he was a risk to the public. The Tribunal was also mindful of the case of SRA v Sharma [2010] EWHL 2022 (Admin) in which Coulson J stated:

> "Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll"

58. The Tribunal was satisfied that there were no exceptional circumstances in this case and that accordingly the appropriate and proportionate sanction in this case, in order to protect the public and the reputation of the profession, was to strike the Respondent's name off the Roll. Trust was a fundamental tenet of the solicitors' profession and it would not be acceptable for a solicitor who had acted dishonestly to be allowed to continue to practise. Accordingly, the Tribunal Ordered the Respondent be struck off the Roll of Solicitors.

Costs

59. Mr Moran, on behalf of the Applicant requested an Order for his costs in the total sum of £7,122.00 and provided the Tribunal with a breakdown of those costs. He confirmed the Respondent had been asked for details of his means but these had not been provided.

60. The Tribunal had considered carefully the matter of costs and was satisfied that the amount of costs claimed was reasonable. Accordingly, the Tribunal made an Order that the Respondent should pay the Applicant's costs in the sum of £7,122.

61. In relation to enforcement of those costs, the Tribunal had particular regard to the case of SRA v Davis and McGlinchey [2011] EWHC 232 (Admin) in which Mr Justice Mitting had stated:

> "If a solicitor wishes to contend that he is impecunious and cannot meet an order for costs, or that its size should be confined, it will be up to him to put before the Tribunal sufficient information to persuade the Tribunal that he

lacks the means to meet an order for costs in the sum at which they would otherwise arrive."

62. In this case the Respondent had not provided any documentary evidence of his income, expenditure, capital or assets and therefore it was difficult for the Tribunal to take a view of his financial circumstances. Accordingly the Tribunal concluded there should be no restriction on the enforcement of costs.

Statement of Full Order

63. The Tribunal Ordered that the Respondent, ANDREI LIAKHOV, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £7,122.00.

Dated this 15th day of November 2017
On behalf of the Tribunal

J. A. Astle
Chairman