

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11754-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

YOUNUS DESAI

Respondent

Before:

Mr D. Green (in the chair)

Ms A. Horne

Mrs S. Gordon

Date of Hearing: 10 to 12 September 2018

Appearances

Yash Bheeroo, counsel, of 3 Verulam Buildings, Gray's Inn, London, WC1R 5NT, instructed by Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant.

Jonathan Goodwin, solicitor, of 69 Ridgewood Drive, Pensby, Wirral CH61 8RF for the Respondent.

JUDGMENT

Allegations

1. The allegations made by the Applicant against the Respondent were set out in a Rule 5 Statement dated 22 November 2017 and were that:
 - 1.1 On 23 January 2015, during a medical consultation between Dr JG and his client for the purposes of preparing an expert report in relation to a personal injury matter, he improperly attempted to influence the evidence of an expert witness and thereby breached Principle 6 of the SRA Principles 2011 (“the Principles”);
 - 1.2 Between 16 November 2016 and 16 February 2017, he attempted to improperly influence an SRA investigation by seeking to influence the responses to be given by Mr DJ to the SRA’s information requests and thereby breached Principles 2, 6 and 7 of the Principles and failed to achieve Outcomes 10.6 and 10.7 of the SRA Code of Conduct 2011 (“the Code”).
2. Dishonesty was alleged with respect to the allegation at paragraph 1.2 above but dishonesty was not an essential ingredient to prove that allegation.

Documents

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

Applicant

- Rule 5 Statement dated 22 November 2017 and exhibits
- One email dated 23 March 2017 to Mr JG produced by the Applicant during the hearing
- Statement of Mr JG dated 4 April 2017 and four emails produced by Mr JG during the hearing
- Updated Schedule of Costs to the Final hearing dated 12 September 2018

Respondent

- Respondent’s witness statement dated 27 February 2018 and exhibits
- Additional documents forming pages 290 to 392 of the hearing bundle
- Two documents produced by the Respondent during the hearing relating to Mr DJ

Factual Background

4. The Respondent was born in 1961 and admitted to the Roll of Solicitors on 1 May 2009. At the date of the hearing, the Respondent held a practising certificate free from conditions.
5. Since 5 November 2015 the Respondent has been a Recognised Sole Practitioner practising as YD Solicitors in Bradford, West Yorkshire (“the Firm”). Prior to that date, the Firm was an authorised body and the two partners were the Respondent and Mr DJ. Mr DJ resigned from the Firm on 19 August 2015, retired from the Firm on 2 October 2015 and voluntarily removed himself from the Roll. Mr DJ subsequently emigrated.

6. During November 2015, the SRA received a report from a solicitor acting in a personal injury claim in which the Firm and the Respondent were involved. The report highlighted alleged irregularities in the disclosed medical report of Mr JG, a Consultant Neurosurgeon instructed jointly by the parties. The SRA duly investigated and allegation 1.1 arose out of those events. Allegations 1.2 and 2 arise out of information received by the SRA from Mr DJ who was contacted as part of the investigation about his own involvement in the personal injury claim.

Witnesses

7. The written and oral evidence of witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence of all witnesses. 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.
8. The following witnesses gave oral evidence:
- Mr JG, consultant neurosurgeon
 - The Respondent

Findings of Fact and Law

9. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
10. **Allegation 1.1: On 23 January 2015, during a medical consultation between Mr JG and the Respondent's client for the purposes of preparing an expert report in relation to a personal injury matter, he improperly attempted to influence the evidence of an expert witness and thereby breached Principle 6 of the Principles.**

The Applicant's Case

- 10.1 The allegation concerned a medical consultation with a minor (who was eleven years old) and was that the Respondent improperly attempted to influence the evidence of the medical expert, Mr JG. Mr Bheeroo, for the Applicant, submitted that the Respondent had three questions to answer:
- Were the interventions by the Respondent in the consultation designed to influence the answers given by the patient?
 - If so, was this an attempt to influence the expert medical evidence of Mr JG?
 - If so, would this undermine the public's trust in the Respondent as a solicitor or in solicitors more generally to serve society?

- 10.2 A solicitor, Ms HS, acting for the other party in the personal injury case, made a report to the SRA which included details about the Respondent, Mr DJ and the Firm. Mr JG was instructed, in effect, as a single joint expert and Ms HS was concerned about irregularities in his report. The concern was that the Respondent went beyond his stated capacity as a translator at the consultation, and that he was seeking to influence the expert's report.
- 10.3 Ms HS had enclosed with her report to the SRA a copy of the medical report of Mr JG. Mr JG's medical report confirmed that the Respondent (referred to in the report as "the family solicitor") was present at the assessment on 23 January 2015 because the patient's mother did not speak English. Mr JG's report also confirms that the Respondent provided details about the car accident, and intervened on the question of when the patient got headaches. The patient's responses to Mr JG's own questions were set out in the report, followed by the answer she then gave in response to a direct question from the Respondent about whether she got headaches during the school day. It was submitted by Mr Bheeroo that the question from the Respondent was a leading one designed to elicit evidence that the patient had not given when answering Mr JG's questions.
- 10.4 In response to a letter from Ms HS, asking why she had not been put on notice of the Respondent's attendance at the medical consultation, he had replied that he attended in order to translate for his client's mother. He accepted that his eleven year old client was fluent in English, and that he did not need to translate for her. He also stated that he did not deem it necessary or appropriate to advise Ms HS that a representative of the Firm would be in attendance at the consultation. Subsequently, in response to a request for information from the SRA, the Respondent stated that he had never attended any other medical consultations with clients. Mr Bheeroo submitted that it was clearly inappropriate for a solicitor to attend a medical consultation, particularly when the expert was in effect acting as a joint expert. In a letter to the SRA dated 25 July 2016, the Respondent stated that ordinarily he would not attend such a consultation but that the 'exceptional and extenuating circumstances' relating to the vulnerability of his client's mother led Mr DJ, who at the time had conduct of the case, to ask the Respondent to attend.
- 10.5 In a subsequent letter to the SRA dated 21 October 2016 the Respondent suggested that it would be helpful if Mr JG could be contacted and invited to give his professional view about whether the Respondent had acted improperly. In the same letter the Respondent stated that his client's mother had asked him to attend the consultation to alleviate her apprehension about it, although he also agreed that, with hindsight, it would have been sensible for an independent translator to attend. He further stated that he had asked Mr DJ to inform Ms HS and Mr JG that he would be in attendance at the consultation, but that Mr DJ had failed to do so. Mr Bheeroo submitted that this was at odds with his earlier insistence that he did not need to inform Ms HS's firm about his attendance.
- 10.6 There was further correspondence between the SRA and the Respondent in November and December 2016. In a letter dated 8 December 2016 the Respondent informed a supervisor from the SRA that the only reason he did not deem it necessary to inform Ms HS' firm about his attendance at the medical consultation was that it would be disrespectful as Mr DJ had conduct of the matter. Mr Bheeroo submitted that this was

an extraordinary position to adopt, but noted the Respondent's acceptance at this stage that the failure to notify both the medical expert, Mr JG, and the opposing solicitor in advance was unacceptable.

- 10.7 As noted above, the Respondent had encouraged the SRA to contact Mr JG which it duly did. In his witness statement, dated 4 April 2017, Mr JG stated that he was very surprised that the Respondent was present during a medical consultation, and that it struck him as a very unusual arrangement. He stated that he would have expected a formal interpretation service to have been arranged. He also noted that the Respondent spoke at the consultation, without invitation, to confirm details of the accident. He noted that questions from the medical expert, which were clearly addressed to the patient, were answered by the Respondent.
- 10.8 Mr JG had questioned the patient about her headaches, and was told that they were improving. She reported getting headaches about twice a week, which was a notable improvement from the position the previous year, when she was experiencing them approximately four times a week. Mr JG reported that the Respondent then interrupted and asked the patient a direct question about whether she got headaches during the school day. She gave a reply that she did get some headaches at school, usually in the afternoon, and that she usually had to go home early as a result. Mr JG's evidence was that he regarded this answer as inconsistent with the previous answers she had given. He stated that he was concerned that the Respondent had asked a leading question which had changed the evidence being provided. Mr Bheeroo submitted that Mr JG had to change his approach to the consultation in the light of the Respondent's intervention. Mr JG also explained in his statement why he did not ask the Respondent to leave: he considered that he would be professionally vulnerable in the consultation with only a minor and her mother who did not speak English present, and was also concerned that the patient's mother would not be able to provide any input should this be required.
- 10.9 The Respondent provided a detailed reply to the SRA, responding to Mr JG's statement on 25 April 2017. Mr Bheeroo submitted that the Respondent focused on the failure of Mr JG to ask him to leave, if he had concerns. Mr Bheeroo submitted that, even if the onus was on Mr JG to do this, it did not absolve the Respondent of his professional obligations. The Respondent did apologise for his actions, and said that Mr JG's failure to raise his concerns with him, or Ms HS's firm, did not excuse his own actions. He said that he deeply regretted his actions, and undertook to the SRA not to repeat them. In the Respondent's witness statement he suggested that Dr JG was to some extent influenced by a delay in his fees being paid in respect of another consultation. Mr Bheeroo submitted that the key issue was the interventions in the consultation, as the allegation was that the Respondent attempted to influence the medical expert.
- 10.10 Turning to the first of his three questions Mr Bheeroo submitted that the interventions, including in the form of a direct leading question addressed to the patient once she had answered the medical expert's questions about her headaches, were clearly designed to influence the patient. Mr JG's evidence was that he had obtained evidence about her experience of headaches, and after this the Respondent interrupted with a leading question, following which the patient gave contradictory evidence. The intervention and the contradictory evidence caused Mr JG to change tack. As to whether an attempt to influence the patient was an attempt to influence the expert's evidence (his second

question), Mr Bheeroo submitted that it was. Mr JG had a method to produce a balanced report, including an account of the headaches experienced by the patient, and at the conclusion of his enquiries on this topic the Respondent had intervened with a leading question. Mr JG's conclusion was that the Respondent was seeking to influence him. In response to a question during cross examination the Respondent acknowledged that Mr JG's report would be altered as a result of his intervention.

- 10.11 Mr Bheeroo referred the Tribunal to the case of Wingate and another v SRA [2018] EWCA Civ 366 and in particular paragraph 105 in which Rupert Jackson LJ confirms that Principle 6 is directed to preserving the reputation of and public confidence in the legal profession. Mr Bheeroo submitted that the Respondent failed to take sufficient care not to interfere in a medical consultation, and to refrain from asking a leading question, and thereby breached Principle 6. He submitted that public trust in the profession would be fundamentally undermined if the public was aware that a solicitor had behaved in this way. The public would not expect a solicitor to take steps to undermine or influence a jointly instructed expert.

Submission of No Case to Answer

The Respondent's Submissions

- 10.12 At the conclusion of the Applicant's Case, Mr Goodwin, for the Respondent, submitted that there was no case to answer in respect of this allegation. He referred the Tribunal to the well-known case of R v Galbraith [1981] 1 WLR 1039 in which the relevant test is set out. Mr Goodwin submitted that, when considering a submission of no case to answer, the Tribunal should consider only that evidence put forward by the Applicant and bear in mind the burden on the Applicant to prove all elements of allegation 1.1 beyond reasonable doubt.
- 10.13 Mr Goodwin submitted that the allegation had been drafted with precision and referred to 'improperly attempted to influence' rather than the mere fact of the Respondent's attendance at the medical consultation on 23 January 2015. He noted that this was contrary to indications in earlier correspondence from the Applicant to the Respondent that his attendance itself was of concern. Mr Goodwin stated that at one stage the Applicant had also alleged dishonesty in respect of the Respondent's attendance at the consultation, but noted that this was also no longer alleged. What remained was an allegation of improperly attempting to influence.
- 10.14 Mr Goodwin submitted that the Respondent relied upon the oral evidence of the medical expert, Mr JG. In particular, the answer he gave when asked to comment on the intention of the Respondent: "of course I cannot say". Mr Goodwin submitted that this was fatal to the allegation of improper intent. The allegation required the Tribunal to be satisfied that the Respondent intended to influence the evidence, yet the medical expert who was the subject of this allegedly intended influence had said that he could not comment on the Respondent's intention. Mr Goodwin submitted that no evidence of such an intention had been presented by the Applicant and that accordingly the allegation as drafted must fail.

10.15 Mr Goodwin submitted the position on this allegation fell within the category in Galbraith where no evidence had been presented, and that accordingly the Tribunal should stop this element of the case. In the alternative, Mr Goodwin submitted that taken at its highest, Mr JG's evidence was tenuous and vague. His written report of the consultation recorded the Respondent's questions, and Mr JG's key oral evidence was that he could not comment on the Respondent's intention. Given that the Applicant must prove the allegation beyond reasonable doubt, this was a wholly insufficient basis, it was submitted, for the Tribunal to make a finding that it was sure the Respondent intended to influence the evidence of Mr JG which was what was required. Mr Goodwin relied on the case of The Law Society v Waddingham [2012] EWHC 1519 (Admin) as authority that the criminal burden of proof applied not only to the allegation of dishonesty but to all of the allegations brought by the Applicant and that the Tribunal needed to be sure that the Respondent intended to influence the evidence of the medical expert. Mr Goodwin submitted that the evidence presented was inadequate for such an inference to be made to the required standard. He invited the Tribunal to conclude there was insufficient evidence of any such intent from which, even taken at its highest, it could properly find against the Respondent.

The Applicant's Submissions

10.16 Mr Bheeroo agreed that the burden of proving the allegation was on the Applicant, but submitted that, as regards the submission of no case to answer, the burden was on the Respondent. In order to succeed, the Respondent must show that there was no evidence that the alleged breach occurred, or alternatively that the evidence presented was tenuous, vague and weak.

10.17 Mr Bheeroo submitted that neither had been shown, and that it could not plausibly be maintained that there was no evidence of a breach of Principle 6. He summarised the evidence before the Tribunal:

- The Respondent had acknowledged that his attendance at the consultation was not appropriate;
- He attended as a translator but did not stick to that role; he intervened unprompted;
- Mr JG had given compelling oral evidence, it was submitted, that the Respondent had interjected deliberately on the subject of headaches after Mr JG had completed his own enquiries on this topic;
- The question asked by the Respondent about headaches was a leading one which elicited a different answer from that previously given by the patient;
- Mr JG's evidence was that the Respondent's question immediately caused him concern because it appeared designed to change the evidence given to him, and he was compelled to adjust his consultation to deal with the evidential inconsistency which had arisen;

- Mr JG was submitted to be a credible witness of fact, with nothing to gain from his evidence, and one who was prepared to make concessions where appropriate (such as the Respondent not in fact being responsible for the non-payment of an earlier invoice).

- 10.18 Mr Bheeroo submitted that the allegation turned on the Respondent's intent, and that this was something to which the Respondent could speak in his evidence, and which the Tribunal required in order to make findings on this question. He submitted that allegation 1.1 was analogous to the case described in Galbraith where the strength or weakness of the prosecution evidence depended on the view taken by the Tribunal of the Respondent's evidence and reliability. That being the case, he submitted that the submission of no case to answer should fail.
- 10.19 Mr Bheeroo submitted that the Tribunal could find against the Respondent on the evidence presented; he referred to Wingate as authority that a solicitor acting carelessly (beyond mere negligence) could breach Principle 6. He submitted that carelessly asking a leading question, with the intention of eliciting a particular answer, was itself sufficient. He asked why would such a question be asked in that way, if not to change or add to the evidence which had been given up to that point? Such a change or addition to the evidence would amount to influence. Mr Bheeroo stressed that it was alleged that the Respondent had attempted to influence Mr JG's evidence, and not that he had succeeded.

The Tribunal's Decision

- 10.20 The Tribunal considered the application by applying the test in Galbraith. The Tribunal accepted that the fact that a leading question had been asked by the Respondent during the medical consultation, after the patient had already given her account of the subject matter with which the question was concerned, was evidence from which a finding that he attempted to influence the medical expert could properly be made. This was a case where the Respondent's evidence about these events would be important. Accordingly, the Tribunal considered there was a case to answer for allegation 1.1 and the test in Galbraith was not satisfied.

The Respondent's Case (on Allegation 1.1)

- 10.21 Mr Goodwin invited the Tribunal to focus on the wording of the allegation which was that the Respondent 'attempted' to influence the medical expert. Such an attempt required an intent to act in the way alleged. It was submitted that it was insufficient to say that the very fact of asking a question alone proved that the Respondent intended to improperly influence. The Applicant must prove this beyond reasonable doubt so that the Tribunal was sure. Mr Goodwin submitted that the Tribunal should ask whether there was a credible alternative explanation put forward for the action, and invited the tribunal to conclude that the Respondent's account of his intention and motivation for his actions was detailed and plausible.
- 10.22 Mr Goodwin submitted that in his live evidence the Respondent made concessions with the benefit of hindsight, where appropriate, and acknowledged that he would do certain things differently. Mr Goodwin submitted that this was not the same as saying his actions were wrong. He submitted that, in his live evidence, the Respondent was keen

to provide context for his actions, and accordingly gave very detailed answers. Mr Goodwin submitted that the Respondent's account of his actions, viewed as the Respondent understood the position at the time, was compelling.

- 10.23 The medical consultation with Mr JG was in January 2015. No complaint had been received from Mr JG, it had been received from the opposing solicitor in November 2015. Mr Goodwin submitted that the SRA should have contacted Mr JG promptly, as he was clearly the most appropriate person with whom to verify details, as so few people were present in the consultation. Some eleven months after the consultation the SRA contacted the Respondent, who suggested that they contact Mr JG. It was submitted that this was not the suggestion of someone with something to hide. It was not until January or February 2017, two years after the medical consultation, that the SRA contacted Mr JG. Mr Goodwin submitted that it was not surprising that Mr JG was unable to recall much detail, something the transcript of his interview with the SRA's Forensic Investigation Officer ("FIO") was submitted to demonstrate. During the investigatory interview Mr JG stated six times that he would need to check his notes, and Mr Goodwin asked the Tribunal to note that Mr JG had accepted in evidence that his notes had been destroyed in 2016 prior to him being contacted by the SRA.
- 10.24 Mr Goodwin accepted that Mr JG had been a truthful witness, but submitted that there was a notable difference between the witness statement which he had prepared for the Tribunal hearing and the transcript of the interview he had had with the SRA on 7 February 2017. It was submitted by Mr Goodwin that the assertions in the statement prepared for the hearing, and dated 4 April 2017, were significantly stronger than those made in the interview. He also invited the Tribunal to consider the contemporaneous report produced after the consultation, against the more strident witness statement prepared for the proceedings. Mr Goodwin submitted that, had Mr JG's concerns at the time been as seriously as set out in his later witness statement, to the extent he felt "professionally vulnerable", it was likely that Mr JG would have preserved his notes. Mr Goodwin also referred the Tribunal to the comments in Mr JG's statement that his mistrust of the Respondent's firm was due in part to him thinking (wrongly as he conceded in his live evidence) that the Respondent had not paid his professional fee. Mr Goodwin also submitted that the delay in the disclosure of the transcript of the FIO's interview with Mr JG had disadvantaged the Respondent.
- 10.25 The question asked by the Respondent, with which the allegation was concerned, was about the patient's headaches. Mr Goodwin noted that during his investigatory interview with the Respondent's FIO, Mr JG had said that he would deem a solicitor playing a passive role in the consultation to confirm some of the factual details around the case as "perfectly appropriate". Mr Goodwin invited the Tribunal to accept that this was the Respondent's intention, to assist Mr JG ascertain the relevant facts.
- 10.26 The Respondent's evidence was that the only reason he asked the question he did was to bring to the attention of Mr JG the fact that the patient had previously reported to him that she had suffered headaches at school. He stated that the patient's mother had specifically asked him to mention that the patient was suffering headaches at school. He accepted that the question was phrased badly, but stated its purpose and intent was to assist the medical expert get to the facts. Mr Goodwin submitted that the Respondent was an honest witness who was doing his best to assist the Tribunal. He was an

individual of impeccable character, with no involvement in any previous Tribunal, SRA or criminal proceedings and as such it was submitted that his account of his motivation and intent should be accepted.

- 10.27 Mr Goodwin took issue with submissions made by Mr Bheeroo that Principle 6 could be breached by mere carelessness, which would have the effect of applying strict liability to the Principle. Mr Goodwin submitted that the Respondent's intent was critical to the allegation as pleaded, and that whatever Principle was cited as the 'peg' on which the facts of the case hang, the Tribunal had to be satisfied that the intent described in the allegation was present.
- 10.28 Mr Goodwin referred to Wingate, and the comment from Rupert Jackson LJ in paragraph 102, that professional tribunals must not set unrealistically high standards. The full factual matrix surrounding the medical consultation and the question posed by the Respondent was submitted to be relevant to an assessment of whether Principle 6 had been breached. The Wingate judgment described carelessness becoming manifest incompetence, and Mr Goodwin submitted that the Respondent's actions did not approach this level. He submitted that it was regrettable that what had been an attempt by the Respondent to assist this client and Mr JG had been turned into a potentially career ending allegation. He submitted that the public would not contemplate that the trust placed by the public in the Respondent or the provision of legal services had been undermined by a solicitor seeking to help an expert establish the facts. On the contrary, offering such assistance would enhance such trust. Mr Goodwin submitted that the Respondent had provided a plausible explanation for his actions, and he invited the Tribunal to apply the Occam's razor principle that the simplest explanation, that given by the Respondent that he had intended merely to assist, was true and that there had been no breach of Principle 6.

The Tribunal's Decision

- 10.29 The Tribunal noted that the hearing bundle contained a file note which corroborated the Respondent's evidence that his client's mother had asked for him to attend the medical consultation. However, the file note made no mention of language difficulties as the reason behind the request, contrary to the oral and other written evidence given by the Respondent. The Tribunal also noted the comment from Mr JG, in the transcript of his investigatory interview, that whilst he was surprised by the Respondent's presence, had he played a passive role, restricted to confirming factual details of the accident such as dates and times, he would have considered that perfectly appropriate. However, the Respondent went beyond such a passive role.
- 10.30 The Tribunal considered that whilst the Respondent's attendance could have been managed in such a way that Mr JG's concerns were assuaged, it was still highly inadvisable. The lack of notice to the opposing solicitor, who is unlikely to have agreed such an arrangement, and to the medical expert, was improper and risked undermining the efficacy of the single expert system. Such a system depends on the complete integrity and transparency of the solicitors involved.
- 10.31 Having considered his evidence about his intent being to help Mr JG establish medical facts which had been recounted to him in advance of the consultation, the Tribunal found the Respondent's actions to be extremely misguided. During cross examination

the Respondent had accepted that he intended and wanted the information provided by the patient in response to his questioning of her to be included in Mr JG's report. The evidence of the medical expert witness would thus be influenced.

- 10.32 The Tribunal did not find the distinction which the Respondent sought to draw between providing 'help' in the form of a deliberate question which elicited new facts for inclusion in the medical report, and 'improper influence', which he denied exerting or seeking to exert, to be credible or meaningful. Asking a direct leading question reveals an intent to elicit information, and the Respondent accepted this was his intention. The Tribunal found this to be a clear attempt to influence the information provided to the medical expert, and also his report. It was clear from Mr JG's report, and his live evidence, that he had to change his approach during the consultation as a result of the Respondent's intervention. Mr JG's opinion was not in fact influenced because he reacted to the attempt to influence him. The content of his report had nevertheless to be altered in order to recite the intervention of the Respondent and the contradictory evidence it elicited. The Tribunal considered the explanation given by Mr JG as to why he did not ask the Respondent to leave the consultation to be reasonable and persuasive; he had been put in a position with very limited options.
- 10.33 The Tribunal considered that the Respondent had taken a cavalier approach to his professional obligations. The Tribunal found that he intended to influence the evidence of the medical expert, something which the Respondent conceded in cross examination. The seriousness of the misconduct was compounded by its effects: the patient, a child, may have had to undergo another consultation, as the Respondent's actions may have invalidated the consultation he attended, and the medical expert was placed in a professionally uncomfortable position. Even though it accepted the Respondent's evidence was truthful, and that his intervention was an attempt to bring information to the attention of the medical expert, the Tribunal considered this highly improper and something which would undermine the trust placed by the public in him and in the provision of legal services. The public would be concerned, and trust would be undermined, by a solicitor taking such an interventionist role in a consultation by a joint expert, and accordingly the Tribunal found beyond reasonable doubt that the Respondent had breached Principle 6.
11. **Allegation 1.2: Between 16 November 2016 and 16 February 2017, the Respondent attempted to improperly influence an SRA investigation by seeking to influence the responses to be given by Mr DJ to the SRA's information requests and thereby breached Principles 2, 6 and 7 of the Principles and failed to achieve Outcomes 10.6 and 10.7 of the Code.**
- 11.1 Mr Bheeroo submitted that there were, again, three questions to be answered by the Respondent. Did he seek to influence the responses from Mr DJ to the SRA? If so, was this in order to influence or affect the SRA's investigation? If yes, had he failed to act in accordance with the Principles and Outcomes listed?
- 11.2 Mr Bheeroo submitted that the evidence was contained in the documentation to the requisite standard of proof. This allegation arose out of enquiries made by the SRA in February 2017 of Mr DJ relating to the Respondent's attendance at the medical consultation with which allegation 1.1 was concerned. Mr DJ had a telephone conversation with an employee of the SRA on 10 February 2017, during which he stated

that he had been concerned about being approached by the SRA and had removed himself from the Roll as a result of the medical report from Mr JG. He stated that it was a given that the Respondent would attend the consultation, as he spoke Urdu and Punjabi, and had done so on many previous occasions. Mr DJ also stated that the Respondent had contacted him and asked him not to correspond with the SRA until the Respondent had seen Mr DJ's correspondence first. This was the point at which the SRA became aware of emails passing between the Respondent and Mr DJ. Mr DJ's answers to the SRA's questions were at odds with those that the Respondent had by this time given to the SRA.

- 11.3 The Respondent had provided Mr DJ's email address to the SRA on 14 November 2016. The documentary evidence subsequently obtained by the SRA showed that the Respondent contacted Mr DJ on the same day and asked him not to respond to the SRA's enquiries until he had seen the Respondent's responses, and he also asked to see Mr DJ's responses before they were sent. In reply Mr DJ stated that he knew there would be a complaint and had warned the Respondent, but he agreed not to respond without the Respondent's confirmation.
- 11.4 Mr Bheeroo referred the Tribunal to correspondence between the Respondent and Mr DJ on the subject of correspondence with the SRA. On 16 November 2016 the Respondent agreed with a comment from Mr DJ about asking the SRA to put their questions in writing, and also stated that following that 'we' would decide how to respond. Later on the same day the Respondent asked to see the SRA's email to Mr DJ and his reply. Mr DJ duly forwarded the email from the SRA (dated 15 November 2016) containing four questions about the medical consultation attended by the Respondent. In reply, on 21 November 2016 the Respondent sent an email to Mr DJ which stated "[p]lease find attached hereto draft response". The Respondent attached a short draft, addressed to Mr JQ of the SRA, which was consistent with the answers that the Respondent had previously given to the SRA.
- 11.5 Mr Bheeroo submitted that the Respondent had moved from saying to Mr DJ "let's see what they say" to preparing a draft response and thereby, it was submitted, he had attempted to control what was sent to the SRA. The draft response was inconsistent with what Mr DJ eventually told the SRA. Mr Bheeroo submitted that the Respondent had intended that this draft should simply be passed onto the SRA, but Mr DJ did not pass it on. Mr JQ of the SRA chased Mr DJ for a response on 20 December 2016, and having received no response, a Section 44(B) (Solicitors Act 1974) Notice, dated 8 February 2017, was subsequently served on him.
- 11.6 Mr DJ responded to the SRA on 14 February 2017 and provided copies of correspondence between the Respondent and himself on 8 February 2017, extracts of which are set out below:
- Mr DJ wrote: "YD, I have done nothing wrong on the [H] matter. Her mother was your client and you as partner took control of the situation. I think this move against me is wholly wrong and unjustified. This matter must be resolved as a matter of urgency";

- The Respondent wrote: “Can I suggest brief answers are given to the 9 questions as follows:...” and set out nine individual answers to the questions posed in the Section 44(B) Notice;
- Mr DJ wrote in reply: “So it all ends up being my bloody fault. I did nothing wrong. I can’t remember. I cannot remember if I did or did not. I do not think I did an omission on my part. I was not well at the time. Sorry YD it does not wash”;
- The Respondent replied: “Dave I genuinely believe very brief responses will suffice just to comply with the notice. I feel it is like a storm in a teacup. Giving them anymore (sic) will give them ammunition. Please help me in these difficult circumstances. I know they will prosecute me...”;
- The Respondent wrote again at 11:08pm: “I am not blaming you for anything but please assist me to get out of it”.

11.7 Mr Bheeroo submitted that the Respondent was seeking to dictate the nature and manner of the response to the SRA. He submitted that the only ‘help’ that Mr DJ could realistically provide would be to send the drafts prepared by the Respondent, and that this was an attempt to control the level of information provided and the information itself. The Respondent had also written “are you seriously considering coming back” and Mr Bheeroo submitted that the inference to be drawn from this comment was that it would not matter if Mr DJ gave the proposed answers as he had left the UK and had no plans to return.

11.8 On the following day Mr DJ stated that he had warned the Respondent not to “play games” with Ms HS. Mr DJ confirmed to the Respondent that he was preparing his response, and the Respondent asked if he could see it before it was sent. Mr DJ refused but said that the Respondent would approve. In reply the Respondent wrote:-

“As long as it is brief and non-committal... I appreciate what you are doing for me. I have helped you when you have been in need. I responded to your calls when ever (sic) you needed me. Please do likewise. You are much older than me and wiser than me. Our friendship goes back years. We have had difficult times but have stood together and dealt with difficult problems together. I am sure that we can do that now.”

Later that day, the Respondent wrote in a further email:

“My view is that if it is brief and short they can not (sic) dwell on it or hang us which they will do. You know better.”

11.9 Mr DJ responded on the same day and stated:-

“If anybody will hang it will be you through your stupidity. I know what I am doing. I am not going to hang.”

And

“And I do not believe in putting a noose around another mans (sic) neck. If he deserves it he will do it himself”.

11.10 Mr DJ wrote to the Respondent the following day:

“After due consideration - and it has taken a lot of heart and soul searching - I am offering you no protection. I am going to speak to the SRA freely and openly. You made your bed and you must lie in it. I will not be sending to you of (sic) any copies of correspondence which I send to SRA (sic). Furthermore, I will not be entering into any further discussions on the matter....”

11.11 On 16 February 2017 Mr DJ provided his responses to the SRA. It was submitted that his answers were very different to those proposed by the Respondent. In many cases they flatly contradicted one another. Consequently the SRA sought further information from the Respondent by letter dated 16 May 2017. In reply, by letter dated 28 May 2017, the Respondent stated that he had merely been providing suggestions to Mr DJ. He also made reference to alleged personal problems on the part of Mr DJ and suggested that his response may have been deliberately intended to discredit the Respondent. He stated that he had doubts about the accuracy of Mr DJ’s answers. Mr Bheeroo submitted that it was significant that the Respondent had not told the SRA of any concerns about the reliability of Mr DJ when he provided his email address to the SRA, but had only done so once Mr DJ had provided information to the SRA which was at odds with what he had suggested should be provided.

11.12 Mr Bheeroo also referred the Tribunal to an email exchange between Mr DJ and the Respondent on 14 November 2016. This was the date of the email in which the Respondent passed Mr DJ’s email address to the SRA. On that date the Respondent had agreed to a request from Mr DJ for a loan of £400. Mr DJ replied saying how grateful he was. Mr Bheeroo submitted that the inference to be drawn from this email, in the context of the others to which the Tribunal had been directed, was that this was part of the encouragement provided by the Respondent for Mr DJ to respond to his request for help.

11.13 The SRA sought further details from the Respondent, and he replied on 6 June 2017. The Respondent referred to ‘nonsensical’ emails he had received from Mr DJ. Mr Bheeroo submitted that the available emails suggested that the relationship had only become problematic and tense from February 2017, after the Respondent provided his draft answers to Mr DJ. He further submitted that the suggestion from the Respondent that Mr DJ may have had some sinister motive was not supported by the Respondent’s reference to repercussions for “both of us”. Mr Bheeroo submitted that it was significant that the Respondent had not sought to discuss with Mr DJ his recollection of salient events to inform Mr DJ’s response; he had instead drafted a response for Mr DJ consistent with what he had already told the SRA.

11.14 In response to a question from the Tribunal, Mr Bheeroo confirmed that the Applicant did not assert that any contact between professionals about a submission to the SRA would inevitably be improper. It was alleged that the way that the Respondent conducted the correspondence was improper. Mr Bheeroo suggested that the Respondent’s actions overall point towards someone seeking to control the answers which were being sent to the SRA.

- 11.15 Turning to his second question, Mr Bheeroo submitted that the Respondent was seeking to influence the SRA's investigation. He submitted there would be no other reason to seek to control the information passed to the SRA by Mr DJ. He further submitted that if Mr DJ had simply sent the information as drafted by the Respondent to the SRA, the investigation would inevitably have been affected, as the answers eventually provided by Mr DJ were at odds with those drafted by the Respondent.
- 11.16 Mr Bheeroo submitted that the question for the Tribunal was not which version was accurate, the Respondent's draft or that received from Mr DJ, but whether the Respondent had sought to improperly influence the investigation. He submitted that the language the Respondent had used in his emails was designed to encourage Mr DJ to adopt his position.
- 11.17 The Applicant alleged that the Respondent failed to act with integrity in breach of Principle 2 by attempting to influence Mr DJ's responses to the SRA by corresponding with him about his proposed response and providing suggested answers to the questions posed. The answers subsequently provided by Mr DJ were inconsistent with those proposed by the Respondent. It was submitted that the Respondent anticipated that the answers which Mr DJ would provide to the SRA's questions would increase the likelihood of the SRA taking regulatory action against him, and so he provided draft answers designed to reduce that likelihood. Mr Bheeroo submitted that according to the test set out in Wingate, solicitors are expected to conform to the higher standards expected of them by society and to adhere to the ethical standards of the profession. He submitted that solicitors were expected to adhere to due process, and that this involved not interfering with witnesses or an independent investigation.
- 11.18 It was submitted that by attempting to improperly influence an SRA investigation, the Respondent had failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6. Mr Bheeroo submitted that the public trust would be diminished if it was known that a solicitor had sought to influence an independent investigation to make it more favourable to himself.
- 11.19 It was submitted that by attempting to improperly influence an SRA investigation the Respondent failed to comply with his legal and regulatory obligations and deal with his regulators in an open, timely and co-operative manner in breach of Principle 7. Solicitors are expected to co-operate fully with the SRA at all times (Outcome 10.6) and to not attempt to prevent anyone from providing information to the SRA (Outcome 10.7). It was submitted that the Respondent had failed to co-operate fully with the SRA and attempted to influence the information which Mr DJ was asked to provide to the SRA. The result would have been that the SRA's investigation would have been improperly influenced had Mr DJ acted in accordance with the Respondent's suggestions and attempted influence.

The Respondent's Position

- 11.20 Mr Goodwin invited the Tribunal to accept the Respondent's careful explanation given in his evidence. Having not dealt with the SRA previously he was anxious, and panicked to find himself subject to an investigation. The fact that the SRA had raised allegations in October 2016, now withdrawn, based on his mere attendance at the medical consultation contributed to this panicked reaction. The SRA also accused him,

at that time, of dishonesty in respect of his attendance, and Mr Goodwin submitted that the effect of this, also withdrawn, allegation should also be taken into account by the Tribunal.

- 11.21 By the time that the SRA contacted the Respondent about his attendance at the medical consultation, Mr DJ had not been at the Firm for some 15 months. The Respondent's only involvement in the relevant case had been his attendance at the consultation; Mr DJ had conduct of the file. Mr Goodwin submitted that the Applicant was not alleging that it was improper for the Respondent to speak with Mr DJ about the SRA's enquiries at all, and that there was no such legal or regulatory prohibition. Within proper boundaries such contact would be unproblematic. In the circumstances in which he found himself in November 2016, the Respondent considered it was appropriate for him to contact Mr DJ.
- 11.22 Mr Goodwin acknowledged that the Tribunal may consider that the Respondent should have done things differently in his interactions with Mr DJ. The SRA had put this to him in May 2017 and asked why he did not ask if he could review draft answers prepared by Mr DJ rather than proactively submitting his own draft answers. In his evidence, the Respondent had stated that a family bereavement had occurred in November 2016, and Mr Goodwin submitted that this was highly relevant. The emails to Mr DJ had begun at that time. In the heat of the moment, feeling panicked and coping with difficult circumstances, the Respondent had decided to act in one way. If he was wrong to do so, he had apologised to the SRA and to the Tribunal. Mr Goodwin submitted that it was a very significant leap to move from adopting an approach the Tribunal may consider ill-advised in his correspondence with Mr DJ, to alleging breaches of Principles 2 and 6 and Outcomes 10.6 and 10.7 of the Code.
- 11.23 Mr Goodwin submitted that the allegation in the Rule 5 Statement that the Respondent had made a loan to Mr DJ in order to secure his cooperation, something that Mr Bheeroo confirmed during the hearing the Applicant did not rely on, was an example of a regrettable and unsupported mistake in interpretation. Mr DJ himself had asked for the loan.
- 11.24 Mr Goodwin submitted that the Respondent had explained in his evidence the wording used in his emails to Mr DJ. He considered that he was agreeing with the approach Mr DJ himself was advocating. Mr DJ had written that he wanted the SRA to communicate with him in writing, and the Respondent agreed with this approach. When he provided suggested answers for the questions that the SRA had posed, the Respondent had described them as 'draft'. Mr Goodwin submitted that whilst the Tribunal may consider that the Respondent could have done things differently, that would not translate into misconduct unless the Tribunal was sure that he intended to improperly influence the SRA investigation. The only person who knew his intent for sure was the Respondent himself, and Mr Goodwin submitted that the Respondent gave compelling evidence about the exchange and that, at the very least, there was doubt about the intent behind the emails and the Respondent was entitled to the benefit of that doubt.
- 11.25 The Respondent was clear in his evidence that he considered there was nothing inappropriate in contacting Mr DJ in the way he did. Mr Goodwin again referred to the Respondent's exemplary character and submitted that, whilst this was not a defence to

the allegations, it suggested that it was unlikely that the Respondent had acted as alleged. How likely was it that the Respondent sought to influence the investigation? The words he used in his correspondence with Mr DJ were set out plainly in emails, not spoken in unrecorded phone calls. Mr Goodwin referred again to Waddingham and submitted that the Tribunal must be sure that the Respondent had acted as alleged, and breached the Principles and Outcomes as alleged, and that anything less was not sufficient.

- 11.26 In his evidence to the Tribunal the Respondent also made reference to concerns about an irrational flurry of emails from Mr DJ, including many which were offensive or distasteful, and displayed animosity towards him. The Respondent's evidence was that the emails were indicative of a negative attitude that Mr DJ had displayed towards him for two years prior to leaving the firm, despite the considerable support and assistance that the Respondent had extended to him over many years professionally and personally.
- 11.27 Mr Goodwin referred the Tribunal to character evidence and testimonials, which were submitted to be persuasive evidence of his exemplary character and integrity, and to support the explanation of events, and his motivation, that the Respondent had given.

The Tribunal's Decision

- 11.28 The Tribunal did not consider that it was inevitably improper for the Respondent to correspond with Mr DJ about the enquiry from the SRA. The Tribunal considered that solicitors may properly 'pool resources', share information and recollections, and potentially share draft responses, provided they were entirely truthful and there was no attempt to exert influence such that a misleading or false submission may be provided. However, the Tribunal did not consider the Respondent's evidence about his motivation for his correspondence, and provision of draft answers to Mr DJ to be credible.
- 11.29 The Respondent did not provide background material from the client's file to help Mr DJ prepare his response, or even offer to do so. The file note included in the hearing bundle, which recorded a request by Mr DJ for the Respondent to attend the medical consultation, was plainly pertinent, but was not sent to him. Nor did the Respondent provide Mr DJ with copies of the responses he himself had provided to the SRA. The Tribunal considered that the Respondent purposefully provided very limited information to Mr DJ, in the hope that he would simply adopt the inaccurate answers that the Respondent had proposed in the unbidden draft response he provided. The answers proposed by the Respondent were substantially contradicted by the answers subsequently provided to the SRA by Mr DJ.
- 11.30 On the evidence available the Tribunal considered that the relationship between the Respondent and Mr DJ deteriorated when it became clear to Mr DJ that the Respondent was seeking to blame him for various shortcomings in the case. After Mr DJ had written "sorry ... it does not wash" the Respondent did not respond by exhorting Mr DJ to tell the truth, or by providing background documentation to substantiate any of his draft answers, he instead asked for Mr DJ's help and referred to the help he himself had given Mr DJ at various times. The Tribunal also found that the Respondent's choice of language, including the SRA hanging "both of us", was designed to encourage Mr DJ to submit a response to the SRA which was consistent with the answers that the

Respondent had already provided. The Tribunal found beyond reasonable doubt that the Respondent sought to improperly influence the answers given by Mr DJ, and thereby sought to influence the SRA's investigation.

- 11.31 The Tribunal accordingly found that the Respondent had failed to act with integrity in breach of Principle 2. By reference to the test in Wingate, the Tribunal found that by seeking to improperly influence Mr DJ, and thereby the SRA's investigation, the Respondent was clearly not adhering to the ethical standards of the profession. The Tribunal found beyond reasonable doubt that seeking to improperly influence submissions given to the Respondent's regulator was conduct which would undermine the trust placed by the public in him and in the provision of legal services in breach of Principle 6. Efforts by a solicitor to improperly influence the evidence presented to a legal regulator would seriously undermine such trust.
- 11.32 The Tribunal also found beyond reasonable doubt that Principle 7, requiring the Respondent to deal with his regulator in an open, timely and cooperative manner, had also manifestly been breached. Seeking to improperly influence the information provided by a third party through the means summarised above did not display the necessary openness and cooperation. Similarly, on the basis of the above findings the Tribunal also found beyond reasonable doubt that the Respondent had breached Outcomes 10.6 and 10.7 of the Code which require solicitors to cooperate fully with the SRA at all times and not to attempt to prevent anyone providing information to the SRA respectively.

Dishonesty

The Applicant's Case

- 11.33 Dishonesty was alleged with respect to allegation 1.2. It was submitted that the Respondent's actions were dishonest in accordance with the test for dishonesty laid down in Ivey (Appellant) v Genting Casinos (UK) Ltd t/a Crockfords (Respondent) [2017] UKSC 67. Mr Bheeroo submitted the test was objective but that the state of the Respondent's mind was relevant.
- 11.34 It was submitted that in attempting to improperly influence an SRA investigation by influencing Mr DJ's answers to requests for information, the Respondent acted dishonestly by the standards of ordinary decent people. An honest solicitor would not have attempted to provide or influence answers to be provided by another party to a request for information from the SRA during a formal investigation into their conduct. An honest solicitor would not have provided answers for Mr DJ to provide to the SRA, but would have taken care to ensure that Mr DJ could provide his own responses to the SRA free from any suggestion or influence by the Respondent.
- 11.35 Mr Bheeroo submitted that, having received requests and formal notices requiring information from the SRA between November 2016 and February 2017, the Respondent was well aware that his own actions were being investigated and he knew that Mr DJ would be contacted. It was submitted that the Respondent ought to have known that the contact he had with Mr DJ was improper, and that he should not have provided answers for submission to the SRA. The Respondent immediately approached Mr DJ and sought to influence him. He initially secured his agreement not to contact the SRA immediately. He then provided unbidden drafts of proposed responses, and

spoke in terms of “us” being hung, which it was submitted was intended to put pressure on to Mr DJ. The intended effect, it was submitted, was that Mr DJ would corroborate the Respondent’s earlier answers, and this would limit the SRA’s investigation. It was submitted that he effectively asked Mr DJ to fall on his sword because he was not planning to return to the UK.

- 11.36 Mr Bheeroo submitted that the issue for the Tribunal to consider was not whether the Respondent’s account, or that eventually supplied by Mr DJ, was correct; the issue was whether the Respondent had sought to influence the SRA’s investigation. He submitted that the Respondent’s conduct was dishonest and that ordinary, decent people would not seek to improperly influence an investigation into their conduct. In response to the Respondent’s contention that Mr DJ was an unreliable witness, Mr Bheeroo submitted that the documents before the Tribunal spoke for themselves. The Respondent had chosen language in his emails which sought to influence Mr DJ to adopt his position. If the Respondent had genuinely been concerned about Mr DJ being unreliable due to animosity towards him, as he had asserted once Mr DJ had put forward his own account to the SRA, it was submitted that this information would have been passed on to the SRA at the point the Respondent provided Mr DJ’s contact details. To highlight the potential effect of the Respondent’s actions, Mr Bheeroo submitted that, had Mr DJ in fact adopted the answers drafted by the Respondent, the SRA’s investigation would clearly have been affected, as it would have proceeded on the basis of a substantially different factual position. For these reasons, it was submitted that the Ivey test was satisfied, and the Respondent’s conduct was dishonest by the standards of ordinary decent people.

The Respondent’s Case

- 11.37 The response to this allegation of dishonesty relied upon the Respondent’s account of his actions in response to allegation 1.2. Mr Goodwin referred to Ivey and submitted that the subjective assessment of the Respondent’s knowledge and belief as to the facts was central to the test of dishonesty, and that the objective element was not the only relevant part of the test. Mr Goodwin submitted that the reasonableness of the Respondent’s belief was not an additional requirement; the genuineness of his belief was key. He invited the Tribunal to ask itself whether the Respondent’s belief that it was permissible for him to contact Mr DJ in the manner he did, was genuinely held. If so, then it would be at that point that the Tribunal should apply the objective standard of ordinary decent people to his conduct. If the Tribunal accepted that the Respondent genuinely held this belief, then it was submitted that the allegation of dishonesty must fail.
- 11.38 As noted in response to allegation 1.2, the Respondent’s evidence was that he considered that it was appropriate to contact Mr DJ, and that he made suggestions without seeking to improperly influence. Mr Goodwin again submitted that the exemplary character evidence presented should be considered by the Tribunal when assessing how likely it was that the Respondent had intended to act improperly as alleged. There was no evidence of any propensity to act as alleged, and the persuasive, independent and compelling testimonials, which stressed his honesty and integrity were submitted to support the Respondent’s explanation of his intent. Mr Goodwin referred the Tribunal to paragraph 54 in Waddingham in which Mr Justice Maddison had stated that “[i]t would be impermissible in my view in a case to which the criminal standard

of proof applied to infer that the person had acted dishonestly without being sure that he had done so”.

The Tribunal’s Decision

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

- firstly the Tribunal established the actual state of the Respondent’s knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held.
- secondly, once that was established, the Tribunal then considered whether his conduct was honest or dishonest by the standards of ordinary decent people.

11.40 Mr DJ had stated, in reply to the Respondent’s suggested answers and approach, that he was going to speak openly to the SRA. The Tribunal considered this was evidence that Mr DJ felt he was being asked to provide an untrue account to the SRA. His subsequent answers were materially different from, and in many areas directly contradictory of, the answers suggested by the Respondent. The Tribunal could not read this evidence in any other way. The Tribunal did not consider that the available evidence supported the Respondent’s contention that Mr DJ’s own submissions to the SRA were unreliable. Whilst there were some extremely blunt and unpleasant comments in some of Mr DJ’s emails, much of the correspondence was professional, and the negative comments only began once it became clear to Mr DJ that he was essentially being asked to accept blame in order to assist the Respondent. No evidence was presented of any animosity on the part of Mr DJ prior to the Respondent’s provision of his draft answers, which attributed fault to Mr DJ. Accordingly, the Tribunal considered that the Respondent knew that he was asking Mr DJ to corroborate his untruthful account. The Tribunal did not find the Respondent’s oral evidence on his motivation convincing, or his stated belief that he was encouraging Mr DJ to provide full and frank disclosure to the SRA to be credible.

11.41 The Tribunal considered that the language in the Respondent’s emails revealed his concern that serious regulatory action against him was likely, based on his own actions. The emotive language, the reference to a common threat, the exhortation to keep the responses brief, the bald requests for help, and the provision of draft answers which corroborated the Respondent’s own answers to the SRA, all supported the conclusion that the Respondent was deliberately seeking to influence Mr DJ’s account. The Tribunal analysed the correspondence very carefully and considered it cumulatively to be a careful and deliberate attempt by the Respondent to influence Mr DJ’s responses to the regulator in order to protect the Respondent’s position. On material points, including whose idea it was for the Respondent to attend the consultation, and whether he had asked Mr DJ to inform the medical expert and the opposing solicitor of his proposed attendance, the Respondent intended Mr DJ to corroborate his own account. Based on the inferences drawn from the email correspondence, and the Tribunal’s assessment that the Respondent’s evidence lacked credibility, the Tribunal was satisfied beyond reasonable doubt that the Respondent was improperly seeking to influence the

responses given by Mr DJ to the SRA. It further found beyond reasonable doubt that ordinary decent people would regard his actions, taking into account his belief at the time, to be dishonest.

Previous Disciplinary Matters

12. None.

Mitigation

13. The Respondent provided various positive character references making references to his honesty and integrity and Mr Goodwin invited the Tribunal to take these into account. He also referred the Tribunal to the case of SRA v Sharma [2010] EWHC 2022 (Admin) and noted that the Tribunal retains the discretion to find that notwithstanding the finding of dishonesty a sanction other than strike off may be appropriate in exceptional cases.
14. The Respondent gave evidence about serious issues in his private life which occurred around the time of the email correspondence with Mr DJ. He provided various details including the ill-health of close relatives, a family bereavement and other distressing issues within his close family which he stated would have impacted upon his state of mind at the material time. His evidence was that his actions were totally out of character, irrational and foolish. He apologised for his actions and expressed remorse.
15. The Respondent had no previous disciplinary history and had a previously unblemished career. His evidence was that he had not deliberately sought to flout any disciplinary rules.

Sanction

16. The Tribunal referred to its Guidance Note on Sanctions (5th Edition) when considering sanction. The Tribunal assessed the seriousness of the misconduct by considering the level of the Respondents' culpability and the harm caused, together with any aggravating or mitigating factors.
17. In assessing culpability, the Tribunal found that the motivation for the Respondent's attendance at the medical consultation and seeking to influence the evidence presented to the expert, was to enhance his client's case. There was no direct personal benefit to be obtained. His motivation for seeking to influence Mr DJ's answers to the SRA, however, was to reduce the likelihood of disciplinary action which he feared would otherwise be taken against him. The Respondent had direct control over those actions and surrounding circumstances. Given that the correspondence with Mr DJ, and the efforts to influence him, extended between November 2016 and February 2017 the misconduct could not be said to be spontaneous. The Respondent was a solicitor with litigation and personal injury experience. His actions were not explicable by any lack of experience in the relevant legal or regulatory areas. The Tribunal assessed his culpability as high.

18. The Tribunal then turned to assess the harm caused by the misconduct. The medical expert had been placed in a professionally uncomfortable position and the Respondent's client, a minor, risked having to undergo a second medical consultation in the event that the first one had been invalidated by the Respondent's actions. Further, trust and confidence in the system of jointly instructed experts was seriously undermined by solicitors unilaterally attending without notice (and even more by overt efforts to influence the evidence of the expert). The Tribunal had found that the Respondent knowingly sought to influence Mr DJ to provide an inaccurate account to the SRA, which also risked harm to the public perception of the profession. In view of the seriousness of seeking to influence jointly instructed experts and the profession's regulator, the Tribunal assessed the harm caused as moderately high.
19. The misconduct of seeking to influence Mr DJ's account to the SRA was aggravated by the fact the Tribunal found it to be a dishonest attempt to conceal details of his own actions. It was also conduct which extended over a considerable period of time and which was deliberate. The seriousness of the conduct was also aggravated by the fact that, as a solicitor with several years' experience, the Respondent knew, or ought to have known, that efforts to influence the information provided to the regulator was potentially harmful to the reputation of the legal profession.
20. The Tribunal did not consider that any of the potential mitigating factors set out in the Guidance Note on Sanctions were present, and none were highlighted on the Respondent's behalf during the hearing. The Respondent had a previously unblemished career, and the Tribunal took into account the character references presented on his behalf.
21. The Tribunal had regard to the case of Sharma, as highlighted by Mr Goodwin, and the comment of Coulson J that, save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll. The Tribunal was not persuaded that any exceptional factors were present, such that the normal penalty would not be appropriate.
22. Having found that the Respondent acted dishonestly the Tribunal did not consider that a reprimand, fine or suspension were adequate sanctions. The Tribunal had regard to the observation of Sir Thomas Bingham MR in Bolton v Law Society [1994] 1 WLR 512 that the fundamental purpose of sanctions against solicitors was:

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

The Tribunal determined that the findings against the Respondent including dishonesty required that the appropriate sanction was strike off from the Roll.

Costs

23. Mr Bheeroo applied for the Applicant's costs in the sum of £20,261.39 as set out in a costs schedule dated 12 September 2018. Mr Goodwin took issue with two elements of the schedule. He noted that 15 hours had been claimed for drafting of the Rule 5 Statement which he submitted was excessive. He also submitted that the instruction of counsel was not required on what he described as a straightforward case. Had the

Applicant's legal adviser presented the case this would have reduced the amount claimed by £2,100.

24. Mr Bheeroo submitted that the time claimed for the Rule 5 Statement was reasonable and that it was a detailed and precise document. He also submitted that it was reasonable for counsel to be instructed given the nature of the case, which involved a full day of cross-examination. He submitted that, had a solicitor less familiar with advocacy presented the case, the hours claimed would inevitably have been higher as considerably more preparation time would reasonably be required. He noted that Mr O'Malley, the Applicant's solicitor for the case, had not claimed the costs of his attendance at the hearing.
25. The Tribunal assessed the costs for the hearing. The Tribunal considered that it was reasonable to instruct counsel on the case, and noted that the Applicant's solicitor had not claimed costs for his attendance at the hearing. The Tribunal considered the Rule 5 Statement was detailed and drafted logically, and that the time incurred was reasonable. The Respondent did not provide any statement of means, and no submissions regarding his ability to pay costs were made. In all of the circumstances the Respondent was ordered to pay the costs of and incidental to this application and enquiry fixed in the sum of £20,261.39.

Statement of Full Order

26. The Tribunal ORDERED that the Respondent, YOUNUS DESAI 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 £20,261.39.

Dated this 3rd day of December 2018
On behalf of the Tribunal



D Green
Chairman

Judgment filed
with the Law Society
on 03 DEC 2018