SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11712-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

DRAKENS EJOVI MUKORO — First Respondent
GANS & CO SOLICITORS LLP — Second Respondent

Before:
Ms N. Lucking (in the chair)
Mr M. Jackson
Mr S. Marquez

Date of Hearing: 25 – 29 June 2018

Appearances

Andrew Bullock, barrister employed by the Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

The First Respondent represented himself.

Jeremy Barnett, counsel of Gough Square Chambers, 6-7 Gough Square, London EC4A 3DE for the Second Respondent

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JUDGMENT

Allegations

1. The allegations against the First Respondent made by the Solicitors Regulation Authority ("SRA") were that:

1.1 Between September 2011 and May 2015, he knowingly caused payments to be claimed in the minimum sum of £11,160.00 from the Legal Aid Agency ("the LAA") in respect of hearings before the First Tier Mental Health Tribunals ("FTT hearings") which had not taken place as described in his files, and therefore breached either or both of :

1.1.1 Principle 2 of the SRA Principles 2011 ("the Principles"); and

1.1.2 Principle 6 of the Principles

1.2 Between September 2011 and May 2015, by altering and/or adding documents to files to make claims to the LAA appear to have been legitimately claimed when he knew they were not, he breached either or both of :

1.2.1 Principle 2 of the Principles; and

1.2.2 Principle 6 of the Principles.

2. The allegations against the Second Respondent, Gans & Co Solicitors LLP ("the Firm") made by the SRA were that:

2.1 Between September 2011 and May 2015 it failed to have in place any or adequate systems for the supervision of client matters being conducted by the First Respondent and therefore breached or failed to achieve all or any of:

2.1.1 Principle 6 of the Principles;

2.1.2 Principle 8 of the Principles;

2.1.3 Outcome 7.2 of the SRA Code of Conduct 2011 ("the Code"); and

2.1.4 Outcome 7.8 of the Code

3. While dishonesty was alleged against the First Respondent with respect to the allegations at paragraphs 1.1 and 1.2 proof of dishonesty was not an essential ingredient for proof of any of the allegations

Documents

4. The Tribunal reviewed all the documents submitted by the parties, which included:

- Notice of Application dated 6 September 2017
- Rule 5 Statement and Exhibit EP1 dated 6 September 2017
- First Respondent's Answer dated 10 October 2017
- Second Respondent's Answer dated 18 October 2017

- Applicant's Reply to the Answer of the First Respondent dated 3 November 2017

Preliminary Matters

5. Application to set aside a witness summons

5.1 The First Respondent had obtained witness summonses in relation to Darren Chamberlain and John Armstrong, both of whom were employed by the LAA. Michael Rimer, a senior lawyer at the LAA attended the hearing to apply for the summonses to be set aside. Prior to his attendance, the First Respondent had agreed that, in light of answers provided to a number of questions, he no longer required Mr Chamberlain to attend the hearing.

5.2 The First Respondent confirmed that the only questions he had for Mr Armstrong were whether a person who was self-employed or freelance could be a supervisor under a LAA Mental Health contract. Mr Armstrong was also to be asked to confirm that only an employee of the firm could be a Supervisor and accordingly to confirm that a self-employed person could not be a supervisor. Mr Rimer applied to set the summons aside on the basis that Mr Armstrong would be unable to answer those questions as they were matters of contractual interpretation.

5.3 The Tribunal considered the questions the First Respondent wished to ask Mr Armstrong in the context of the allegations he faced. The Tribunal found that the questions, and any potential answers, were not relevant to the issues in the case. Accordingly, the application to set aside the witness summons in relation to Mr Armstrong was granted. The application to set aside the witness summons in relation to Mr Chamberlain was granted on the consent of the parties.

6. Application by the First Respondent to set aside the witness summonses in relation to Emmanuel Ganiga (EOG) and Yvonne Munu

6.1 The First Respondent had obtained witness summonses for the above named witnesses. Both the Applicant and the Second Respondent objected to those witnesses being called as it seemed that the First Respondent wished to cross-examine both of those witnesses. The First Respondent, on further consideration of his application, decided that he no longer required either witness to attend. Accordingly, the Tribunal set aside the witness summonses of both witnesses on the application of the First Respondent.

7. Application by the Applicant to amend the Rule 5 Statement

7.1 Mr Bullock applied to amend a minor error in the Rule 5 Statement which referred to "other dates in the form" when it should have stated "other documents in the file". The First and Second Respondents had no objection to the application. The Tribunal determined that as the requested amendment did not prejudice either party, the application to amend was granted.

8. Application by the Applicant to rely on additional evidence

8.1 Mr Bullock applied to admit the following additional evidence:

- A spreadsheet produced by Fiona Thompson of the LAA
- Phone records in relation to a phone operated by the First Respondent

8.2 It was submitted that these documents were relevant as the spreadsheet dealt with the question of whether the claims were made before the First Respondent was employed by FMW, and the phone records went to the issue of whether text messages relied on by the Applicant were fabricated, as claimed by the First Respondent. The First and Second Respondents did not object to the application. The Tribunal considered that the documents were relevant to issues in the case and found that it was in the interests of justice for the documents to be admitted. Accordingly, the application to admit additional evidence was granted.

9. Application to hear the evidence of Karen Early by telephone

9.1 An application for Ms Early to give her evidence by way of video-link had already been granted by the Tribunal. Due to technical difficulties with establishing a connection, it was not possible for Ms Early to attend the hearing by way of a video-link. In the circumstances, Mr Bullock applied for Ms Early to be allowed to give her evidence by telephone. The First and Second Respondents did not object. The Tribunal considered that given the problems in establishing a video-link connection, it was appropriate to allow Ms Early to give her evidence by telephone and thus granted the application.

10. Recording of the hearing

10.1 Given the sensitive nature of client matters discussed during the hearing, the Tribunal directed that the recording of the hearing must not be released (other than to the parties) without the prior consent of the Tribunal.

Factual Background

11. The First Respondent was admitted to the Roll of Solicitors in January 2011. He did not hold a current practising certificate.

12. The Second Respondent was a limited liability law practice which had been authorised to practice as a recognised body by the SRA since 1 July 2008. At the relevant time it had five Members, including EOG and EDG. Its head office was in Peckham, London, with branch offices in Deptford, London. The Firm held a contract with the LAA to undertake mental health matters from 1 April 2011 until 12 June 2015.

13. The First Respondent was employed as an Associate Solicitor by the Second Respondent in September 2011, to supervise the Mental Health department, based at the Second Respondent's Deptford office.

14. The First Respondent maintained that he resigned from his employment at the Second Respondent on 31 July 2014 and began to work at a separate firm of solicitors, FMW, the following day. The Second Respondent maintained that the First Respondent was employed by it until 8 May 2015, albeit claiming that from

May 2013 until he left he was employed under a fee-sharing agreement ("the Freelance Agreement") and not as an employee.

15. In May 2013 the LAA commissioned a Peer Review Audit of the Second Respondent's mental health files. The reviewing solicitor raised concerns that in six of the files reviewed ("the Six Files") the FTT hearings seemingly attended by the First Respondent did not take place as described in the files provided. All Six Files were marked as being conducted by the First Respondent. The LAA reviewed a further 96 of the Second Respondent's mental health files. It concluded that a further 24 FTT hearings had not taken place as described in the files, resulting in £22,627.26 being improperly claimed from the LAA.

16. The LAA was unable to locate a number of further files, resulting in it recouping a further £176,716.00 from the Second Respondent, as the claims for payment could not be substantiated.

17. On 7 September 2015 the LAA sent a report to the SRA concerning its suspicions that the Second Respondent had submitted Legal Aid claims to the LAA to obtain payment for mental health tribunals that did not take place ("the LAA Report"). As a result, the Supervision Department of the SRA commissioned an investigation into the Second Respondent.

18. On 29 September 2015 a Forensic Investigation Officer ("the FI Officer") commenced an inspection of the books of accounts and other documents of the Second Respondent. The Inspection culminated in a Forensic Investigation Report dated 22 September 2016 ("the FI Report").

19. The FI Report detailed, amongst other things, 15 matter files where FTT hearings had not taken place as described in the files between 2011 and July 2014, resulting in improper claims of £11, 160.00 being made from the LAA.

20. During the investigation the First Respondent, and officers for the Second Respondent were all shown examples of the fraudulent files. They all confirmed that the files appeared to have been altered. Each denied having been aware that the files had been altered prior to the discovery by the LAA, but all agreed that as a result of the alterations, the Second Respondent had made fraudulent claims from the LAA.

Witnesses

21. The following witnesses provided statements and gave oral evidence:

- Elizabeth Bond – Forensic Investigation Officer employed by the Applicant
- Fiona Thomson – Senior Investigator at the LAA
- Vanessa Winnie McCain – former employee of the Second Respondent
- Hakeem Ayantayo – Solicitor at the Second Respondent
- Obasogie Michael Obebeduo – Solicitor at the Second Respondent

22. The following witnesses were initially required to attend by the First Respondent who subsequently confirmed that their attendance was not required:

- Karen Early – Operations Manager of HMCTS. Mr Bullock confirmed that he relied on the statement of Ms Early to show that improper claims were made and Ms Early was not being relied upon as a witness who could identify the person responsible for running the files, writing attendance notes or making the claims. In light of that explanation, the First Respondent confirmed that he no longer wished to cross-examine Ms Early. In the circumstances, the Tribunal agreed that the statement of Ms Early could be read in the context described by Mr Bullock above.

- Charles Irvine – Paralegal employed within the legal and enforcement department of the SRA. Mr Bullock explained that Mr Irvine's evidence was relied upon to confirm the documents retrieved from a USB flash-drive provided to the SRA by the Second Respondent. Those documents were created or modified on or after 31 July 2014. He could not provide evidence as to who created the documents, however he could give evidence as to what was contained in the metadata of documents he had located. In light of that explanation, the First Respondent confirmed that he no longer wished to cross-examine Mr Irvine. In the circumstances, the Tribunal agreed that the statement of Mr Irvine could be read in the context described by Mr Bullock above.

The following witness provided a witness statement and was not required to attend the hearing:

- Sophie Munn – Investigation Officer employed by the Applicant

23. The written and oral evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties.

Findings of Fact and Law

24. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondents' rights to a fair trial and to respect for their private and family lives under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Tribunal read all of the documents in the case and made notes of the oral evidence, including the submissions of the parties. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

25. **Allegation 1.1 – Between September 2011 and May 2015, the First Respondent knowingly caused payments to be claimed in the minimum sum of £11,160.00 from the LAA in respect of hearings before the FTT which had not taken place as described in his files, and therefore breached either or both of Principles 2 and 6 of the Principles.**

Applicant's Submissions

The First Respondent's Employment

25.1 The First Respondent commenced his employment with the Second Respondent on 5 September 2011. From then until March 2013, according to bank records, the First Respondent was being paid a monthly salary. Between 1 March 2013 and 31 March 2015, the Second Respondent made 24 payments to the First Respondent in varying amounts ranging from £900 to £7,989.10. Mr Bullock submitted that the answer to the varying payments may be found in the Freelance Agreement that was signed by EOG but not the First Respondent. The First Respondent did not accept that the Freelance Agreement was valid. He had not signed it.

25.2 There was a dispute between the parties as to where, and in what capacity, the First Respondent was employed by the Second Respondent after 31 July 2014. The First Respondent stated that he left the Second Respondent on 31 July 2014, and commenced his employment with FMW on 1 August 2014. The Second Respondent stated that the First Respondent became Freelance in May 2013, and continued to do work for the Firm until 8 May 2015. The Applicant accepted that the First Respondent was employed by FMW from 1 August 2014 until his resignation in July 2015.

25.3 The documentary evidence showed that a mobile phone, provided by the Second Respondent to the First Respondent, was continually in use from 31 July 2014. That phone was used to make calls to hospitals, the office and members of staff employed by the Second Respondent. Further, it was used to make over one hundred calls to the First Respondent's home, and over 90 calls to his wife's mobile telephone. In his interview, the First Respondent maintained that the bills did not show who had made the calls to his home telephone number and to his wife. He stated that the calls might have been made by EOG as part of a "conspiracy" against him.

25.4 The bills demonstrated that there were a number of work related text messages sent from the Second Respondent to the same phone, some of which clearly related to ongoing matters. The bills also showed that in addition to text messages being sent to the First Respondent's mobile phone provided by the Second Respondent, text messages were also sent to the mobile telephone provided by FMW, passing on messages to call patients/clients at a variety of hospitals. The First Respondent stated that the messages had been created as part of the conspiracy, and that they were not genuine messages.

25.5 Notwithstanding the evidence showing that there was a continuing relationship between the First and Second Respondents after 31 July 2014, the Applicant submitted that the First Respondent's employment status was not an important consideration. The claims in relation to each of the files which were the subject of the allegations were submitted to the LAA between April 2012 and July 2014. Even on the First Respondent's case, he had been employed by the Second Respondent until that date. Thus, it was submitted, it was unnecessary for the Tribunal to resolve this issue in order to make findings on the allegations.

The Claims

25.6 Following a Peer Review Audit of the Second Respondent's mental health work in May 2013, when the reviewing solicitor raised concerns that FTT hearings had not taken place as described in the Six Files provided, the LAA made further enquiries into the Six Files reviewed by the solicitor reviewer. These enquiries revealed that the hearings did not occur as described in the First Respondent's files, in that:

- five of the clients were not patients at the time, and there was no record of the sixth; and

- several of the judges, medical members and lay members shown in the files as being present at the FTT hearings were not recorded on the HMCTS system, and three who were located subsequently confirmed they did not attend the FTT hearings as described in the attendance notes.

25.7 During an interview under caution by the police on 17 March 2015, the First Respondent confirmed that the handwriting on the FTT hearing attendance notes from the Six Files looked like his handwriting.

25.8 During the LAA investigation, the Second Respondent gave the LAA 96 files. The LAA determined that out of the 96 files, 40 FTT hearings had purportedly taken place. In 15 of the files the FTT hearings had not taken place as described. The First Respondent was responsible for the conduct of 39 of those 40 files.

25.9 During her investigation, the FI Officer reviewed 31 of the 40 files provided to the LAA by the Second Respondent, including the Six Files. Ms Early, an Operations Manager of HMCTS Checks confirmed in her statement of 1 May 2018, that FTT hearings had not taken place as described in the 15 files. Fiona Thomson, in her statement dated 18 August 2016, confirmed that payments had been claimed and made to the Second Respondent on the 15 files on the basis that FTT hearings had taken place. Mr Bullock submitted that as the hearings had not taken place, the claims were fraudulent in the total amount of £11,160.00.

25.10 Mr Bullock exemplified 3 matters:

25.11 <u>ZY</u>

25.11.1 This matter commenced in September 2013 and appeared to be conducted by the First Respondent. A letter from HMCTS to the First Respondent dated 18 November 2013 stated that ZY had been discharged from section on 18 November 2013 and no further action would be taken. His discharge from section was also confirmed in a discharge sheet sent to the Second Respondent.

25.11.2 A 'Legal Help and Controlled Legal Representation – Mental Health' was signed by ZY and purportedly by the First Respondent, and submitted to the LAA. A level three payment for attendance at hearing was submitted to the LAA for the total sum of £744.00.

25.11.3 In her statement dated 11 August 2016, Ms Early confirmed that a "FTT hearing was booked to take place on 18 November 2011 but the client was discharged before the hearing date. There are no further hearings recorded on the system and definitely no hearings recorded as being set or heard in 2014".

25.12 MR

25.12.1 A Legal Help and Controlled Legal Representation form was signed by MR and purportedly by the First Respondent. An attendance cover sheet dated 13 March 2012, and a letter from the First Respondent to MR, stated that an application was made to withdraw the application on the day of the FTT hearing. A level three claim for £744.00 was submitted to the LAA.

25.12.2 In her statement, Ms Early confirmed that there was no record of a FTT hearing on 13 March 2012. NH of the Central and West London NHS Trust also confirmed there were no FTT hearings in March 2012 for MR.

25.13 JP

25.13.1 The Legal Help and Controlled Legal Representation Form was signed by Mr JP and purportedly by the First Respondent. An attendance cover sheet dated 3 September 2012 stated that the First Respondent had attended as advocate at JP's FTT hearing on 3 September 2012. A level three payment of £744.00 was submitted to the LAA. Ms Early confirmed that there was no FTT hearing on 3 September 2012.

25.13.2 All 15 files were conducted, concluded and claimed between 2011 and July 2014, when the First Respondent admits to having been employed by the Second Respondent.

25.13.3 As detailed above, the First Respondent stated that from 31 July 2014, he ceased to be employed by the Second Respondent; whereas the Second Respondent stated that the First Respondent was employed by the Firm from May 2013 on the basis of a fee sharing agreement.

25.13.4 Between September 2014 and February 2015, payments were received by the Second Respondent from the LAA in respect of a further 73 level three claims submitted to the LAA, where a claim was made for attendance by the First Respondent at a FTT hearing. HMCTS confirmed that FTT hearings did not take place in sixty five of those matters as claimed.

25.13.5 All of the 73 files for this period were removed from the Second Respondent's offices prior to the commencement of the Investigation, and all electronic files were deleted from the Second Respondent's IT system. However, the Second Respondent managed to obtain copies of the electronic files from its offsite back-up server which showed that the First Respondent was undertaking work on mental health files on the Second Respondent's system between 15 September 2014 and 16 March 2015.

Billing

25.14 Ms McCain, receptionist and legal secretary at the Second Respondent confirmed in her statement and in her oral evidence that she was responsible for preparing the billing of civil files. She explained that the last billing she did with the First Respondent was for the submission on 20 March 2015. She informed the FI Officer that she had received a text from the First Respondent on 16 March 2015 regarding his billing, which they did on 19 March 2015, when the First Respondent attended the Firm's office. The message was received at 2.46am and stated: "Hi Winnie. How are you? I hope you had a pleasant weekend. Just to let you know I have the files for this month/march 2015 in the usual place (15 in total). My apology (sic) but I was unable to get them ready until Sunday night (17/03/15) when I worked until 2.30 late at night!! Thanks a million as usual Winne. Take care for now Drakens".

25.15 Mr Bullock submitted that the First Respondent's reference to 17 March was an error as 17 March 2015 was not a Sunday, but was in fact a Tuesday. Ms McCain responded to that message: "Hello Drakens that alright will go there on Thursday and sort them out. You take care as well". That response, it was submitted, was in line with Ms McCain's evidence that the First Respondent attended the office on Thursday 19 March 2015, when he sat with her to submit the billing. The First Respondent's text to Ms WM was corroborated by the Second Respondent's Lawmaster report, which showed that the First Respondent, using his own username and password, used the Second Respondent's software on 20 days between 15 September 2014 and 15 March 2015. Mr Bullock rejected the First Respondent's assertion that the 'files' referred to in the message related to marketing letters and training materials. He likewise rejected the assertion that anyone who logged onto the Firm's Lawmaster system did so using the First Respondent's username.

Payments to the First Respondent

25.16 During the period September 2014 to February 2015 the Second Respondent paid the sum of £38,018.20 to the First Respondent, which it claimed was the 70% of the claims made to the LAA in accordance with the Freelance Agreement.

25.17 The First Respondent stated that the payments were due to him as a result of monies owed to him by EOG for untaken holiday and campaigning on EOG's behalf for his application to become President of the Urhobo Progress Union (UPU). Further, EOG had promised the First Respondent a payment in the sum of £10,000 for joining the Firm. The First Respondent was unable to provide any evidence to substantiate the payments allegedly owing to him.

25.18 The First Respondent *"**categorically [denied]** having conduct (in any way, shape or form) of **any** of the level 3 mental health **tribunal** files"*. He also stated that although he said to the police during interview that the handwriting on the Six Files was his, when he was able to review them in depth *"although the writing and signatures looked like his, he thought they were forged"*.

25.19 Mr Bullock submitted that there were 4 issues that the Tribunal ought to consider:

25.20 Issue 1 – Were improper claims made to the LAA in relation to the 15 files?

25.20.1 This question, it was submitted, was non-contentious and the answer was plainly yes. The evidence of Ms Thomson was that payments were made to the Firm in relation to the files. Ms Early confirmed that there were no hearings as claimed on the files. Both Respondents accepted that it was improper to make claims in relation to the 15 files.

25.21 Issue 2 – Who was responsible for the claims being made?

25.21.1 Mr Bullock submitted that it was either (a) the First Respondent, (b) someone else or (c) the First Respondent together with someone else. It was the Applicant's position that there was overwhelming evidence that it was the First Respondent (whether alone or with someone else) who was responsible for making the claims. On 8 July 2015, the First Respondent sent an email to FMW, which, it was submitted, equated to a clear admission that the First Respondent created the file notes suggesting FTT hearings had taken place on the Six Files. The email stated (amongst other things):

> "I must stress that the "attendance notes" for the respective files with the LAA are relying on ARE NOT meant to be an accurate records (sic) of the work done on the particular day. The "attendance notes" first and foremost, are meant to be a rough notes (sic) to be subsequently corroborated by "other evidence" on the respective files, such as Tribunal "written decisions", 'NOTICE OF HEARING' sent by the Tribunal, to confirm the details of the Tribunal dates, venue amd Tribunal Panel names. I explained to you how is (sic) was possible to get some of these details wrong.
>
> A vital question (in trying to establishing (sic) the intention) of making "Attendance Notes" is: what are/is the of (sic) purpose of making these "Attendance Notes"?
>
> The answer to the above question is that (for mental health "Advocacy" work only) "Attendance Notes" are a **personal reminder** to the **person making the "attendance notes"** of what **may** have transpired on a particular advocacy date.
>
> ……..
>
> The LAA accusation that the "Attendance Notes" had my handwriting and thus I made a fraudulent claim, firstly ignores the "purpose" or intention behind making these notes (a personal record) and secondly, ignores that (sic) fact that another person [EOG] had "control" of these files and he makes the decision whether of (sic) not to 'make a claim'. And that if he choses (sic) against my advice not to claim payment from the LAA for the 6 files in issue, this is beyond my control.

> Regard, (sic) the argument that *"I made those attendance Notes" knowing or ought to know* (sic) *that these notes would be used to make a claim to the LAA for payment".* My response is to rely on the "purpose" for making these notes, and on the 'Advice/Compliance Report' which I write on every file handed to [EOG]. I advised [EOG] that the "Advocacy Attendance Notes" on the 6 files in issue **were not corroborated** and thus SHOULD HAVE REMAINED **Personal Reminder** to me the note maker, and **should not** have been relied on as a bases (sic) of making a claim for payment to the LAA, because as I have pointed out many times, the 'Personal Reminders' ("Attendance Notes") were not corroborated by other evidence on the respective 6 files in issue."

25.21.2 The First Respondent provided a similar explanation in his formal review request letter to the LAA dated 4 August 2015, in which he stated (amongst other things):

> "My hand written 'Attendance-Notes' were my 'Personal Record' and 'advice' to my then boss/employer [EOG/the Second Respondent] of mental work (sic) I believed that I had carried out the truth of which to be confirmed after being subjected to a **'Safety Check'** or an **'Advice/Compliance'** which I was required to provide to [EOG] for the purpose of his advice and to prevent him from making fraudulent claims to the LAA for payments on each closed mental health file.
>
> .....
>
> **The LAA also relied on Evidence of my hand-written 'Attendance Notes'.** It is clear that the LAA were also relying on my hand-written 'Attendance Notes' in order to prove the fraudulent claims for payments allegation against me. During the police interview on 17.03.2015, [the police officer] produced and showed me the first page of 6 separate hand-written 'Attendance-Notes' and asked me to confirm the 6 separate 'Attendance Notes' were my handwriting? (sic) I confirmed on police tape and record at my police interview that the hand-writing on the 'Attendance Notes' were (sic) mine.
>
> .....
>
> ... I am saying that just because the 'Attendance Notes' are in my hand writing, this fact by itself, does **not mean that I personally made claims to the LAA for payments.** This is because the 'Attendance Notes' are my **'Personal Records'** of the work which I believe I have done on a particular day and time."

25.21.3 Mr Bullock referred the Tribunal to a signature on one of the improper documents and a signature that was known and accepted by the First Respondent to be his. He submitted that there was a similarity between those signatures which the Tribunal, whilst not being experts in handwriting analysis, was entitled to take into account when considering the

First Respondent's submission that the handwriting on the documents was a forgery and the signatures on the documents were fake. Further, it was submitted, the documents were clearly created by someone who was familiar with mental health law. This was clear from some of the technical terminology used in the documents.

25.21.4 There was no evidence of any fraud by any other person at the Firm as alleged by the First Respondent. The matter had been investigated by the Police, the LAA and the SRA. None of those organisations had found any evidence of fraud on the part of the Firm or EOG. Further, there was no evidence of any fraudulent activity in any other area of the Firm's legal aid practice. As a result of its investigation, only the First Respondent was made the subject of any sanction by the LAA.

25.21.5 There was no other evidence to support the First Respondent's contention that this was a fraud perpetrated by EOG with the intention of framing the First Respondent. Such a course would have involved EOG undertaking a wholly extraordinary exercise to shift the blame onto the First Respondent at a time when there was no investigation into the Firm and EOG would not have been aware of any future investigation. The numerous calls that were made to the First Respondent's home address and his wife's mobile phone commenced in 2014; the police investigation commenced in March 2015. For the First Respondent's version to be correct, it meant that EOG called his home and wife numerous times to provide a cover story for investigations that were not yet known about. It would also involve EOG attending the office late at night, or on weekends simply for the purposes of laying a false trail. Further, the conspiracy against the First Respondent would necessarily have to include Ms McCain and Messrs Ayantayo and Obebeduo.

25.21.6 Mr Bullock submitted that given all of the above, the Tribunal could be satisfied to the requisite standard, that the First Respondent created the attendance notes and other documents on the file and caused them to be submitted to the LAA for payment.

25.22 Issue 3 – Was the First Respondent undertaking fee earning work at the Firm after 31 July 2014?

25.22.1 Mr Bullock submitted that this was not a relevant factor for the Tribunal to consider in determining the allegations against the First Respondent, as all the 15 files were submitted prior to that date. Notwithstanding that it was not relevant, Mr Bullock addressed this issue given the First Respondent's submissions. Mr Bullock referred the Tribunal to the telephone calls and text messages. Ms McCain confirmed that she continued to bill mental health files conducted by the First Respondent up to March 2015.

25.23 Issue 4 – If it is accepted that the First Respondent caused improper claims to be made to the LAA, did his conduct breach the Principles as alleged and was such conduct dishonest?

25.23.1 If the factual premise of the Applicant's case was proved, it was plain that such conduct breached the Principles as alleged. Knowledge that a solicitor had claimed or caused to be claimed payments from the LAA to which he knew he was not entitled would necessarily impair the good repute of, and the diminish the trust the public placed in, both the solicitor and the profession. A solicitor of integrity would ensure that any documents that were placed on his files, and which he knew would be used as the basis of claims being submitted to the LAA for payment, were strictly truthful and accurate, and would ensure that any claims that were made to the LAA on his files were an accurate reflection of work that had been undertaken. Under no circumstances would a solicitor of integrity claim or cause to be claimed payments from the LAA in respect of FTT hearings and/or work that he knew had not taken place as described.

Dishonesty

25.24 Mr Bullock submitted that the appropriate test for dishonest was that formulated by Lord Hughes in Ivey v Genting Casinos (UK) Ltd (t/a Crockfords) [2017] UKSC 67:

> "When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

25.25 Mr Bullock submitted that if the factual premise of the Applicant's case was accepted, it was clear that the First Respondent's conduct was dishonest. The First Respondent deliberately created attendance notes on a number of files over a significant period of time, referring to his attendance as the advocate at FTT hearings, when he was fully aware that the hearings did not take place as described, or at all. In so doing he had procured the payment of a sum in excess of £11,000 from the LAA. No honest solicitor would have acted in such a manner.

First Respondent's Submissions

25.26 The First Respondent's first interview for the Firm was in June 2011 with EOG. He was offered the position. At the interview, EOG discovered that the First Respondent was from the same region in Nigeria and that they spoke the same language. The First Respondent had concerns about joining the Firm due to the limited number of matter starts allocated to the Firm by the LAA. His second interview was on

1 July 2011. In late August 2011 the First Respondent went to Spain. While there he spoke to EOG and expressed the concerns that he had in joining the Firm. EOG offered the First Respondent £10,000 to join the Firm. The First Respondent accepted the offer and joined the Firm on 5 September 2011. He resigned from his former firm on 27 August 2011 with his resignation to be effective from 31 August 2011.

25.27 The First Respondent remained at the Firm until he discovered that EOG was "not good at paying salaries, disbursements and third party payments." EOG mentioned that he had cashflow difficulties. He promised the First Respondent a pay increment after 6 months. That increment did not materialise.

25.28 EOG ran a campaign to become President of the UPU. When the First Respondent had completed his fee earning work, he campaigned for EOG at an agreed rate of £40 per hour.

25.29 In 2013 the First Respondent decided that it was time to move on. At that time he discovered that EOG had links to a former disgraced Delta State Governor. He secured a job at a firm in Harlow which paid £4,000 less per year than his basic salary at the Firm. He was going to accept the position until he discovered that that firm's Principal had been referred to the SDT. He eventually secured an interview and conditional offer from FMW. On the basis that he completed a Supervisor Declaration Form for FMW, and on the award of a mental health contract he would be employed by that firm. The application for a contract was successful and the First Respondent resigned on 31 July 2014 with immediate effect. On that date he returned the mobile phone provided for his use to the Firm.

25.30 On 10 March 2015, he was contacted by the police and voluntarily attended the police station on 17 March 2015 to be interviewed in relation to the Six Files. Mr Armstrong from the LAA was present throughout the interview and also asked questions of the First Respondent. During the interview he was shown 6 sheets of A4 sized paper, each of which was referred to as a sample. When asked whether the handwriting on the sheets looked like his, he replied that it did "but". The "but" signified that he required further information. He answered all questions put to him and heard nothing further from the police or the LAA for some time. He kept his then employer fully informed. On 14 May 2015 he was informed that the LAA were making him subject to a sanction.

25.31 At that point he was suspended on full pay. He made an informal application for review of the sanction. In July 2015, Mr Armstrong provided FMW with the samples shown to the First Respondent during his interview. The First Respondent attended the firm's offices for a meeting on 8 July 2015 where he was asked to explain the notes. He was told that a bare denial was not sufficient, and he needed to provide an explanation. Following that meeting and further correspondence with the firm, the First Respondent resigned from his position.

25.32 The First Respondent made a formal application for review of sanction in his letter to the LAA of 4 August 2015. A Contract Review Board (CRB) meeting was fixed for 22 October 2015. On 8 September 2015, the LAA disclosed its bundle of papers which included the witness statements of EOG and other members of staff at the Firm. The First Respondent's then legal team advised that as matters were being

investigated by the police, the CRB were highly unlikely to lift the sanction. On the basis of that advice, the First Respondent withdrew his application for a formal review.

25.33 In the documents disclosed by the LAA were the Six Files with an additional Nine Files. In January 2016, the First Respondent was contacted by the SRA with a request that he attend an interview. He met with the FI Officer on 17 May 2016.

25.34 As regards the allegation, it was accepted that the claims made to the LAA in respect of the 15 files were not legitimate claims, as FTT hearings had not taken place on those files. The First Respondent denied that any of the handwriting on the documents was his. All signatures purporting to be his had been forged. The Tribunal was referred to the signature on the Legal Help and Controlled Legal Representation form for TA. The First Respondent submitted that in comparing that to his real signature, there was no similarity between the two. During his interview with the FI Officer, he had categorically denied any misconduct. He provided the FI Officer with samples of his handwriting and his signature for comparison with the documents contained in the files. No expert analysis had been undertaken by the Applicant despite its having had full access to the files of which he had conduct at FMW and the samples he provided to the SRA. The First Respondent submitted that he had no incentive to create the files; he was employed at the time thus there would be no financial advantage to him.

25.35 The SRA was trying to connect the First Respondent to the Second Respondent subsequent to his leaving the Second Respondent on 31 July 2014. It had been submitted that he had continued to undertake work for the Second Respondent. However, no files had been produced showing any work undertaken by the First Respondent on any of the Second Respondent's files post 31 July 2014.

25.36 As regards the Freelance Contract, this was a forgery. The first time he saw that document was when he was provided with a copy by the FI Officer. In any event, the First Respondent submitted that the existence of such a contract was a factual impossibility. If he had been freelance, the Firm would have required, under the terms of its contract with the LAA a new full-time equivalent employee to supervise the mental health department. The First Respondent submitted that the terms of the Second Respondent's contract with the LAA did not permit a freelancer to be a supervisor.

25.37 It was the First Respondent's case that the files had been created by someone else. He noted that no witnesses had been called to say that they had witnessed him altering or amending any files. It was not accepted that he had caused any of the files to be the subject of improper claims from the LAA. He had no knowledge in relation to any of the 15 matters, and there was no objective evidence that linked him to any of those matters. The First Respondent directed the Tribunal to a number of issues in relation to the matters; some had been professed to be opened before he commenced his employment with the Firm and others contained fundamental mistakes that he would not have made.

25.38 He rejected the submission that he had confessed to creating the attendance notes. At the police station when he was asked whether the writing looked like his, he said that it did but... The 'but' was because he required further information before he could know for sure. When he spoke to FMW about matters, FMW were only in possession of the papers disclosed at the police station. He was asked for an explanation, and tried as best he could to explain the position on the information that was available to him at the time. It was not until he received full disclosure from the SRA that he was able to ascertain the position. After receipt of the papers from the SRA the First Respondent prepared his Categorical Denial of having conduct of any of the files. Having reviewed those documents, it became clear to the First Respondent that he was the victim of a conspiracy by EOG to 'set him up' by way of EOG wrongfully attributing his fraudulent conduct to the First Respondent. In order to do this, it was critical for EOG to "physically remove me from FMW and place me at the Firm" until 8 May 2015. The attempt to maintain a presence by the First Respondent at the Second Respondent was also contained in the witness statements of Messrs Ayantayo and Obebeduo and Ms McCain. Messrs Ayantayo and Obebeduo stated that they saw the First Respondent, on the CCTV system at the Second Respondent's Deptford office, attending the office on 20 March 2015. However, no CCTV evidence, or any other form of independent evidence was provided by the Second Respondent to show that the First Respondent had actually attended the office on that date. Further, Ms McCain stated that the First Respondent had been at the office going through files with her on 19 March 2015 during the afternoon. He left and returned to the office at around 5.00pm. The First Respondent referred the Tribunal to his attendance sheet at FMW, which showed that he was signed in at their offices at 2.35pm and signed out at 6.30pm. He had attended a Tribunal hearing on the morning of 19 March 2015 (as was confirmed by HMCTS). Accordingly, it was impossible for him to have been at the office on 19 March 2015 as claimed by Ms McCain.

25.39 The First Respondent was employed full-time by FMW from 1 August 2014. He had conduct of 75 matters whilst employed there. A review of those files by an independent auditor showed no evidence of fraud.

25.40 As regards the payments received by the First Respondent after he left the Firm, the First Respondent explained that these were not related to any work he undertook for the Firm, but were payments due to him personally by EOG for his joining fee, his campaign work and in lieu of holiday.

25.41 Two of the messages which related to clients, and upon which the Applicant relied to show that the First Respondent had a continuous working relationship with the Second Respondent, related to FMW clients.

25.42 The submission that the First Respondent was the only person at the Firm that had knowledge of mental health law was incorrect. EOG was an expert in mental health practice and procedure and had applied to the Law Society to become a mental health panel member. That application was assessed but was unsuccessful. The First Respondent had been unable to provide any evidence of that application as records from that time had been destroyed by the Law Society.

25.43 The First Respondent submitted that this allegation had already been considered by the police and CPS, who had not charged the First Respondent with any criminal offence. In the event that there was insufficient evidence to charge, there was also insufficient evidence for the matter to be found proved, given that the CPS and the SDT operated the same standard of proof. Further, the Applicant had failed to provide objective independent evidence which showed or proved that he had knowingly caused the Firm to claim payments from the LAA.

Dishonesty

25.44 The First Respondent denied that his conduct had been dishonest. He had not created the attendance notes, these had been forged. He did not have conduct of the 15 files. The suggestion that he did was a result of the way that the files were labelled. EOG had put the files in his name as part of the conspiracy against him as being the scapegoat for EOG's misconduct. The First Respondent referred the Tribunal to the fact that payments were being claimed both before and after he worked at the Second Respondent.

The Tribunal's Findings

25.45 The Tribunal determined that the text messages and telephone calls made after 14 July 2014 were not relevant to its consideration of allegation 1.1. Whilst they occurred during the timeframe defined for the allegation, they did not relate to the payments claimed from the LAA in respect of hearings before the FTT which had not taken place as described.

25.46 The Tribunal noted that in his email to FMW of 8 July 2015, the First Respondent stated: "I advised [EOG] that the "Advocacy Attendance Notes" on the 6 files in issue **were not corroborated** and thus SHOULD HAVE REMAINED **Personal Reminder** to me the note maker". In his letter of 4 August 2015, sent to the LAA requesting a formal review of the sanction it had placed on him, the First Respondent stated: "I confirmed on police tape and record at my police interview that the hand-writing on the 'Attendance Notes' were (sic) mine" and "just because the 'Attendance Notes' are in my hand-writing…", and "It is clear that the LAA were also relying on my hand-written 'Attendance Notes' in order to prove the fraudulent claims for payments allegation against me."

25.47 The Tribunal noted that when it was put to the First Respondent that the explanation he gave to FMW was not because it was right, but because that was what he could say at the time, the First Respondent explained that when he was asked if he had created the documents he said he had not, but he was "struggling" to explain matters to his boss and he "latched on to the only defence I felt was suitable" as he "had to say something". When questioned further on the email to FMW, the First Respondent stated that the use of that email against him in these proceedings was "quite unfair". In that email he was "trying to offer an explanation" at a time when he did not have "sufficient information" and he was "struggling to explain what had transpired so I latched onto excuses or defences … I was looking for an explanation". The Tribunal found that it was proper that the First Respondent's previous explanations were put to him as a contemporaneous record of his position at the time.

25.48 When he was questioned about his representations to the LAA in his 4 August 2015 letter, the First Respondent explained that he still did not have sufficient information and was providing a "general defence".

25.49 It was plain, and the Tribunal found that in July and August 2015, the First Respondent accepted that he had written the attendance notes in relation to the Six Files. Indeed, it was his position in July 2015 that not only had he written the notes as a "personal reminder", but also that he had advised EOG that the notes were not "corroborated" and further that any claim made to the LAA in respect of those files was made by EOG against the advice of the First Respondent. There was absolutely no suggestion in the email to FMW or the formal request to the LAA that the First Respondent was not responsible for creating the notes, or that the handwriting on the notes did not belong to him.

25.50 As detailed above, in his letter to the LAA the First Respondent had on at least three separate occasions in that letter referred to the handwritten notes as being his. It was not until the SRA investigation, when it was positively asserted that the notes were fraudulent that the First Respondent claimed that the notes were not in his handwriting and were a forgery. The Tribunal rejected as fanciful his explanation that he needed to see all the rest of the documents as were disclosed by the SRA, before he knew whether the writing was his. Even where parts of a page had been redacted, it was reasonable to expect a person to recognise their own handwriting. He was specifically asked during his police interview whether it was his writing. His explanation that it looked like his "but", the "but" being he needed more information, was nonsensical. There could be nothing further that would cause him to better recognise his own writing, or that would make his own handwriting more or less recognisable. The Tribunal considered the comments made by the First Respondent in his email to FMW and his letter to the LAA to be unequivocal admissions that he was the author of the attendance notes on the Six Files.

25.51 The Tribunal compared the additional nine matters to the original Six Files and noted striking similarities not only in the handwriting across the files, but also in the linguistic style. The Tribunal had, during its preparation and throughout the hearing, read a number of documents where the First Respondent accepted he was the author, e.g. his email to FMW, his letter to the LAA, his Answer to Rule 5 Statement. The First Respondent often underlined and emboldened text to add emphasis to his writing. The notes were all completed in a similar form, and with similar types of information. The Tribunal also found that the signatures on the false documents closely resembled that of the First Respondent. As a result of those similarities, the Tribunal was satisfied so that it was sure that the author of the handwritten notes on the additional nine matters was the same as the author of the attendance notes on the Six Files. Having already found that the First Respondent was the author of the attendance notes on the Six Files (in line with his admissions contained in the email to FMW and his letter to the LAA), the Tribunal found that the First Respondent was the author of the notes on the additional nine matters. The Tribunal also noted that there was correspondence on the files from external agencies that was addressed to the First Respondent.

25.52 In a letter to HMCTS on the ZY matter, there was both underlined and emboldened text. That letter also named the First Respondent as the person to whom all correspondence should be sent, together with a mobile number, which the First Respondent accepted was in use by him at that time. Had the letter been written by EOG, or someone else, in an effort to frame the First Respondent, the number in the letter would not have been the number that the First Respondent was using, but would have been a different number used by the conspirator who would then purport to be the First Respondent.

25.53 The Tribunal found the First Respondent's explanation that an attendance note was a "personal reminder" that needed later "corroboration" to be unbelievable: an attendance note was a contemporaneous, or near contemporaneous record of events. It was not the creation of a note for a hearing that had not and would not take place. Accordingly, it rejected the First Respondent's submission as contained in his letter to the LAA that "at the time I am making the hand-written 'Attendance Notes' I am not saying ... that the 'Attendance Notes' are true and accurate as to facts, dates, times, names or venue or any other information contained in the attendance notes." When cross-examined on this point the First Respondent explained that he was not a stenographer and could did not produce a verbatim note. When writing notes one wrote what one thought one heard. All notes were a rough copy of work that would then be subject to checking as things could sometimes be wrongly recorded. The Tribunal found that this in no way explained the creation of wholly fraudulent attendance notes.

25.54 The Tribunal rejected in its entirety the First Respondent's defence that he was the victim of a wide ranging conspiracy instigated by EOG. This was a later fabrication by the First Respondent, who did not allege any conspiracy during his police interview, or to FMW, or the LAA in his correspondence with them. The operation of the conspiracy was fantastical. It would need to have commenced from the earliest stages of the Respondent being employed at the Firm, and would include the making of almost 200 calls to his home phone and his wife's mobile phone. The Tribunal rejected the differing explanations provided by the First Respondent as regards the calls including allegations of harassment by EOG, calls made as part of the conspiracy, calls made to his wife as she had friends at the Firm. The conspiracy also included the fabrication of text messages and then calls to the numbers detailed just so as to ensure that it seemed as if the message was genuine. The Tribunal examined the phone used to send the messages. From that examination it appeared that the messages had indeed been sent. This was supported by the proximate calls made to the numbers detailed in some of the messages. The Tribunal accepted, as was stated in his evidence, that Mr Ayantayo took the screenshots of the messages. It did not find that the messages had been faked as alleged by the First Respondent.

25.55 The alleged conspiracy would have necessarily included more than just EOG; all the witnesses from the Second Respondent who attended the hearing would have had to be a part of the conspiracy. It would involve the attendance of EOG or someone on his behalf at the office during unsociable hours, simply to log in using the First Respondent's log in details. The Tribunal did not accept, and no evidence was provided, that the Firm, in order to log into Lawmaster, could only do so using the First Respondent's details.

25.56 The Tribunal found the First Respondent's explanation as regards his text messages with Ms McCain to be incredible. The Tribunal noted that the Firm submitted 15 mental health matters for billing in March 2015, which was the number of files referred to by the Respondent in his text to Ms McCain. The Tribunal accepted that the files referred to in the text messages were files for billing, as stated by Ms McCain in her oral evidence.

25.57 It was not necessary to make, and the Tribunal made no, findings in relation to the First Respondent's attendance or otherwise at the Second Respondent's offices on 19 and 20 March 2015 as this did not relate to the 15 matters which were relied on in regard to allegation 1.1.

25.58 As to the First Respondent's submissions that the matter had already been investigated by the CPS who were in possession of all the evidence that was before the Tribunal, the Tribunal noted that the CPS were investigating the Six Files and were not in possession of the additional nine matters. Further, the focus of any investigation by the police and the CPS was on criminal conduct. The Tribunal was not determining any criminal matters, it was considering whether the conduct complained of was in breach of the Principles as alleged. The fact that the CPS had decided, during its investigation, not to charge the First Respondent with any criminal offences, did not preclude the Tribunal from carrying out its statutory duty.

25.59 The Tribunal rejected the First Respondent's contention that as he was not a party to the contract with the LAA, he could not "cause" the bills to be submitted. In placing documents on the file that made it appear as if hearings had taken place when they had not, and then handing those files in for billing, the First Respondent had knowingly caused those files to be claimed when they ought not to have been. It was no defence to rely on the "rigorous scrutiny" of the billing team. It was not their role to check whether hearings had taken place, but to ensure that the times as recorded on the files were accurately recorded on the system for the purposes of billing the files.

25.60 For the reasons detailed above, the Tribunal found that the factual premise of the Applicant's case on allegation 1.1 was proved beyond reasonable doubt. The First Respondent's conduct, in knowingly causing payments to be claimed from the LAA in respect of hearings that had not taken place, diminished the trust the public placed in him and in the provision of legal services. Members of the public would be concerned to understand that a solicitor had faked documents so as to claim monies that were not entitled to be claimed. Thus, the Tribunal found beyond reasonable doubt that the First Respondent had breached Principle 6. No solicitor acting with integrity would create false documents in order to make fraudulent claims. That such conduct was in breach of Principle 2 was evident.

25.61 The Tribunal accepted the submissions that the appropriate test for dishonesty in this jurisdiction was that formulated by Lord Hughes in Ivey. The Tribunal noted that in his representations to the LAA of 4 August 2015, the First Respondent explained that the attendance notes on the Six Files were for work that he "believed that I had carried out". The Tribunal did not find this plausible. No FTT hearings had taken place; the First Respondent could not have believed he had attended hearings for clients when the hearings were non-existent. The Tribunal found beyond reasonable doubt that the First Respondent's conduct was dishonest. No honest solicitor would create

attendance notes so as to make improper claims. Reasonable and decent people, operating ordinary standards of honesty would find that the First Respondent, in creating false documents and claiming for hearings that had not taken place, had acted dishonestly.

25.62 Accordingly, the Tribunal found allegation 1.1 proved beyond reasonable doubt, including that the First Respondent's conduct had been dishonest.

26. **Allegation 1.2 - Between September 2011 and May 2015 by altering and/or adding documents to mental health files to make claims to the LAA appear to be legitimately claimed when he knew they were not, the First Respondent breached either or both of Principles 2 and 6.**

Applicant's Submissions

26.1 The matters exemplified in relation to allegation 1.1 above also demonstrated that the First Respondent amended documents on the files to make it appear that he had undertaken hearings which had not in fact taken place before passing the file for billing and thereafter for submission of a claim to the LAA.

26.2 ZY

26.2.1 The client care letter sent to Mr ZY dated 30 September 2013 contained dates which did not correlate with the section dates provided on the file cover sheet. The date of the Legal Help and Controlled Legal Representation - Mental Health form signed by ZY and by the First Respondent was 25 April 2014, however this date had been amended with whitening fluid, with the date under the fluid appearing to be 29 September 2013. Other dates in the form appeared to have been amended with whitening fluid, including some where the original dates appeared to be from 2013 but were amended to dates in 2014.

26.2.2 Other discrepancies were also noted:

- In an attendance note purportedly dated 19 May 2014, the final sentence on page 1 did not match the start of the first sentence on the following page

- In an attendance note on the file purportedly dated 19 May 2014, it was recorded that the First Respondent had attended at ZY's FTT hearing, whereas, as Ms Early confirmed in her statement, no FTT hearing had taken place on that date and that two of the members listed on the attendance note were not recorded on the system as being members of the FTT panel.

26.3 MR

26.3.1 An attendance note dated 24 January 2012 stated that the First Respondent attended MR to take instructions regarding the submission of a FTT hearing. Further correspondence dated 27 January 2012 from the

First Respondent to the client, HMCTS and the Mental Health Act Administrator at St Charles Hospital advised the recipient that the First Respondent has been instructed by MR to prepare an application to be heard at a FTT hearing. A letter from the Clerk to HMCTS acknowledging the First Respondent's confirmation that he would be acting for MR was also on the file, however the top of that letter, where the date and reference number would ordinarily have been, appeared to have been torn off.

26.3.2 The file also contained an attendance note where the handwriting on pages two to six of the note did not appear to match the handwriting on the first page, and where the page numbers appeared to have been amended.

26.3.3 A further attendance note stated that the First Respondent attended as advocate at MR's FTT hearing, where he withdrew the application, and waited after the hearing for the decision. A letter to the client from the First Respondent confirmed that the application to withdraw from the FTT hearing was accepted on the day of the hearing.

26.3.4 In her 11 August 2016 statement, Ms Early stated: "The officer showed me a letter to [the First Respondent] from [Miss KH], Clerk to the Tribunal that acknowledged receipt of confirmation that [the First Respondent] would be representing [MR]. The top of the letter appeared to have been torn off so the date and reference number was missing. I was able to complete a search and locate the electronic version of the original letter that was sent to [the First Respondent]. The letter was dated 16 March 2011 and was addressed to [the First Respondent] at another firm of solicitors, [B & Co] and related to a previous, different hearing for [MR] that took place on 13 May 2011. A further hearing also took place on 2 September 2011 but [the Second Respondent] was not acting. There have been no further applications on behalf of [MR] since 2011 and no report of an FTT on 13 March 2012".

26.4 JP

26.4.1 An attendance note dated 4 June 2012 stated that the First Respondent attended JP at Lambeth Hospital to take instructions regarding the submission of a FTT hearing application. Letters dated 7 June 2012 from the First Respondent to the client and to The Mental Health Act Administrator at the Lambeth Hospital appeared on the file.

26.4.2 Attendance notes dated 18 July 2012, 24 August 2012 and an attendance cover sheet dated 3 September 2012 appeared on the file. These notes refer to a FTT hearing, which purportedly took place on 3 September 2012 at Lambeth Hospital.

26.4.3 A letter dated 7 September 2012 to HMCTS purportedly from the First Respondent stated that he had been instructed by JP to prepare an application to be heard at a FTT hearing. A letter of the same date again purportedly from the First Respondent advised the client that he was not discharged from his Section 37 at the FTT hearing on 3 September 2012.

26.4.4 Only one letter from HMCTS was on the file, asking the First Respondent to confirm his appointment to represent JP in writing by completing an attached pro forma. The top right hand corner of the letter appeared to have been torn off so it was not possible to see the date or the reference number.

26.4.5 In her statement, Ms Early stated: "an application was made on 28 August 2011 by [the First Respondent] at [the Second Respondent] but the application was invalid and the matter was closed on the system on 11 October 2011. A letter was sent to [the First Respondent] but it was not the same as the letter shown to me by the officer that was located on the file. There was no record on the system of a hearing on 3 September 2012 and no applications on the system for 2012. I can confirm that only one of the panel members was recorded on the system as being a member of the [FTT] panel. There are no records of the other two members that were listed".

26.4.6 During his interview with the FI Officer, the First Respondent agreed that these files appeared to have been doctored but denied that he was responsible for this. However, each of those files was a matter on which he was the fee earner. Moreover, he was the only solicitor at the Second Respondent undertaking mental health work, and as such would have been the only person who would have had sufficient knowledge to know what documents to create in order to purportedly show that the work being claimed for from the LAA had been undertaken by him. The irresistible inference arises that he was responsible for doctoring them.

26.5 Mr Bullock submitted that the matters set out above demonstrated a settled pattern of behaviour upon the part of the First Respondent with respect to the means by which he procured payment of sums which were not properly due from the LAA. The further irresistible inference that also arose was that he would have procured all of the payments which are the subject of allegation 1.1 by the same means.

26.6 A solicitor of integrity would ensure that any documents that he created were strictly truthful and accurate, and would not create or alter a document which he knew did not accurately reflect the true position. In particular, a solicitor of integrity would not create attendance notes in respect of FTT hearings which he knew had not taken place, nor would he alter dates on correspondence and documents using whitening fluid, or tear correspondence so that key information such as dates and reference numbers could no longer be seen, in order to create a misleading impression that new instructions had been given or new correspondence entered into. Under no circumstances would such a solicitor fabricate such documents, or insert such fabricated documents into his files in an attempt to substantiate claims for payment on his files to the LAA.

26.7 Knowledge that a solicitor had falsely created or doctored documents which he knew to be untrue and misleading, and subsequently attempted to rely on the contents of the same to substantiate claims being made to the LAA in respect of work purportedly undertaken on his files would necessarily impair the good repute of, and the diminish the trust the public placed in, both the solicitor and the profession.

Dishonesty

26.8 In creating the amended and/or fabricated attendance notes and other documents and correspondence and placing them on his mental health files, when he knew they would be relied upon by the Second Respondent in making fraudulent claims to the LAA for work which he knew had not been undertaken as described in his files, the First Respondent knowingly acted dishonestly by the ordinary standards of reasonable and honest people.

First Respondent's Submissions

26.9 The First Respondent repeated his submissions as regards allegation 1.1 above. He denied that he had created or amended any of the documents on the files. He had no knowledge of those matters and did not have conduct of any of the matters. The First Respondent submitted that the LAA review of mental health files demonstrated that alterations and the adding of documents to files took place during times when he was no longer employed by the Second Respondent. The Tribunal was referred to the lies told by EOG. He had claimed that the First Respondent was present during an LAA audit when that was not the case. He had also claimed that he paid for the First Respondent's practising certificate for the practice year 2014/15, when in fact it had been paid for by FMW. Those lies were told by EOG so as to "physically place" the First Respondent at the Firm at the time of the LAA audit. Given those proven lies and the forged Freelance Contract, it was submitted that EOG was certainly capable of amending files/documents both when the First Respondent was working at the Firm full time and after his departure.

Dishonesty

26.10 The First Respondent denied that his conduct had been dishonest. He had not created the attendance notes, as detailed above, they had been forged. He did not have conduct of the 15 files. He had not altered or amended any of the documents on the files, nor had he added any documents to the files. The evidence that pointed to his involvement had been faked by EOG so as to frame the First Respondent.

The Tribunal's Findings

26.11 The Tribunal found, as per allegation 1.1, that the First Respondent had created the false documents. The Tribunal determined that it was the First Respondent that had added these documents to the files.

26.12 The First and Second Respondents accepted, during their interviews, that documents on the files had clearly been altered, and as a result the Firm had made fraudulent claims to the LAA. The Tribunal carefully examined those documents and found the acceptance of alterations of the documents to be properly made.

26.13 As regards the MR matter exemplified by the Applicant, the Tribunal noted that the original letter was addressed to the First Respondent at his previous employer. The First Respondent was the only person in the mental health department that had worked for his previous employer and thus was the only person who would have had

access to that letter. The Tribunal found that the First Respondent was the person who had removed the header of that letter and placed it on the file.

26.14 The Tribunal found that as regards the ZY matter, it was the First Respondent that had amended the date on the Legal Help and Controlled Legal Representation form so that it appeared that the form had been signed on 25 April 2014, whereas it had actually been signed on or around 29 September 2013. The Tribunal further found that it was the First Respondent who had amended the date on the telephone attendance note from 27 September 2013 to 24 May 2014, and on the other numerous documents contained within the file where dates had been amended.

26.15 The Tribunal rejected the First Respondent's submission that the alterations were carried out by EOG. Having already found that it was the First Respondent who had created attendance notes for hearings that did not take place on the 15 matters, the Tribunal found that the First Respondent had also altered and added documents to those files. He had done so in a deliberate attempt to provide evidence showing that these were valid matters where payment could properly be claimed from the LAA.

26.16 The Tribunal found beyond reasonable doubt that such conduct was plainly in breach of Principle 2. No solicitor acting with integrity would amend documents so as to give a false impression of when they were created. Nor would such a solicitor remove parts of documents so as to disguise when those documents were actually sent/received. As found above, no solicitor with integrity would create false hearing attendance notes. That such conduct breached Principle 6 was also beyond reasonable doubt. Members of the public would not expect a solicitor to rip off parts of letters so as to disguise identifying features, or to amend dates so as to enable false claims to be made.

26.17 The Tribunal determined beyond reasonable doubt that such conduct was plainly dishonest. Reasonable and decent people operating ordinary standards of honesty would find that the First Respondent, in deliberately altering and adding fake documents to files so as to make improper claims for payment had acted dishonestly.

26.18 Accordingly the Tribunal found allegation 1.2 proved beyond reasonable doubt, including that the First Respondent's conduct had been dishonest.

27. **Allegation 2.1 - Between September 2011 and May 2015 the Second Respondent failed to have in place any or adequate systems to ensure the supervision of client matters being conducted by the First Respondent and therefore breached or failed to achieve all or any of Principles 6 and 8 of the Principles and Outcomes 7.2 and 7.8 of the Code.**

27.1 Outcome 7.2 of the Code required that: "you have effective systems and controls in place to achieve and comply with all the Principles, rules and outcomes and other requirements of the Handbook, where applicable"

27.2 Outcome 7.8 of the Code required that: "you have a system for supervising clients' matters, to include the regular checking of the quality of work by suitably competent and experienced people".

Applicant's Submissions

27.3 During his interview with the FI Officer on 20 July 2016, EOG confirmed that the First Respondent's files "were supervised by the LAA as [the First Respondent] was the only person at [the Second Respondent] able to review mental health matters. A review had taken place twelve months prior to the discovery of the fraudulent files where no problems had been reported back to [the Second Respondent].....[the First Respondent] worked alone and was the only fee-earner in the mental health department and he was trusted to set up and manage the department". Mr Bullock submitted that it followed that the Second Respondent in fact had no system in place for the supervision of client matter's being conducted by the First Respondent.

27.4 Even if the First Respondent possessed a degree of knowledge in the field of mental health law such that it would not have been possible for another person at the Second Respondent to assess the technical accuracy of his work, the proper governance and management of the firm in accordance with sound financial and risk management principles still required them to review and audit his files on a regular basis so as to confirm, amongst other things, that he was conducting matters in accordance with his regulatory obligations. Further, the Second Respondent should not recruit someone whose area of practice was so specialised, that he could not be supervised by the Firm.

27.5 In a letter to the FI Officer dated 13 July 2016, EOG explained that the Firm had taken proactive steps. It had reviewed and updated its internal systems and procedures with new control measures ensuring that files were internally verified and certified as billable. The Second Respondent had also reviewed and strengthened its security in respect of access to the offices and its IT security policy.

27.6 When asked by the FI Officer in August 2016 whether the systems in place during the time the First Respondent worked at the Firm were sufficiently robust and adequate, EOG stated: "We believe that [the Second Respondent] had adequate supervision in place and [the First Respondent] himself was employed as a supervisor and to help strengthen our control system especially that of the mental health department.... [The Second Respondent] did not at any time envisage that [the First Respondent] would perpetrate fraud as we know now, otherwise he would not have been employed in the first instance".

27.7 Mr Bullock submitted that the Second Respondent was guilty of culpable conduct. File reviews were a basic precaution against misconduct and bad practice in any firm. The Second Respondent had breached the Principles and failed to achieve the outcomes as alleged:

- A member of the public would expect a firm of solicitors to have sufficient control and systems in place over its employees to ensure that they were not in a position to fabricate documents and/or cause significant fraudulent claims to be submitted to the LAA. A member of the public would also expect a firm of solicitors to be aware of the work undertaken by its employees, and whether or not any employees were working elsewhere, and to ensure that appropriate file reviews and controls were in place. Failure to do so would necessarily diminish the trust the public placed in it and in the provision of legal services.

- By failing to have such controls in place to ensure the effective supervision of the First Respondent, the Second Respondent also failed to run its business effectively and in accordance with sound risk management principles.

- By failing to prevent significant fraudulent claims being submitted to the LAA, the Second Respondent failed to have in place effective systems and controls in place to achieve and comply with all Principles, rules and outcomes and other requirements of the Handbook, and failed to have in place a system for supervising clients' matters, to include the regular checking of the quality of work by suitably competent and experienced people.

Second Respondent's Submissions

27.8 Mr Barnett stated that the submission made by Mr Bullock as regards the Firm not employing someone who was so specialised that the Firm could not supervise them, was a novel proposition with no foundation in law or practice. The Applicant's position as regards the Second Respondent was over prescriptive and based entirely on hindsight. It was unfair of the Applicant to point to the actions subsequently taken by the Firm and then rely on that as evidence that the previous systems were defective. The Second Respondent had acted responsibly and reviewed its systems in light of the conduct of the First Respondent. The First Respondent, it was submitted, was thoroughly dishonest and had "completely hoodwinked" the Firm.

27.9 Mr Barnett submitted that whilst the Firm had admitted that its systems were not sufficiently robust, this was not sufficiently serious enough to amount to misconduct. The Tribunal ought to assess the conduct of the Second Respondent in light of the circumstances; the First Respondent was "utterly plausible" and "completely dishonest through and through". The Tribunal should also consider proportionality. The Firm had had to repay £179,716.00 to the LAA to rectify the fraud of the First Respondent. It had also had to fund the litigation of this matter before the Tribunal in the face of accusations by the First Respondent that EOG and others at the Firm had been were dishonest notwithstanding that the LAA, police and SRA who had all investigated this matter made no such accusation.

27.10 Further, the Firm had shown remorse and there was no current impairment. Regulation was about assessment of future risk. The Second Respondent did not pose any risk or repetition of the failings identified.

The Tribunals Findings

27.11 The Tribunal noted that there was no factual dispute between the Applicant and the Second Respondent. In its Answer, the Second Respondent stated: "the Second Respondent admits that between September 2011 and May 2015 that it failed to prevent claims being made to the LAA with a total sum of £11,160.00. It also recognises the systems and controls that were in place were not sufficiently robust to prevent the First Respondent from acting in the manner alleged."

27.12 The Tribunal was not persuaded that the failings of the Firm did not amount to misconduct. Whilst there may not have been anyone at the Firm who could check the accuracy of the First Respondent's advice, this did not negate the Firm's requirement

to undertake reviews of the First Respondent's files. Even rudimentary reviews, such as checking the hearing date on attendance notes against the Court diary may have highlighted, at a far earlier stage, that hearings that had not taken place were being claimed. The Tribunal noted that when the First Respondent joined the Firm, he was a newly qualified solicitor with just short of 8 months post qualification experience. Given his lack of post qualification experience, it was the more important that the Firm ensured that he was properly supervised. The Tribunal was satisfied that the systems in place were inadequate. As regards impairment and future risk, whilst it was accepted that regulation was about managing risk, the Tribunal did not accept that as future risk had been minimised, the Firm should not be held liable for its previous failings. Those failings had been serious, and on the Firm's own admission, had allowed the First Respondent to make improper claims to the LAA.

27.13 The Tribunal found that such conduct breached Principles 6 and 8 of the Principles as alleged. Members of the public would be extremely concerned to know that the Firm had failed to supervise the First Respondent, who had been able to submit fraudulent claims. Members of the public would also expect firms to have adequate systems in place to effect proper supervision, and to ensure that its staff operated with the integrity, probity and trustworthiness expected of them.

27.14 That the Second Respondent had failed to run its business in accordance with proper governance and sound financial and risk management principles was plain. There was no proper governance of the First Respondent; that failure was evident in the First Respondent's conduct.

27.15 That the Second Respondent had failed to achieve Outcomes 7.2 and 7.8 was, likewise, plain. It had failed to have effective systems and controls in place to achieve and comply with all Principles, rules and outcomes and other requirements of the Handbook, and had failed to have in place a system for supervising clients' matters, to include the regular checking of the quality of work by suitably competent and experienced people.

27.16 Accordingly, the Tribunal found allegation 2.1 proved beyond reasonable doubt.

Previous Disciplinary Matters

28. None.

Mitigation

29. The First Respondent explained that he was not expecting the Tribunal to find the matters proved, and so had not prepared any mitigation. Having consulted the Handbook, he submitted that in view of the comments in Bolton and the Tribunal's findings on dishonesty the Tribunal was likely to strike him off the Roll. The First Respondent submitted that the Tribunal should consider indefinitely suspending him. He was 61 years of age and was highly unlikely to return to practice in the future. Even if he did wish to return to the profession, it would take him a minimum of 3 years to regain his mental health accreditation, and he would find it extremely difficult to obtain any further employment. In practical terms, the imposition of an indefinite suspension would have the same effect as a strike off.

30. Mr Barnett submitted that the Firm had taken a number of steps as a result of the deficiencies in its systems. This was not a case where there was no supervision but was one of inadequate supervision. Had it not been for the fact that the Firm was jointly charged with the First Respondent, it was highly likely that the proceedings could have been disposed of more quickly by way of an Agreed Outcome. The First Respondent's actions and the subsequent recoupment of mental health payments from the LAA had had a huge impact on the Firm. Whilst a fine might be an obvious sanction to consider, the Tribunal could, unusually, consider the imposition of a reprimand. The Tribunal directed Mr Barnett to Paragraph 18(2) of Schedule 2 of the Administration of Justice Act 1985, which detailed the Tribunal's powers in relation to sanction of a recognised body. Where the Tribunal is satisfied that allegations against a recognised body are proved it can make:

> "(a) an order revoking the recognition under section 9 of this Act of the body to which the complaint relates;
>
> (b) an order directing the payment by that body of a penalty to be forfeited to Her Majesty;
>
> (c) an order requiring that body to pay the costs incurred in bringing against it the proceedings before the Tribunal or a contribution towards those costs, being a contribution of such amount as the Tribunal considers reasonable."

31. Mr Barnett submitted that given the extreme pressures suffered by the Firm, caused by the First Respondent who was thoroughly dishonest, this was an appropriate case for the Tribunal to impose no order; the Firm had already been punished over and above what was proportionate.

Sanction

32. The Tribunal had regard to the Guidance Note on Sanctions (5th Edition). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

33. <u>The First Respondent</u>

33.1 The Tribunal considered that the First Respondent's culpability for his misconduct was of the highest order. He had created false documents and amended documents on files so as to cause them to appear as if they could be properly claimed when he knew that was not the case. Those actions were clearly planned. It took some foresight to rip references off letters sent to him at his previous employment, and to amend dates on key documents. His actions were in fundamental breach of the trust placed in him by the Second Respondent to provide it with legitimate files for billing. Whilst the First Respondent did not have numerous years of post-qualification experience, he was an experienced mental health practitioner, and the only one specialising in that field in the Firm. He had caused colossal harm to the reputation of the profession, and had caused financial harm to his previous employers. He had wholly departed from

the standards of complete integrity, probity and trustworthiness expected of him by the public and his peers. His conduct was aggravated by the findings of dishonesty. His dishonest conduct was deliberate, calculated and repeated throughout his employment with the Second Respondent. He had attempted to cover his tracks by amending and defacing documents on the files. He knew that his conduct was not only dishonest, but was in material breach of his obligation to protect the public and the reputation of the profession. The Second Respondent had been substantially impacted by his misconduct. The Tribunal noted that the First Respondent had a previously unblemished career. However, this was insufficient to ameliorate the seriousness of his misconduct. The Tribunal found the First Respondent's conduct to be at the highest level such that the protection of the public and the protection of the profession necessitated his immediate removal from practice. The Tribunal did not consider that there were truly compelling and exceptional reasons to impose an indefinite suspension. Given the extremely serious nature of the First Respondent's conduct, the Tribunal determined that the only proportionate sanction was to strike the First Respondent off the Roll of Solicitors.

34. The Second Respondent

34.1 The Tribunal did not consider that the culpability of the Second Respondent was so low that it would be unfair or disproportionate to impose a sanction. The Second Respondent had employed a solicitor with less than 1 year's post-qualification experience, and had not put in place any mechanisms for his supervision. This was not a trivial or technical breach of its obligation. The Second Respondent's failing had led it to suffer severe financial repercussions, and had allowed fraudulent claims to be submitted to the LAA. Mr Barnett's submission that No Order was appropriate was unrealistically optimistic. The Second Respondent was wholly culpable for its failings. By failing to ensure that it had proper systems in place, it had allowed the First Respondent's misconduct to go unchecked. In so doing it had caused harm to the reputation of the profession. The Tribunal noted the steps taken by the Second Respondent to ensure that such a situation would not arise again. It considered that a financial penalty was appropriate. The Second Respondent's conduct fell within Level 2 of the Tribunal's Indicative Fine Band levels, and a fine of £5,000 was appropriate, proportionate and reflective of the Second Respondent's failings.

Costs

35. Mr Bullock applied for costs, after appropriate reductions, in the sum of £48,142.40. He made no submission as to how the costs should be divided between the Respondents. He noted that had the Second Respondent appeared alone, the matter would have been a 1 day hearing. He further observed that had matters remained focussed on the actual issues to be determined, the matter ought to have concluded in 3 days rather than 5. In considering the costs, it was proper for the Tribunal to have regard to the way in which the Respondents had conducted their defence of the allegations.

36. The First Respondent explained that he had no money. He had not worked for 3 years and was reliant upon his wife and his elderly mother for money. The Tribunal noted that his statement of means was not supported by any evidence, and was lacking in detail.

37. Mr Barnett submitted that there was no issue with the quantum of costs claimed by the Applicant. The majority of those costs were down to the First Respondent and the way that he had conducted his defence of the allegations. This had increased the Applicant's costs and had also increased the costs of the Second Respondent.

38. The Tribunal considered that the costs claimed were reasonable and proportionate, taking into account the nature of the case, the issues to be determined and the defence of the Respondents. The Tribunal considered that the First Respondent should be responsible for the vast majority of the costs. An approximate split of 80% for the First Respondent and 20% for the Second Respondent was appropriate. Accordingly, the Tribunal ordered that the First Respondent pay a contribution of £38,142.40 towards the Applicant's costs, and that the Second Respondent pay a contribution of £10,000 towards the Applicant's costs.

Statement of Full Order

39. The Tribunal Ordered that the Respondent, DRAKENS MUKORO, 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 £38,142.40.

40. The Tribunal Ordered that GANS & CO SOLICITORS LLP, Recognised Body, do pay a fine of £5,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that they do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,000.00.

Dated this 24th day of July 2018
On behalf of the Tribunal

Nicola Lucking.

N. Lucking
Chair

Judgment filed
with the Law Society
on 24 JUL 2018