SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11649-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

AZFAR NASEEM BAJWA Respondent

Before:

Mr A. N. Spooner (in the chair)
Mr H. Sharkett
Mr P. Hurley

Date of Hearing: 24-25 October 2017

Appearances

Rory Dunlop, barrister of 39 Essex Chambers, 81 Chancery Lane, London WC2A 1DD, instructed by Kate Steele, solicitor of Capsticks Solicitors LLP of 1 St George`s Road, Wimbledon, London, SW19 4DR, for the Applicant.

The Respondent appeared in person.

JUDGMENT

Allegations

1. The Allegations made against the Respondent by the Applicant were that:

1.1 He facilitated the abuse of litigation by bringing Judicial Review claims on behalf of clients which he knew were not properly arguable in circumstances where he knew or should have known that the true purpose of the claim was to thwart or delay lawful removal or procure release from lawful detention. This was a breach of any or all of Principles 1, 2, and 6 of the SRA Principles 2011, and a failure to achieve Outcome 5.6 of the Solicitors Code of Conduct 2011 ("SCC 2011");

1.2 He misled Clients 1, 4, 6 and 7 that their claims for Judicial Review had some prospects of success when the Respondent knew that the claims were not properly arguable. This was a breach of any or all of Principles 2, 4, 5 and 6;

1.3 He breached his professional obligation to the Upper Tribunal not to make submissions that he did not consider were properly arguable. This was a breach of Principles 1, 2 and 6 and a failure to achieve Outcome 5.6;

1.4 Allegations 1.1 to 1.3 above were pleaded on the basis that the Respondent knew or recklessly disregarded the fact that at least some of the totally without merit claims he brought were not properly arguable. In the alternative, if the Respondent considered that all or any of those claims were properly arguable, he was manifestly incompetent in bringing these claims. This was a breach of any or all of Principles 1, 5 and 6 and a failure to achieve any or all of Outcomes 1.2, 1.4 and 1.5;

1.5 He failed adequately to supervise unadmitted fee earners in his firm. This was a breach of Principles 6 and 8 and a failure to achieve any or all of Outcomes 7.6, 7.7 and 7.8.

Documents

2. The Tribunal considered all of the documents in this matter including:

Applicant

- Application and Rule 5 Statement with exhibit KAS/1 dated 5 May 2017
- Applicant's hearing bundle
- Cost Schedule

Respondent

- Reply to Allegations dated 12 June 2017
- Respondent's hearing bundle

Preliminary Matters

The scope of Allegation 1.4

3. The Tribunal queried the scope of Allegation 1.4 and the basis on which it was put as it was not entirely clear from the wording of the Allegation in the Rule 5 Statement. Mr Dunlop told the Tribunal that Allegations 1.1-1.3 were put on the basis of knowledge or reckless disregard on the part of the Respondent. If the Tribunal was not sure in respect of any of those Allegations that the Respondent had acted with reckless disregard or with knowledge that the claims were not properly arguable then the alternative basis was that he was manifestly incompetent in not realising this and in the way he brought the claims. The Tribunal asked Mr Dunlop if it should effectively delete the first sentence of Allegation 1.4 and proceed on that basis. Mr Dunlop confirmed that he was content for the Allegation to be approached in this way. The Respondent raised no objection to this course of action.

Presentation of the Respondent's case

4. The Respondent initially elected to present his case by way of oral submissions. The Tribunal became concerned that the Respondent was, in effect, giving evidence. The Tribunal, through the clerk, had provided the Respondent with a copy of Practice Direction 5 ("PD5") to the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR"). The Tribunal reminded the Respondent that if his submissions were, in essence evidence, it could attach no weight to that evidence as he had not provided it under oath and it could not be tested by way of cross-examination. The Tribunal reminded the Respondent of the effect of PD5. The Tribunal did not seek to persuade the Respondent to adopt any particular course – it was entirely a matter for him. However it was important that the Respondent have every opportunity to properly put his case forward. The Tribunal rose early on the first day of the hearing in order to afford the Respondent sufficient time to fully consider how he wished to present his case.

5. At the commencement of the second day of the hearing the Respondent informed the Tribunal that he wished to give evidence and duly did so.

Hearing in Private

6. The case involved sensitive personal information about clients as well as matters that were the subject of legal professional privilege. The Applicant had addressed this issue by referring to clients by number rather than by name in the papers and in Mr Dunlop's oral submissions.

7. The Respondent, at the start of his submissions, made repeated slips with the result that he identified some clients by name.

8. While no application had been made under SDPR Rule 12(4), the Tribunal had the power under Rule 12(6)(a) to make a direction that part of the hearing be held in private if it would have granted an application under Rule 12(4) had it been made. Rule 12(4) permitted an application to be made if a private hearing was required to prevent a) exceptional hardship or b) exceptional prejudice to any person affected by

the application. The Tribunal could grant such an application if it was satisfied that those grounds were met and that it was just and proper to do so (Rule 12(5)).

9. The Tribunal accepted that the Respondent's slips were inadvertent and he apologised each time they occurred. However they were deeply regrettable. The matters that were being referred to in submissions and evidence contained matters that were very personal to the individual clients, including children. The Tribunal was satisfied that the clients could suffer exceptional hardship and prejudice by having such details aired in public. The Tribunal therefore directed that the hearing take place in private for the duration of the Respondent's submissions and evidence. Following the hearing the Tribunal made a direction that the audio recording of the hearing was not to be released to non-parties without leave of the Tribunal.

Factual Background

10. The Respondent was born in August 1972 and was at all material times the principal of A Bajwa & Co, 39 Gowers Walk, London, E1 8BS ("the Firm"). At the time of the hearing he held a practising certificate for the practice year 2016/2017, free from conditions.

Background to the Allegations

11. In a letter dated 17 August 2015 the Chief Operating Officer of UK Visas and Immigration, Mike Wells had written to the Applicant expressing concern about certain firms of solicitors that had made disproportionately high numbers of claims for Judicial Review ("JR") which had been certified as being 'totally without merit' ("TWM") in immigration and asylum claims.

12. At the material time it was the usual policy of the Home Office, subject to some exceptions, to defer removal directions when the subject made a claim for JR. The Applicant's case was that the effect of bringing a claim for JR, even if the claim was without merit, was that it could prevent the claimant from being removed until their claim for JR was determined.

13. One of the potential reasons for detaining someone under immigration powers was that their removal was 'imminent'. However, the Applicant's case was that if a person who had been detained pending imminent removal brought a claim for JR, that would often mean that their removal was no longer 'imminent'. As a result, bringing a claim for JR could often result in a claimant's release from immigration detention, even when their claim was without merit. In many cases it would not matter if the JR claim was rejected because, by the time it had been decided, the removal would have been cancelled and the claimant released. The Respondent did not accept this analysis.

14. The information provided by the Home Office highlighted that between 5 August 2014 and 20 July 2015, the Firm had submitted at least 14 cases which were certified as TWM. An inspection into the Firm commenced on 6 April 2016. The Firm provided a schedule ("the Firm's Schedule") showing that between 1 April 2015 and 1 April 2016 it had filed 71 claims for JR. Ultimately all 71 were refused

permission. The Firm's Schedule showed that in 53 of the 71 claims permission had been refused and of those 53 refusals, 20 were certified as TWM.

15. The Firm had characterised 14 of the outcomes as a 'success' in the schedule, although only 6 of these involved the Home Office withdrawing the decision under challenge.

Client 1

16. Client 1 was granted entry clearance as a visitor for a period of six months when he was a minor in 2010. On 4 November 2010 Client 1's visa expired. He did not return to Pakistan but overstayed in the UK illegally. In an attendance note dated 27 May 2014 Client 1 was advised by the Firm as to how to make an application for leave to remain. On 29 May 2014 the Firm applied for leave to remain on behalf of Client 1. The Firm asserted that Client 1 had 'severed all ties' with Pakistan, including ties to his father, and that he had moved to the UK to escape his father's neglect. However, no evidence was provided in support of those representations. The evidence attached to Client 1's application merely confirmed that he was a good student who lived with, and was supported financially by his uncle. In a notice of decision dated 12 August 2014 the Home Office refused to grant Client 1 leave to remain.

17. An attendance note dated 10 September 2014 recorded that the Firm advised Client 1 that he had a 'moderate' chance of success if he brought a JR of the decision of 12 August 2014. Client 1 instructed the Firm to bring a JR. In a letter before action dated 19 September 2014 the Firm had argued that Client 1 had a good claim for leave to remain under Article 8 of the European Convention on Human Rights ("ECHR").

18. In a JR claim form filed on 1 December 2014, which was out of time, Client 1 sought to challenge the decision of 12 August 2014. The claim form was signed with a statement of truth by the Respondent. The statement of facts and grounds which accompanied the claim form relied on allegations that had not been supported by evidence, in particular that Client 1 had a family life with his uncle in the UK and had been ill-treated by his father in Pakistan.

19. On 25 June 2015 Upper Tribunal Judge ("UTJ") Rintoul refused permission and certified the claim as TWM. He pointed out that the application was "significantly out of time" and the explanation offered was "wholly insufficient". UTJ Rintoul said that it was 'wholly unarguable' that the Secretary of State had acted unlawfully and the material provided 'gave rise to no prospect of success whatsoever'.

20. In a letter dated 17 October 2016 the Applicant had asked for the Respondent's explanation of his conduct in bringing a TWM claim out of time on behalf of Client 1. The Respondent replied on 2 November 2016 stating that he honestly believed that Client 1's chances of success were moderate. He told the SRA that counsel had not warned that the claim was TWM and he blamed counsel for the claim being filed late, saying it was "regrettable she did not take personal responsibility".

Client 2

21. Client 2 entered the UK on a valid visitor's visa which was to expire on 27 June 2012. On 27 June 2012 Client 2 applied for leave to remain. This application was refused but he was given a right of appeal. Client 2 appealed to the First-tier Tribunal ("FTT"). Client 2 claimed that he was entitled to remain in the UK by reason of Article 8 of the ECHR on the basis of a family life with his parents and siblings in the UK. The FTT dismissed Client 2's appeal on the basis that his right to remain in the UK had always been precarious and there were no obstacles to his returning to Pakistan. Client 2 was refused permission to appeal by the FTT and the Upper Tribunal and his appeal rights were exhausted on 23 September 2013. Client 2 did not return when his appeal rights were exhausted and overstayed illegally.

22. In a letter dated 23 October 2013 the Firm wrote to the UK Border Agency on Client 2's behalf seeking leave to remain outside the Immigration Rules The letter did not advance any material change in circumstances in the month since his appeal rights had been exhausted. Instead, it relied on matters that had been pursued in the appeal, in particular Client 2's family in the UK and the political situation in Pakistan. In a letter dated 3 December 2013 the Home Office refused Client 2's application.

23. In a letter dated 5 August 2015 the Firm made another application for leave to remain on behalf of Client 2. This letter referred to essentially the same matters which had been relied on unsuccessfully in the appeal. In a letter dated 22 October 2015 the Home Office refused this application.

24. Client 2 was detained on 18 November 2015. In an attendance note dated 19 November 2015 the Firm was recorded as having advising him that his chances of success were minimal. On 24 November 2015 the Firm had filed a claim form on behalf of Client 2 which contained a statement of truth signed in the name of the Respondent. The claim form challenged the decision of 22 October 2015 and relied on matters which had been raised before the FTT in 2013. On 8 December 2015 Client 2 was released on bail. On 22 December 2015 UTJ Perkins refused permission and certified the claim as TWM.

25. In a letter dated 17 October 2016 the Applicant asked for the Respondent's explanation of his conduct in bringing a TWM claim out of time on behalf of Client 2. On 2 November 2016 the Respondent replied, blaming the poor quality of the work in this case on the fact that the matter was prepared and dealt with by his father.

Client 3

26. Client 3 was granted entry clearance as a student, under Tier 4 of the Points Based System, valid until 12 April 2013. On 3 February 2011 Client 3 was interviewed on arrival in the United Kingdom and it was discovered that his English was poor. Checks were made with Client 3's Tier 4 sponsor, who withdrew their sponsorship. As a result, Client 3 was refused leave to enter. He appealed that decision to the FTT. The FTT dismissed his appeal and the Upper Tribunal refused permission to appeal. Client 3's appeal rights were exhausted on 6 June 2011. Client 3 did not leave but overstayed illegally.

27. On 21 June 2011 Client 3 failed to report as required to the Home Office and on 19 October 2015 he was arrested. In an attendance note dated 29 October 2015 the Firm recorded the fact that Client 3 had called to inform them that he was detained. Client 3 was advised that his chances of success were 'average'. In a separate attendance note of the same date, the Firm recorded the fact that Client 3 wanted to apply for bail.

28. On 25 November 2015 Client 3 was convicted of battery and sentenced to 6 weeks imprisonment and given a Restraining Order and Protection from Harassment Order which required him not to contact Person C. On 4 December 2015 Client 3 was refused bail. In a claim form filed on 10 December 2015, signed with a statement of truth in the name of the Respondent, the Firm brought a claim for JR on behalf of Client 3, relying principally on his private life with Person C. The grounds also stated that Client 3 'contends that he feels suicidal and depressed'.

29. In a decision sent to the parties on 18 January 2016, UTJ Southern refused permission and certified the claim as TWM. He said that "the grounds advanced are nothing short of fanciful and have no prospect whatever of succeeding, as the professional draftsman of them must surely have recognised".

30. An attendance note of 20 January 2016 recorded a discussion between Client 3 and the Firm where Client 3 instructed that he wanted to pursue the application further "as he could be removed from the UK away from his partner". The note recorded that Client 3 was advised of 'merit/chance of proceedings realistically the case' (sic), although it did not record what prospects Client 3 was assessed as having.

31. On 25 January 2016 the Firm applied for permission to appeal UTJ Southern's decision to the Court of Appeal. The application repeated the arguments in the JR claim form and added a sentence to address UTJ Southern's decision, which read; "The UTJ Southern overlooks this raising an important point of practice and principle to consider the laws relevant in determining a case" (sic). On 2 February 2016 UTJ Southern refused permission to appeal saying: "In refusing permission on the papers, it was said of the grounds... that they were nothing short of fanciful and had no prospect whatever of succeeding, as the professional draftsman of them must surely have recognised. I make precisely the same observation about the grounds for seeking permission to appeal to the COA."

32. In a letter dated 17 October 2016 the Applicant asked for the Respondent's explanation of his conduct in bringing a TWM claim out of time on behalf of Client 3. In a letter dated 2 November 2016 the Respondent replied, stating that the Firm had received instructions from Client 3 that he was 'attempting to reconcile with his partner' and 'hoping that upon his release that he could further improve relations between them and that he could in turn submit possibly a fresh application to the Home Office.'

Client 4

33. On 8 August 2015 Client 4 applied for entry clearance to come to the UK as a visitor with his family. On 13 August 2015 the Entry Clearance Officer ("ECO") refused entry clearance to each member of the family.

34. In an attendance note dated 28 October 2015 the Firm was recorded as having advised Client 4 that "chances are fairly good in terms of merits of case given the applicant's immigration history". The note did not record any advice being given about the need to file the claim for JR within 3 months of the decision.

35. In a letter before action dated 5 November 2015, the Firm wrote on Client 4's behalf challenging the decision to refuse him entry clearance. In a letter dated 16 December 2015 the British Embassy in Dubai responded, pointing out that the letter before action had not addressed the two reasons for refusal. In an attendance note dated 16 December 2016 (but that should possibly have been dated 16 December 2015) it was recorded that the Firm advised Client 4 that the chances of success were 'minimal'.

36. On 20 January 2016 the Firm filed a claim for JR on Client 4's behalf in which the Respondent had signed the statement of truth.

37. On 19 February 2016 UTJ Macleman refused permission and certified the claim as TWM. He noted that the claim was out of time and that the grounds did not "hint at anything wrong" in the reasons given for the refusal of the application.

38. In a letter dated 17 October 2016 the Applicant asked for the Respondent's explanation of his conduct in bringing a TWM claim out of time on behalf of Client 4. In a letter dated 2 November 2016 the Respondent had stated that the delay in bringing the claim for JR was the fault of Client 4 and/or the Home Office, and that Client 4's immigration history suggested he could be trusted to return.

39. By way of a section 44B notice dated 1 March 2017 the Applicant asked the Respondent what advice was provided to Client 4 about the risk that if he waited beyond 13 November 2015 for a response from the Home Office to the letter before action, his claim for JR would be out of time. In a letter dated 10 March 2017 the Respondent replied stating that Client 4 wanted to avoid JR and it seemed sensible not to bring a claim "as my father believed the Home Office may well change their mind". The Respondent explained that there was no attendance note of any conversation between the Respondent's father and Client 4 on the subject of time limits but Client 4 had been spoken to and could set out in writing the advice he had received.

Client 5

40. Client 5's leave to remain in the UK lapsed in 2003 but he had overstayed illegally. On or around July 2014 he was detained pending his removal. He brought a claim for JR of the decision to remove him under his alias name. Efforts to remove him were suspended pending the determination of the claim for JR. Permission was refused on the papers and again at an oral hearing on 20 November 2014. UTJ Warr certified the claim as TWM, saying that the Article 8 claim must fail as any family life in the UK was established at a time when his status was "nothing if not precarious". On 27 November 2014 the Home Office received information as to Client 5's real name. On 29 January 2015 directions were set, in Client 5's real name, for Client 5's removal on 13 February 2015.

41. An attendance note dated 4 February 2015 recorded the advice given to Client 5 as to his chances of success in a JR as being low. On 10 February 2015 the Respondent's father filed a claim for JR in which he signed a statement of truth, giving his position as 'Consultant/Barrister' even though he did not have a practising certificate. The only decision challenged was the removal directions and the claim form asserted that Client 5 was not known by the name which Home Office had been informed was his real name. As a result of this claim for JR, the removal directions were cancelled.

42. On 15 April 2015 UTJ Kopieczek refused permission on the papers, pointing out that the claim was academic as removal directions had been cancelled, the Home Office had material on which they could reasonably conclude that they had Client 5's true name and that, in any event, the facts which underlay the removal decision were not disputed. On 20 April 2015 the Respondent's father, made a request for reconsideration of the application for permission, saying "the claim has not been fully and properly considered in view of Article 8 of the ECHR" even though Article 8 had not been relied on in the claim form. In the part of the application form, he gave his name as counsel. On 18 June 2015 UTJ McWilliam refused permission at an oral renewal hearing.

43. In an attendance note dated 25 April 2016 Client 5 was recorded as wanting to bring a further JR. The note recorded that the Firm again advised that his chances were similar to the previous unsuccessful JR. The Firm filed a claim for JR on behalf of Client 5 and permission was refused.

44. In a letter dated 17 October 2016 the Applicant asked for the Respondent's explanation of his conduct in bringing a TWM claim out of time on behalf of Client 5. In a letter dated 2 November 2016 the Respondent replied, arguing that they had good reason to think that Client 5's true identity was his alias name, not the name which the Home Office had been told was his true name.

Clients 6 & 7

45. Clients 6 and 7 were husband and wife. On 5 March 2008 Client 6 entered the UK with a student visa which was valid until 31 December 2009. Thereafter she overstayed illegally. On 17 February 2009 Client 7 arrived in the UK with a student visa which was valid until 30 June 2012. On 26 June 2012, before his leave expired, he applied for leave to remain as an entrepreneur. On 15 February 2013 his application was refused. He appealed but before the scheduled hearing could take place, the Home Office withdrew the decision under challenge. On 28 January 2015 the Home Office replaced its earlier decision with a decision that Client 7 be removed as someone who had sought leave to remain by deception, because his application for leave to remain relied on an English language certificate ("TOEIC") that had been obtained by deception using a proxy to take the test for him. In the meantime, Clients 6 and 7 had a son born in the UK.

46. On 10 February 2015 the Firm submitted a statement of additional grounds for resisting Client 7's removal. This was treated as an application for leave to remain based on Article 8.

47. On 13 May 2015 this application was refused and certified as "clearly unfounded". In an attendance note dated 9 June 2015 the Firm was recorded as advising that the merits of the case were "average". The Firm sent a letter before action dated 14 July 2015 and the Home Office replied on 24 July 2015. On 11 August 2015 the Firm filed a claim form for JR on behalf of Clients 6 and 7 with a statement of truth signed by the Respondent. The claim alleged that the decision dated 13 May 2015 to refuse Client 7 leave to remain was unlawful because the couple had a child born in the UK and there were insurmountable obstacles to their returning to India. UTJ Rintoul refused permission and certified the claim as TWM. He said that the Home Office was "manifestly entitled" to conclude that the claimants did not meet the Immigration Rules and 'the grounds fail properly to identify why there would even arguably be very significant obstacles to integrating into India, the country of their birth, or why the [Home Office's] conclusion on that matter was irrational." He described 'the application as hopeless. The material provided offered "no prospect of success whatsoever" in any further JR.

48. In a letter dated 17 October 2016 the Applicant asked for the Respondent's explanation of his conduct in bringing a TWM claim out of time on behalf of Clients 6 and 7. In a letter dated 2 November 2016 the Respondent replied, relying on the uncertainty and litigation around TOEIC certificates and the evidence that such certificates had been obtained by deception.

Client 8

49. At a hearing in the Upper Tribunal on 16 September 2015 in a JR brought by the Firm on behalf of Client 8, the Respondent instructed Person B to appear on behalf of the claimant. The Upper Tribunal enquired into whether Person B had a right of audience and it transpired that she did not. The result was that the hearing had to be adjourned. The Respondent took responsibility for instructing Person B and said he had misunderstood the rules which prevented Person B from having a right to address the Upper Tribunal. The Upper Tribunal made a wasted costs order against the Firm.

Witnesses

50. Andrew Bennett (Home Office)

50.1 Mr Bennett confirmed that the contents of his witness statements were true to the best of his knowledge and belief. Mr Bennett had been asked to provide further information about claims made by the Firm. He was asked by the Tribunal whether there were any other cases where a wasted costs order had been made beyond the case of Client 8. Mr Bennett was unable to assist as he was not an expert in that area. The Tribunal explored with Mr Bennett an apparent anomaly in the dates in the data he had produced. It transpired that he had not been able to access data for a particular series of dates and therefore provided data for a different set of dates.

51. Respondent

51.1 The Respondent apologised for not having filed a witness statement, believing that his Answer had sufficed.

Allegation 1.1

51.2 The Respondent told the Tribunal that his father and brother worked together and the Respondent had a separate phone line, email and casework. His father and brother generated their work through their own goodwill and the Respondent did not feed them work. However they all worked in the same open plan office with his father sitting next to him and where he could see and hear his brother.

51.3 The Respondent told the Tribunal that he could not take responsibility for cases that he had not signed off. They were not his clients at any stage. Client 1 had been his client but this was not a detention case. The Respondent oversaw Client 4's case from December 2015 and again this was not a detention case. The Respondent had asked his father to show him his High Court work and the Respondent was not satisfied with what he saw. The grounds had been drafted by his father. Client 5 was a detention case but this was not certified as TWM and the Respondent was not involved in this case as it was one of his father's. Clients 6 and 7 were the Respondents matters but they were not detention cases. Client 15 was a case that the Respondent was involved in but again not a detention case.

51.4 The Respondent told the Tribunal that when preparing the Firm's schedule, cases were put into two categories by him. The definition of success came from the clients. The Respondent had included consent order cases in the category of success even though he did not consider those successes within the ordinary meaning of the term. The Respondent accepted that he had not made this clear in the schedule and that the criteria had not been drawn to the attention of the FIO.

Allegation 1.2

51.5 The Respondent confirmed that he was responsible for Clients 1, 6 and 7. His responsibility for Client 4 had only been at the end of the process. On 28 October 2015 his father had advised Client 4 that his prospects were "fairly good" and on 16 December 2016 the Respondent had advised him that his prospects were "minimal". This reflected the Respondent's intervention into this file and his subsequent recalibration of the advice given. The Respondent had attended a continuing professional development (CPD) course in December 2016 and the lecturer had referred to the need to exercise great care in drafting. It had occurred to the Respondent that he had not read through his father's files. This had been due to his father's experience and the fact that no complaints be made against him.

51.6 In respect of Client 1 the attendance note had recorded "JR chances of success moderate". The Respondent told the Tribunal that this attendance note did not accurately or fully reflect the record of his meeting the client. There was now no handwritten note of the meeting. The handwritten note would have been typed up by the Respondent's secretary. The Respondent told the Tribunal that his secretary may have misread his handwriting, as he would have written "low to moderate" or something similar. The Respondent accepted that he had not mentioned this anomaly in his Answer. The Respondent recalled attempting to dissuade the client from bringing a claim in that meeting. The Respondent drew to the Tribunal's attention and email from Client 1 in which he had confirmed that he did not wish a refund from the Respondent in respect of the case.

51.7 In respect of Clients 6 and 7, the attendance note of 9 June 2015 stated "advised merits of the case as average". The Respondent told the Tribunal that the flavour of the meeting had not come across in the typed attendance note. The client had subsequently confirmed to him that the advice he had been given was that his prospects were fair or low to fair. The Respondent again suggested that this may have been a misunderstanding on the part of the secretary as he was surprised to see the word 'average' in that attendance note. The Respondent confirmed that his secretary was generally accurate and should know his handwriting. The Respondent told the Tribunal that his handwriting was "terrible" and he now used fountain pens and a laptop to overcome this issue. The Respondent referred the Tribunal to letters written by the clients stating that they had not believed their chances to be more than low or, at most, moderate. The Respondent had never put their chances above moderate or fair. It would have been remiss of him to do so.

Allegation 1.3

51.8 The Respondent confirmed that he admitted this Allegation to the extent of Clients 1, 6 and 7 and stated that he could not comment on the remainder of the clients. He told the Tribunal that the classification of TWM was not entirely clear cut and accepted that in terms of figures it looked bad. However he pointed out an example of two detention cases which were identical on the facts, where one JR refusal was deemed TWM and the other where it was not.

51.9 The Respondent believed that the TWM cases would have been the ones run by his father and his brother to a greater extent than his. This was reflected in a drop in the number of such cases from 40% to 17% since 2014/15.

Allegation 1.4

51.10 The Respondent told the Tribunal that he had not been responsible for the drafting of these matters. This had been his father's responsibility, something his father had accepted in his statement. Unfortunately his father was abroad and he had understood from the Applicant that he was not required to attend the hearing. The same applied to his brother.

51.11 In respect of person B attending court, the Respondent took responsibility for failing to verify what she had told him that she had heard about her rights of audience. The Respondent accepted that he should have checked but denied that it amounted to manifest incompetence. It was an oversight and a one-off aberration. The Respondent denied that he had been incompetent but he recognised that he had failed to weigh up his duties properly and that alarm bells should have rung.

Allegation 1.5

51.12 The Respondent again referred to his father's statement and told the Tribunal that he had had no reason to suspect that his father's work was below the required standard. In response to a question from the Tribunal the Respondent confirmed that he and his father would sometimes discuss the refusals that had been received but not the specifics. Because the Respondent's own cases were also being refused there were no alarm bells being rung in respect of his father's work and the Respondent did not see

every single item of post. The Respondent believed that they were being properly drafted but nevertheless being refused. It transpired that his father had written things that he should not have done in his exuberance at passing the bar exams. His father should not have described himself as a barrister and had the Respondent known about it he would have put an immediate stop to it. The Respondent at this point clarified his answer in respect of the seating plans and explained that his father worked in a separate room. It was an open plan office but was divided by glass walls and there was a stud wall between himself and his father. The Respondent apologised for his earlier answer being unclear and told the Tribunal that he had not fully realised the meaning of the term 'open plan'. His father did not sit at the next desk to him but he was still able to hear both his father and his brother as they were very loud.

51.13 In cross examination Mr Dunlop took the Respondent through the sequence of events in respect of Client 1. The Respondent confirmed that Client 1 has entered the UK as a visitor aged 13 and had subsequently overstayed. Four years later he had applied for leave to remain with the Respondents assistance. The Respondent agreed that he had not provided any evidence of mistreatment or of ties having been severed with his family and his country of origin. Client 1 had asserted that he could not live with his father but no documentary evidence had been produced to support that assertion. The Respondent agreed that the refusal did not surprise him. He had gone by his client's instructions. The Respondent accepted that he believed the chances of success of a JR were "exceedingly low" and he did not believe that the court would grant it. The Respondent regretted not putting more clearly in his hand written notes that the advice he had given the client was that his chances were less than moderate. This way it would not have been missed when being typed up, if that was what had happened. The attendance note was an anomaly. Mr Dunlop put to the Respondent that he had exaggerated his prospects of success when advising him in order to encourage him to pay money for representation. The Respondent strongly denied this.

51.14 In respect of Client 2 the Respondent confirmed that this had been an Article 8 appeal in which the client been represented by the Respondent's brother. The appeal had been dismissed and the JR claim was based on the same factors that had been dismissed in the appeal, although the Respondent was not sure if the clients family situation had changed in the interim. Mr Dunlop asked the Respondent if he accepted that the purpose of this JR was to thwart the imminent removal and was therefore abusive. The Respondent told the Tribunal that he believed that his brother had been reckless as to whether the claim was abusive. If he did not know that he should have known. The Respondent denied that it was his signature on the claim form stating that it was his brother's. He was shown another example of his brother's signature and accepted that it looked nothing like it. The Respondent maintained that the signature on the claim form was not his signature. The Respondent was asked whether he had told his brother that it was acceptable to sign a claim form and the Respondent denied that this was the case. He had told his brother that he should not ever sign a claim form but accepted he had not had such a discussion with his father.

51.15 Mr Dunlop put to the Respondent that he had told the SRA in his letter of 30 January 2017, replying to the EWW letter of 17 January 2017, that it was his father who had conduct of Client 2's matter when he was now saying that it was his brother. The Respondent agreed that this was correct. The Respondent also stated that he made an error in the same letter when he had stated that he would have had sight of all the

files and grounds with the application submitted to the Upper Tribunal, when in fact he had not seen those in respect of Clients 2 and 3. Mr Dunlop put to the Respondent that the reality was that he had realised that Client 2's claim was abusive and so he was trying to distance himself from it. The Respondent denied this and stated that he had not been lying, he had simply had a better chance look at the files. He had been under stress at the time and he was realising things even in the course of the hearing that he should have put in. The Respondent regretted the way his statements had been drafted.

51.16 In respect of Client 3 Mr Dunlop again put to the Respondent that this was an abusive claim. The Respondent accepted that it was abusive, albeit with qualification and again stated that his brother had been reckless. Mr Dunlop put to the Respondent that although he was now saying that it was brother who had come into the matter, in his letter to the SRA dated 2 November 2016, responding to a letter of 17 October 2016, he stated "we were instructed…" and this reflected involvement on his own part as well. The Respondent stated that this referred to the Firm and not to him personally. It was pointed out to him that that section of the letter contained no reference to his brother, to which the Respondent stated that it should have done.

51.17 Mr Dunlop put to the Respondent that no competent solicitor could have based a claim on the right to family life when the family in question consisted of an ex-partner who Client 3 had been convicted of assaulting. The Respondent accepted that "it does seem incongruous" but told the Tribunal that he understood that there was the prospect of a reconciliation at the time. The Respondent denied signing the claim form. It was put to him that the reason for this denial was that he was trying to distance himself from it. The Respondent denied this.

51.18 In respect of Clients 6 and 7, the Respondent accepted that their chances had been "extremely low". He also accepted that according to the attendance note they had been described as "average". The Respondent agreed that the term 'average' would imply 'reasonably good'. It was put to him that no competent solicitor could have given such advice. He accepted that "on face value it's terrible" but stated that the attendance note was not a full record. The Respondent had produced an attendance note dated 11 September 2017 of a visit to the Firm's offices by Client 6. That attendance note had included the following:

> "He received a letter regarding refund on 14 August 2017 and has stated that he knew the chances were fair and currently put to him and that is his belief that Mr Azfar Bajwa acted properly to him as a client in his duties as a professional".

51.19 This attendance note had been signed by Client 6. The Respondent said that he had not been present when this meeting took place and the Client 6 had used his own words to explain the position to the secretary. The Respondent had realised that the use of the word "fair" was ambiguous. The client was in fact referring to the Respondent's conduct being fair not his assessment of the merits of Client 6's claim. He had established this during a phone call that took place between himself and Client 6, although he did not have any notes of this conversation. Client 6 had then made the statement dated 17 October 2017 in which he had stated "he suggested that me and my wife do not proceed with my JR as he believed it would be a waste of my

money…" Mr Dunlop put to the Respondent that he had been leading Client 6 away from his own choice of words. The Respondent stated that he had been leading Client 6 into a situation where he could focus his mind on what he meant by the term "fair". The Respondent accepted that it was his signature on the claim form and further accepted that the claim was not properly arguable.

51.20 It was put to the Respondent that the statistics showing the high number of claims were certified as TWM showed a systemic pattern of failing to discharge his duties to the Upper Tribunal. The Respondent denied this and stated that a certain percentage had been consent orders. He accepted that the figure for TWM was too high but maintained that the detention cases were properly brought.

51.21 The Respondent denied that imminent removal was a factor in a decision on bail and that the filing of JR, even without merit, was a device by which to secure bail for clients who would otherwise be lawfully removed. The Respondent accepted that he had badly calibrated the balance between his duty to his clients and his duty to the court. Mr Dunlop put to him that by taking on cases that were not arguable he had sought to give himself a commercial advantage. The Respondent denied this. He accepted he was paid between £500 and £1000 per case but denied that this was the motivation.

51.22 The Respondent accepted that he had made a mistake in trusting his father, believing him to be competent. He denied however that this amounted to a lack of adequate supervision. When he did realise that poor advice had been given he had rectified it. Mr Dunlop asked him why it had taken so long to establish this, the Respondent stated that they had their own casework and he did not monitor their work, referring to his father and brother.

Findings of Fact and Law

52. 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.

53. The Tribunal considered carefully all the documents, witness statements and oral evidence presented. In addition it had regard to the oral and written submissions of both parties.

54. **Allegation 1.1 - He facilitated the abuse of litigation by bringing Judicial Review claims on behalf of clients which he knew were not properly arguable in circumstances where he knew or should have known that the true purpose of the claim was to thwart or delay lawful removal or procure release from lawful detention. This was a breach of any or all of Principles 1, 2, and 6 of the SRA Principles 2011, and a failure to achieve Outcome 5.6 of the Solicitors Code of Conduct 2011 ("SCC 2011");**

Applicant's Submissions

54.1 Mr Dunlop told the Tribunal that this Allegation specifically focussed on those claims in respect of individuals in detention and/or facing imminent removal. He submitted that a solicitor had to be careful that they were not facilitating abusive claims, which had no merit. The true purpose of the claims brought by the Respondent was to thwart lawful, imminent removal and/or to procure the clients' release from lawful detention. Mr Dunlop referred the Tribunal to SRA v Ip Case No 11615-2017 in which the Tribunal had been satisfied that failing to discharge duties to the Court in this way could amount to professional misconduct. The failure to act as a filter for JR claims put pressure on the system. At [144] the Tribunal had noted:

> "It undoubtedly contributed to the burden on the Upper Tribunal and the operation of the immigration system generally. There was a risk that where resources were diverted to dealing with matters such as the five in this case, other cases which required proper argument and consideration by the Court could be allocated insufficient resources."

54.2 The Respondent was the owner and the only enrolled solicitor in the Firm. He was therefore the only person in the Firm qualified to sign the statement of truth in a JR claim form and he was therefore responsible for ensuring each claim form complied with the appropriate legal requirements.

54.3 On the Respondent's own analysis, in the period between 1 April 2015 and 1 April 2016, the Firm filed 19 claims for JR on behalf of clients who were faced with lawful, imminent removal and/or were in detention pending removal, none of which were found to be arguable. In 14 of the 19 cases, the filing of the claim thwarted lawful removal and/or procured the client's release from detention. This was reflected in his definition of a 'success' not being the success of the claim but if it prevented removal and/or led to release.

54.4 The Respondent had said that he did not know the claims were abusive. Mr Dunlop submitted that this was difficult to believe but even if true, it still amounted to a lack of integrity. If the Respondent realised there was a risk that the claims were abusive and proceeded anyway, this was a reckless disregard for his professional obligations. Mr Dunlop referred the Tribunal to Scott v Solicitors Regulation Authority [2016] EWHC 1256 in which it was held that lack of thought could amount to lack of integrity. If it never occurred to the Respondent that there was an ethical risk that in itself demonstrated a lack of moral compass and thus a lack of integrity.

54.5 It followed from this that a breach of Principle 6 had arisen as the trust the public placed in the profession was undermined by abusive JR claims. The Respondent had breached his duty to the Court by not acting as a filter in respect of meritless claims.

54.6 The Respondent must have known that Client 2's claim was not properly arguable because it was based on essentially the same matters which had been raised before the First Tier Tribunal in 2013. The Respondent either knew or recklessly disregarded the fact that Client 2's real purpose in bringing the claim was to thwart lawful removal and/or procure release. It was no defence to say that the claim form was drafted by his father. The Respondent was the responsible solicitor and he had signed the

statement of truth in the claim form confirming his belief that the facts stated in the claim form were true. He must therefore have read the claim form.

54.7 The Respondent must have known that Client 3's claim for JR, and his appeal against the refusal of permission, were not properly arguable. No competent immigration solicitor could have considered it arguable that the removal of an illegal overstayer was a breach of Article 8 on the basis of a private life with a 'partner' who the claimant had assaulted was prevented from contacting by court order. The assertion of mental illness was unsupported by evidence. The Respondent had either known or had recklessly disregarded the fact that Client 3's real purpose in bringing the claim was to thwart removal and/or procure release.

54.8 In facilitating abusive claims the Respondent had failed to uphold the rule of law as he was thwarting lawful removal and wasting the time of the Upper Tribunal, with the result that other, more meritorious cases would be delayed.

Respondent's Submissions

54.9 The Respondent referred the Tribunal to his evidence in relation to this Allegation.

54.10 The Respondent submitted that for a claim to amount to an abuse of process it would need to be:

a) TWM; and

b) Its true purpose would have to be purely to secure a client's release on bail.

54.11 In the detention cases that the Respondent had worked on there had been other elements to those cases. The Respondent submitted that the lodging of JR did not automatically result in bail being granted as immigration judges at bail hearings were not naive and could see whether a JR was abusive and when it was not. If bail was to be refused the fact of an existing JR could in fact amounted to an additional punishment for the client. The Firm had not sought interim orders. The Respondent had put consent orders in the same category as successes in that they served a purpose. He reiterated his evidence that they were not what he considered successes.

The Tribunal's Decision

General Observation

54.12 The Tribunal found that the Respondent's approach to these proceedings had not been helpful. In particular the failure to comply with directions concerning service of witness statements, which were due to be filed and served by 3 October 2017, had resulted in the Respondent not filing a witness statement of his own.

54.13 The way in which the Respondent had given evidence had been discursive, inconsistent and lacked credibility. He had dissembled and when he had finally given answers to key questions those answers had been unhelpful to him.

54.14 The Respondent had not served any notices pursuant to the Civil Evidence Act 1995 nor had he challenged any of the evidence from the Applicant prior to the hearing. There had been inconsistencies between his replies to the SRA and his oral evidence. He had raised matters for the first time during the course of his evidence, including a challenge to the authorship of signatures which had not previously been raised as a point of dispute. A significant portion of his evidence involved attributing blame for the failings to his father and his brother. They had not been called to give evidence and he produced no evidence to support his assertion that the solicitors for the Applicant had told him not to bring them to the hearing. The Respondent was an experienced litigator and should have known the procedure well enough to have arranged their attendance. In circumstances the weight attached the evidence of the Respondents father and brother was very low.

54.15 The Respondent's explanation about Client 6's use of the word "fair" and the circumstances in which the attendance note was at variance with the witness statement, namely that the client had confused fairness of treatment with fair prospects of success, was nonsensical. The terms "average" and "fair" were much the same. The telephone call in which this asserted misunderstanding came to light and was resolved was not corroborated by any sort of note but was followed by an exculpatory witness statement from Client 6. The Respondent had raised the issue of secretarial skills, particularly when dealing with difficult questions in relation to attendance notes, for the first time in his evidence. The Tribunal found it very unfortunate that the Respondent had chosen to blame his secretary in this way. The Tribunal also noted that the Respondent had appeared to blame Person B for the circumstances leading to the situation in which she was sent to court without rights of audience. At every turn the Respondent had tried to blame others for matters which were his responsibility.

Findings on Allegation 1.1

54.16 The Tribunal confined itself to consideration of 'detention cases' – that is cases in which a JR claim was made in respect of a client who was in detention and/or facing imminent removal. The bringing of litigation in circumstances where a solicitor knows that the grounds advanced are not properly arguable was capable of amounting to an abuse of litigation. It was clear from R (On the Application of Grace) v Secretary of State for the Home Department [2014] EWCA Civ 1091 that the concept of TWM arose out of a desire to reduce the time taken up by the Courts in dealing with hopeless claims. The letter from Mike Wells at UK Visas and Immigration dated 17 August 2015 to Paul Phillip of the SRA had referred to that case and expressed concerns about the number of meritless claims being lodged.

54.17 In relation to detention cases, there was a clear causal link between the lodging of a JR and the activation of removal directions. Chapter 60 of the Enforcement and Instructions Guidance in force at the time stated in Section 4.1 (Deferral of Removal) that "The Home Office will normally defer removal where a JR application is made…". This in turn has a significant bearing on the decision to detain. Chapter 55 of the Enforcement and Instructions Guidance (current version) lists, at section 55.3.1 some of the 'Factors influencing a decision to detain'. The first factor identified is "What is the likelihood of the person being removed and, if so, after what timescale". The Tribunal was therefore satisfied that there was a causal link between the lodging

of a JR application and the deferral of removal, possibly triggering a release from detention. This would be regardless of the merits of the JR application and provided a potential incentive to file a meritless claim. That was not the proper purpose of JR proceedings and to utilise the system in this way had a clear potential to be abusive.

54.18 The question for the Tribunal was therefore whether the Respondent had facilitated such an abuse. The claims had been issued in the Firm's name and he was the only individual at the Firm who was permitted to sign the claim forms. He had told the SRA in his letter of 30 January 2017 that he "would have had sight of all the files and grounds with the application submitted to the Tribunal except for [Client 5] and would have seen incoming post for all of them". In that letter he had stated that his father had been responsible for conduct of the matters identified. This was contradicted by his evidence in which he had stated that it was his brother.

54.19 The Respondent had disputed that it was his signature on the forms relating to detention cases. This suggestion had not been raised before and was not supported by any evidence from a handwriting expert, his father or his brother. The Respondent's own evidence was not credible.

54.20 The Tribunal was satisfied beyond reasonable doubt that the Respondent had facilitated the abuse of litigation in circumstances where he knew that the true purpose of the claim was to thwart or delay lawful removal or procure release from detention. This was an obvious breach of Principle 1, which required solicitors to uphold the rule of law and the proper administration of justice. It followed as a matter of logic that the Respondent had failed to achieve Outcome 5.6.

54.21 The Tribunal applied the definition of integrity set out in Hoodless and Blackwell v FSA [2003] UKFSM FSM007 in which it had been held at [18] that "In our view 'integrity' connotes moral soundness, rectitude and steady adherence to an ethical code". A solicitor of integrity would not lodge claims for JR that were ostensibly intended to challenge an unlawful decision when in reality the purpose was to secure a result for a client that could not be achieved by legitimate means. The conduct that the Tribunal was dealing with here was clearly not consistent with steady adherence to an ethical code. The Tribunal was satisfied beyond reasonable doubt that the Respondent had acted without integrity in breach of Principle 2.

54.22 The trust the public placed in the profession could not be maintained in the circumstances set out above and the Tribunal was satisfied beyond reasonable doubt that the Respondent had breached Principle 6.

54.23 The Tribunal found Allegation 1.1 proved in full beyond reasonable doubt.

55. **Allegation 1.2 - He misled Clients 1, 4, 6 and 7 that their claims for Judicial Review had some prospects of success when the Respondent knew that the claims were not properly arguable. This was a breach of any or all of Principles 2, 4, 5 and 6**

Applicant's Submissions

55.1 Client 1 did not have a 'moderate' prospect of success and the Respondent could not have thought that he did. The Respondent did not correct that advice, even though there was no evidential support for the assertions on which the claim relied, namely that Client 1 had 'severed all ties' with Pakistan, including ties to his father, that Client 1 had moved to the UK to escape his father's neglect and that Client 1 had a family life in the UK. Mr Dunlop submitted that a solicitor had duty to check Counsel's grounds before submitting an application to the Court. Mr Dunlop submitted that the Respondent, in providing misleading advice, demonstrated a lack of integrity in that he failed to adhere steadily to an ethical code.

55.2 Clients 6 and 7's case was hopeless in light of the fact that they had overstayed illegally and there were no obstacles to their returning to India. It was impossible to see why the Respondent had advised that it was average. Mr Dunlop submitted that the term 'reasonable' must mean more than very low.

55.3 Mr Dunlop accepted that matters were not quite as clear-cut in respect of Client 4 as the advice given to the client did change and he was advised that he had a minimal prospect of success.

55.4 The Applicant's case was that the misleading advice had been given in order to obtain instructions and payments from the clients.

Respondent's Submissions

55.5 The Respondent referred the Tribunal to his evidence in relation to this Allegation. The Respondent submitted that he made his advice very clear and his incentive was not financial. He had tried to dissuade clients from bringing actions that were without merit and many had indeed been dissuaded. In the case of Client 4 he had revised the advice that had been given by his father. He had never had a complaint about his integrity or his transparency and he had never misled clients.

The Tribunal's Decision

55.6 This Allegation concerned Clients 1, 4, 6 and 7. The Respondent acted for each of these clients.

55.7 The Tribunal attached very little weight to the evidence provide by way of the letter and email sent by Client 1 concerning the advice he received in this matter. The client had not been called to give evidence and the discrepancy between what was apparently being said now and the contemporaneous attendance note could not therefore be explored.

55.8 The attendance note of 10 September 2014 was clear. The heading stated "Nature of discussion/Points raised/Points agreed/Advise (sic) given". It set out the basis of Client 1's claim and concluded with the words "JR chances of success moderate". It was clear from the subsequent Judgment of UTJ Rintoul that there was "no prospect of success whatsoever". This was on the basis that none of the assertions being made had been supported by evidence or even put forward in the initial application.

55.9 The Respondent's evidence had been that he had made handwritten notes of the meeting which may have contained the phrase "low to moderate" or something similar and that this may have been mistyped by his secretary. The Tribunal, had it accepted that evidence, would have found that even the words "low to moderate" would have been misleading. However the Tribunal did not accept the Respondent's evidence on this point due to the inconsistencies in his account and the late suggestion, without any evidence, that the secretary may have been blame. The Tribunal was satisfied beyond reasonable doubt that the Respondent had advised Client 1 that the prospects of success were moderate and that he knew this to be misleading as they were in fact negligible.

55.10 In respect of Client 4 there was a lack of clarity regarding the dates of the advice being given in relation to the claim being lodged. This was due to a possible typographical error on the Attendance Note reflecting the revised advice, which was dated 16 December 2016. The Grounds for Permission for JR claim was dated 15 January 2016 and permission was refused on 19 February 2016. It was likely that the Attendance Note should have been dated 16 December 2015.

55.11 The more relevant matter was the fact that the Respondent clearly had given the correct advice at some stage during the period in which the Firm was instructed, namely that the prospects were "minimal". It was likely that this was after the pre-action protocol letter dated 5 November 2015 but before the issuing of proceedings on 20 January 2016.

55.12 The Tribunal found that this was an accurate description of Client 4's prospects. The previous attendance note in September 2015 had indeed been completely misleading. However in view of the Respondent's correction of that advice, which may have been provided by his father or brother, the Tribunal found that in respect of Client 4, this Allegation was not proved.

55.13 In respect of Clients 6 and 7 the attendance note of 9 June 2015 stated "Advised merits of the case as average". The Tribunal interpreted "average" in the normal way, which was to say that it meant "reasonable". The Respondent had himself accepted this interpretation. The prospects were clearly not "average" – indeed they were "hopeless" according to UTJ Rintoul. The Judge had considered that "it cannot rationally be argued that on any legitimate basis that any appeal against the decision could succeed...." The Respondent's case in respect of Clients 6 and 7 was in similar terms to his case concerning Client 1. The Tribunal again rejected the Respondent's evidence in relation to the suggested secretarial failings for the reasons set out above. It also rejected the apparent evidence of Client 6 for reasons set out at the beginning of these findings. The Tribunal was satisfied beyond reasonable doubt that the Respondent had advised Clients 6 and 7 that their prospects were average and that he knew this to be misleading as they were in fact negligible.

55.14 The Tribunal found that in misleading clients to the effect that their claims would have some prospect of success when in fact he knew they were unarguable the Respondent had lacked integrity. It was a fundamental duty of a solicitor to give sound advice to a client. These were not borderline cases where he had advised a moderate prospect of success and had then been unsuccessful after full legal argument at a hearing. The chances of success had been non-existent and the Respondent knew

that. The Respondent was clearly capable of identifying such cases as he had recognised that Client 4's prospects were minimal. The gulf between the advice and reality was such that it could not be discounted as simple over-optimism on the part of the Respondent. In giving such advice the Respondent had failed to adhere to an ethical code which required frank and accurate advice to be given to clients before embarking on legal proceedings. The Tribunal found beyond reasonable doubt that the Respondent was in breach of Principle 2.

55.15 It could never be in the best interests of clients to be given misleading advice, nor could it be consistent with a proper standard of service. The Tribunal found the Respondent to have breached Principles 4 and 5 beyond reasonable doubt.

55.16 As a matter of logic, taking all the above factors into account, the Tribunal found beyond reasonable doubt that the Respondent's conduct had failed to maintain the trust the public placed in the provision of legal services and he had breached Principle 6.

55.17 The Tribunal found Allegation 1.2 proved beyond reasonable doubt in respect of Clients 1, 6 and 7 and not proved in respect of Client 4.

56. **Allegation 1.3 - He breached his professional obligation to the Upper Tribunal not to make submissions that he did not consider were properly arguable. This was a breach of Principles 1, 2 and 6 and a failure to achieve Outcome 5.6**

56.1 Mr Dunlop told the Tribunal that this Allegation went wider in scope than Allegation 1.1 in that it was not limited to detention/imminent removal cases.

56.2 The Respondent owed a duty to the Upper Tribunal to satisfy himself that his submissions were properly arguable. The Respondent had deliberately breached or recklessly disregarded this duty when he signed the claims forms for Clients 1-4 and 6 and 7. He had made an application for permission to appeal against the decision in respect of Client 3 when he knew or recklessly failed to have regard to the fact that the appeal was not properly arguable.

56.3 The Respondent's conduct had the effect of obstructing the administration of justice by wasting the time of the Upper Tribunal, with the consequence that other cases would be delayed

56.4 The Respondent's conduct amounted to a lack of integrity as he had taken on cases in order to receive payment, when he knew or recklessly disregarded the fact that the cases were not properly arguable. This diminished the trust which the public placed in the Respondent, the Firm and the legal profession.

56.5 The Tribunal was referred to R (On the Application Of Akram & Anor) v Secretary of State for the Home Department [2015] EWHC 1359 (Admin). At [2] of that judgment the Court had stated "There is a pressing need for legal representatives acting for claimants in JR proceedings to do so in a professional manner both towards their clients but also towards the Court, bearing in mind that the paramount duty of all legal representatives acting in proceedings before courts is to the Court itself".

Respondent's Submissions

56.6 The Respondent had admitted this Allegation in respect of Clients 1, 6 and 7. The admission was qualified to the extent set out in his evidence in relation to this Allegation.

The Tribunal's Findings

56.7 This Allegation went further than Allegation 1.1 in that it was not limited to cases where the clients were in detention and/or facing imminent removal.

56.8 The Respondent had admitted this Allegation in respect of Clients 1, 6 and 7 as he had personal conduct of those matters. The Tribunal was satisfied that these admissions were properly made.

56.9 In Akram, the Court had been unequivocal as to the need for great care to be taken by firms. The JR claims had been signed either by the Respondent or, at the very least, on his behalf. The suggestion that the Respondent may not have signed all of them had been raised at a very late stage and was unsubstantiated by any evidence. The Tribunal did not need to make a finding on that point as it was not relevant. The Respondent was the Principal at the Firm and was the sole person permitted to sign a statement of truth and even if he had not personally signed all the forms, he was nevertheless responsible for them having been signed. Further, he had told the SRA that he "would have had sight of all the files and grounds within the application submitted to the Upper Tribunal except for [Client 5] and would have seen incoming post for all of them". The Tribunal was satisfied that the Respondent knew of the claims and their grounds regardless of whether or not he physically signed them.

56.10 None of the claims in the exemplified cases before the Tribunal were properly arguable. They were variously found to be; "wholly unarguable" and "totally without merit" (Client 1); to "wholly fail to make out a case that the [Secretary of State] ought to have allowed the application…" (Client 2) and "hopeless" (Clients 6 and 7).

56.11 In the case of Client 3, the Tribunal noted the comments of the Judge who described the grounds as "nothing short of fanciful and had no prospect whatever of succeeding, as the professional draftsman of those grounds must surely have recognised". The Tribunal agreed with those observations. The facts of Client 3's case were stark. The client had overstayed for a number of years and had then been convicted of battery in a domestic context, for which he received a custodial sentence. The basis of the claim had been his private life with the very person whom he had been convicted of assaulting and in relation to whom there was a Restraining Order. The references in the claim to mental health issues were entirely unsupported by evidence. This was a very obvious example of claim being unarguable and the Respondent would have known that, indeed it was a matter of common sense.

56.12 The Tribunal found beyond reasonable doubt that the Respondent had breached Principles 1, 2 and 6 and failed to achieve outcome 5.6 for the same reasons as set out in relation to Allegation 1.1. In addition, even without the element of detention, imminent removal and bail, these principles had still been clearly breached owing to

the Respondent and his Firm filing multiple claims that were TWM. The scale of the claims was apparent from the Respondent's own schedule of cases.

56.13 The Tribunal found Allegation 1.3 proved in full beyond reasonable doubt.

57. **Allegation 1.4 - Allegations 1.1 to 1.3 above were pleaded on the basis that the Respondent knew or recklessly disregarded the fact that at least some of the totally without merit claims he brought were not properly arguable. In the alternative, if the Respondent considered that all or any of those claims were properly arguable, he was manifestly incompetent in bringing these claims. This was a breach of any or all of Principles 1, 5 and 6 and a failure to achieve any or all of Outcomes 1.2, 1.4 and 1.5**

57.1 The Tribunal had established that this Allegation was an alternative to the matters that formed the basis of Allegations 1.1-1.3. The Tribunal had found those matters proved and in the circumstances it was not required to make findings in respect of Allegation 1.4.

58. **Allegation 1.5 - He failed adequately to supervise unadmitted fee earners in his firm. This was a breach of Principles 6 and 8 and a failure to achieve any or all of Outcomes 7.6, 7.7 and 7.8.**

Applicant's Submissions

58.1 Mr Dunlop submitted that the Respondent had demonstrated a worrying ignorance of his responsibilities. He was the only person qualified to sign a statement of truth. Mr Dunlop submitted that a solicitor must satisfy themselves when signing a statement of truth that what is contained in the document is properly arguable. The Respondent had failed to take responsibility even at this stage. The particular failings included;

- Allowing the Respondent's father to draft JR claim forms containing contentions that were not properly arguable;
- Allowing a situation to arise whereby the Respondent's father had held himself out as a barrister when he had no practising certificate;
- Allowing a situation to arise where the Respondent's father had signed an application for renewal of the application for permission and held himself out as counsel although he had no rights of audience or practising certificate;
- Failing to adequately to supervise Person B by allowing her to appear as an advocate for Client 8 when she had no rights of audience.

Respondent's Submissions

58.2 The Respondent referred the Tribunal to his evidence in relation to this Allegation. The Respondent submitted that he had had no reason to doubt the quality of the work being undertaken by his father or brother and he had intervened before the SRA investigation took place. They were clearly guilty of manifest incompetence which he

blamed on age and complacency. The Respondent accepted that he was responsible for submitting the claims accepted that some of them should not have been put forward. The Respondent submitted that this did not amount to a lack of adequate supervision. He told the Tribunal that he had a very good system in place, which he had refined further in 2016 before the SRA visit.

The Tribunal's Findings

58.3 The Respondent, in the course of his evidence, had told the Tribunal that his father and his brother had been guilty of manifest incompetence. This had been evident in poor drafting, the giving of poor advice, his father wrongly signing a statement of truth as a barrister and his brother signing a statement of truth when he had no right to do so while being reckless as to whether JR claims were abusive. In the circumstances the Tribunal rejected the Respondent's evidence that he had "a very good system". There had been contradiction in the Respondent's evidence as to the exact proximity in the office between his workstation and that of his father and brother. The Tribunal did not need to determine that point however, as adequate supervision did not depend on the location of desks but on the systems in place to ensure that supervision could be effective. The very fact that multiple claims that should never be made or lodged with the upper Tribunal demonstrated that whatever supervision structures the Respondent had in place had been completely ineffective. The Tribunal accepted that in respect of Client 4 the Respondent had intervened to correct poor advice but this appeared to have been the exception to the rule.

58.4 In respect of Person B, the lack of supervision was evident in the fact that Person B had attended a hearing when she had no rights of audience. It was the Respondents responsibility to have ensured that person B had a correct understanding as to the areas of work she was permitted to undertake and those that she was not. This was part of his role as supervisor and he should not have accepted her explanations, if indeed they were provided as described, without satisfying himself directly that Person B's understanding was correct.

58.5 The Tribunal was satisfied beyond reasonable doubt that the Respondent had failed to adequately supervise unadmitted fee earners in the Firm. This was clearly inconsistent with both running his business and carrying out his role in the business effectively and in accordance with proper governance and sound financial and risk management principles. The Tribunal found beyond reasonable doubt that the conduct was in breach of Principle 8 and Outcomes 7.6, 7.7 and 7.8.

58.6 The trust the public placed in the legal profession depended to a large extent on the way firms were operated and a key part of that was the way in which individuals in a firm were supervised. The Respondent's failures to adequately supervise the individuals referred to above undermined that trust the Tribunal was satisfied beyond reasonable doubt that the Respondent was therefore in breach of Principle 6.

58.7 The Tribunal found Allegation 1.5 proved in full beyond reasonable doubt.

Previous Disciplinary Matters

59. On 10 February 2010 the Respondent had been ordered to pay a fine of £2,000, and he had been further ordered that he be jointly and severally liable with a co-Respondent to pay costs in the sum of £7,500. This followed the Tribunal having found one allegation proved against the Respondent, namely that he, together with two co-Respondents had entered into a sham agreement pursuant to which one of the co-Respondents was held out as a partner and principal of the firm of A Bajwa & Co, when that firm was in reality controlled by this Respondent. The Respondent had admitted the allegation.

Mitigation

60. The Respondent told the Tribunal that the previous case related to the time when the Firm was first set up. It was a technical matter relating to the improper formation of the partnership.

61. In relation to the current matters the Respondent told the Tribunal that the Firm prided itself on its work and the fact that the source of clients was word-of-mouth. Work was undertaken at a fixed rate and the Firm continued to provide a good service to its clients. The Respondent referred the Tribunal to completed questionnaires from clients indicating their satisfaction service they had received. There had been a substantial reduction in the amount of JR work done by the Firm and a further risk factor that had been reduced going forward was the fact that the Respondent's father and brother were going in a separate direction from the Respondent and they would no longer be working together. The Respondent's hope was that the prospects of any repeat of the mistakes that had taken place were minimal, if not zero. The Firm now outsourced much of this work and obtained counsel's advice at an early stage.

62. The Respondent told the Tribunal that he had never had a complaint made by a client to the SRA and he was particularly upset by the Tribunal's finding in relation to Allegation 1.2 as he had never lied to his clients. He told the Tribunal that supervising his father and brother had clearly been difficult and he had learned lessons. The Respondent was hoping to go back to running a small practice, as it had been initially, so that he could keep a close eye on what was going on and take personal responsibility.

Sanction

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

64. In assessing culpability, the Tribunal found that the Respondent to be motivated by desire to grow his business. The filing of unarguable and abusive claims was part of a pattern designed to, in particular in relation to detention cases, secure a result for a client that could not otherwise have been legitimately achieved. This was clearly planned. The misleading of clients was part of that pattern and again was planned rather than spontaneous. While the Tribunal recognised that there were no complaints

before it from clients, the fact remained that clients trusted solicitors to provide accurate advice and that trust had been breached in this case by misleading advice having been supplied on more than one occasion. The Respondent has direct control and responsibility for the circumstances giving rise to the misconduct based on his status as principal of the practice. He was an experienced practitioner.

65. In assessing harm the Tribunal considered that the Respondent's actions had a significant impact on the judicial system and on the public purse. The harm caused to the reputation of the profession by such conduct was severe.

66. The misconduct was aggravated by the fact that it was deliberate and repeated and had taken place over a period of approximately two years. The Tribunal noted that clients in the immigration system are often very vulnerable due to various factors, a point identified in Akram. The Respondent knew that he was in material breach of his obligations. The Tribunal also noted that he had been before the Tribunal on a previous occasion when he had admitted misconduct in the setting up of the Firm.

67. In mitigation, the Tribunal acknowledged that the Respondent had offered refunds to some clients and had cooperated with the SRA. The Tribunal also took into account of what the Respondent had said in mitigation. The Tribunal was concerned by the Respondent's lack of insight into his misconduct, reflected in the fact that his admissions were generally limited and he had tended to blame his misconduct on the failings of others. He had not taken responsibility despite his role as principal.

68. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the Respondent. In Solicitors Regulation Authority v Emeana, Ijewere and Ajanaku [2013] EWHC 2130 (Admin) at [25] Moses LJ had stated "The profession of solicitor requires complete integrity, probity and trustworthiness. Lapses less serious than dishonesty may nonetheless require striking off, if the reputation of the solicitors' profession "to be trusted to the ends of the earth" is to be maintained." This was a reference to Bolton v The Law Society [1994] 1 WLR 512 in which Sir Thomas Bingham MR (as he then was) stated "Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed on him by the Solicitors Disciplinary Tribunal".

69. The Tribunal considered a suspension for a fixed period. In this case the Respondent's misconduct involved failing to discharge his professional duties to the court and to his clients, including failing to act with integrity or uphold the rule of law. This was misconduct at the highest level which had manifested itself on multiple occasions over an extensive period. He had displayed no insight into this and a suspension was therefore insufficient in all the circumstances. The only appropriate sanction was a Strike Off. The protection of the public and of the reputation of the profession demanded nothing less and indeed required reassurance that such serious breaches of professional ethics would be dealt with proportionate and appropriate severity.

70. The Tribunal considered carefully whether there were any exceptional circumstances that would make such an order unjust in this case. The Tribunal found there to be nothing that would justify the imposition of an indefinite suspension. The only appropriate and proportionate sanction was that the Respondent be struck-off the Roll.

Costs

71. Mr Dunlop applied for costs in behalf of the Applicant in the sum of £47,835.05. The Tribunal was not satisfied that the costs schedule served provided sufficient detail of the work done, nor did it explain how the fixed fee had been arrived at. The Tribunal could not carry out a summary assessment of costs, as it was being invited to do, without knowing how much work had been done. The investigation costs relating to Sarah Taylor (the FIO) were clarified as being £3,961.65.

72. In terms of the work undertaken by the solicitors for the Applicant, Mr Dunlop told the Tribunal that 139.9 hours had been spent on this matter and if the fixed fee was divided by the number of hours this equated to an hourly rate of £166.25. If an hourly rate of £140 was applied to the number of hours the overall costs claimed by the Applicant would be £41,180.15.

73. The Respondent did not make any detailed submissions on costs other than to observe that there were two entries for 30 hours of work.

74. The Tribunal, having found the majority of the matters proved against the Respondent, decided that there should be a costs order in favour of the Applicant. The Tribunal agreed to carry out a summary assessment as invited by the parties and took the starting point as being £41,180.15. The Tribunal noted that the majority of the work in this case appeared to have been undertaken by Mr Dunlop and therefore there appeared to have been an element of duplication in terms of perusing and drafting. The Tribunal deducted approximately 30 hours from the calculation. Taking all matters into account and having regard to what was reasonable and proportionate, the Tribunal decided that the appropriate figure was £37,500. The Respondent had not filed a statement of Means nor had he invited the Tribunal to take account of his means in the course of submissions costs. The Tribunal therefore ordered that the Respondent pay the Applicant's costs fixed in the sum of £37,500.

Statement of Full Order

75. The Tribunal Ordered that the Respondent, AZFAR NASEEM BAJWA, 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 £37,500.00.

Dated this 13th day of December 2017
On behalf of the Tribunal

A. N. Spooner
Chairman