SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11772-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

NADIR SULEMAN First Respondent

AADIEL SALYA Second Respondent

Before:

Mr J. C. Chesterton (in the chair)
Ms A. Horne
Mr M. Palayiwa

Date of Hearing: 1 March 2018

Appearances

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

The Respondents did not appear and were not represented.

JUDGMENT

Allegations

1. The Allegation made against the First Respondent by the Applicant was that:

1.1 By virtue of his conviction for the offence described below, he breached any or all of:

1.1.1 Principle 1 of the SRA Principles 2011;

1.1.2 Principle 2 of the SRA Principles 2011; and

1.1.3 Principle 6 of the SRA Principles 2011.

2. The Allegation made against the Second Respondent by the Applicant was that:

2.1 By virtue of his conviction for the offence described below, he breached any or all of:

2.1.1 Principle 1 of the SRA Principles 2011;

2.1.2 Principle 2 of the SRA Principles 2011; and

2.1.3 Principle 6 of the SRA Principles 2011.

Documents

3. The Tribunal considered all the material in the case including:

- Application and Rule 5 Statement with exhibit EP/1 dated 29 December 2017
- First Respondent's Answer to Rule 5 Statement dated 6 February 2018
- Second Respondent's Answer to Rule 5 Statement (unsigned and undated)
- Bundles of documents (x2) served as exhibits to Second Respondent's Answer
- Second Respondent's Application to Adjourn with supporting documentation including inter-parties correspondence served on 28 February 2018 and 1 March 2018
- Legal Submissions of Second Respondent – Substantive Hearing
- Applicant's Schedule of Costs
- First Respondent's letter to the SRA on the issue of costs dated 26 February 2018.
- Memorandum of Case Management Hearing on 16 February 2018 dated 19 February 2018.

Preliminary Matters

<u>Application to proceed in absence</u>

4. At the commencement of the hearing Mr Moran applied to proceed in the absence of the Respondents, neither of whom had attended the hearing.

<u>First Respondent</u>

5. In his Answer to the Rule 5 Statement dated 6 February 2018 the First Respondent had admitted the Allegations. He had told the Tribunal that:

> "As you can no doubt appreciate, I have limited access to emails and telephone calls, as I am in prison and will not be able to attend any hearings or conferences".

6. Mr Moran told the Tribunal that the First Respondent was a serving prisoner and wanted the matters resolved as soon as possible. He had engaged with the Tribunal and had indicated that despite his non-attendance, it should proceed with the hearing. The First Respondent had invited the Tribunal to proceed in his absence and Mr Moran submitted that the Tribunal should do so.

Second Respondent

7. The Second Respondent had been released from prison on 23 November 2017. In his email to the Tribunal of 28 February 2018 enclosing his Application to Adjourn he had stated:

> "Due to my current Home Detention Curfew and dreadful weather conditions up north trains are severally [sic] delayed to London Euston. I am concerned that this will lead to breach of my curfew conditions and for me to then have to serve the remaining of my time in prison. It is due to these reasons that I kindly request to be excused from tomorrow's hearing. I believe all the attached documents have substantial grounds and reasons for an adjournment to be granted. Should for any reason that the adjournment is not granted then I have submitted written legal submissions if the substantive matter is determined tomorrow other than that there isn't anything more that I can say".

8. In his email dated 1 March 2018, sent in response to the Applicant's email opposing the application for an adjournment, the Second Respondent had stated:

> "Finally, I am sorry that I cannot attend today and I have explained my reasons in full below with respect, all I ask is that fair and due consideration is given to the application to adjourn and if the adjournment is not granted fair and due consideration is given to my legal submissions".

9. Mr Moran submitted that the Second Respondent could have been at the hearing and that his application to adjourn was an attempt to go behind the conviction. The Chairman reminded Mr Moran that the matter in hand at this stage was purely a question of whether or not it was in the interest of justice to proceed in absence. The merits of the adjournment application was not a relevant factor at this point.

10. Mr Moran noted this and invited the Tribunal to proceed in the absence of the Second Respondent.

The Tribunal's Decision – First Respondent

11. The Tribunal considered the representations made by the Applicant. The First Respondent was aware of the date of the hearing and Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR") was therefore engaged. The Tribunal had regard to the Solicitors Disciplinary Tribunal Policy/Practice Note on Adjournments (4 October 2002) which it considered in the context of the application to proceed in absence, and the criteria for exercising the discretion to

proceed in absence as set out in R v Hayward, Jones and Purvis [2001] QB 862, CA by Rose LJ at paragraph 22 (5) which stated:

> "In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:
>
> (i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;
>
> (ii) …;
>
> (iii) the likely length of such an adjournment;
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> (iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;
>
> (v) …;
>
> (vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;
>
> (vii) …;
>
> (viii) …;
>
> (ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;
>
> (x) the effect of delay on the memories of witnesses;
>
> (xi) …;"

12. In GMC v Adeogba [2016] EWCA Civ 162, Sir Brian Leveson P noted that in respect of regulatory proceedings there was a need for fairness to the regulator as well as a respondent. At [19] he stated:

> "…It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage with the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed".

13. Leveson P went on to state at [23] that discretion must be exercised "having regard to all the circumstances of which the Panel is aware with fairness to the practitioner being a prime consideration but fairness to the GMC and the interests of the public also taken into account".

14. The Tribunal noted that the First Respondent, who was a serving prisoner, had engaged with the Tribunal and had responded to the Rule 5 Statement. This had included responding to the Allegations, putting forward mitigation and making representations on costs. The Tribunal was satisfied that the First Respondent envisaged the Tribunal proceeding in his absence as he had not expressed any desire to attend or to appear via Videolink.

15. The Tribunal was satisfied that it was in the interests of justice to proceed in the absence of the First Respondent.

The Tribunal's Decision – Second Respondent.

16. The Second Respondent was also aware of the hearing date as he had specifically referenced it in his correspondence. He too had engaged with the Tribunal. He had responded to the Allegations and made applications and submissions in writing. The Tribunal was satisfied that SDPR Rule 16(2) was again engaged.

17. The Second Respondent had explained his absence by reference to the weather and the impact of weather-related delays on public transport on his ability to adhere to his Home Detention Curfew.

18. The Second Respondent had provided no evidence of the curfew hours to which he was subject. It would have been open to him to apply to the relevant authority to have the hours varied or lifted in order to enable him to attend the hearing. It was right to say that parts of the country had been affected by snow on the day of the hearing, but this had been the case for at least two days and the Second Respondent had not provided any evidence of attempts to vary the curfew in that time.

19. The Tribunal was satisfied that the Second Respondent had voluntarily absented himself from the hearing. The purpose of an adjournment to enable him to attend (which was not the basis of his application to adjourn) was therefore unclear. He had told the Tribunal that he had nothing to add in relation to his application to adjourn and he had also served detailed legal submissions in the event that the substantive hearing went ahead.

20. The Allegations were serious and there was a public interest in the matter being resolved in a timely manner. The Tribunal was satisfied that it was in the interests of justice to proceed in the absence of the Second Respondent.

21. The Tribunal therefore granted the applications to proceed in absence. The Tribunal did not draw an adverse inference in respect of either Respondent from their absence and reminded Mr Moran that he should address each of the points raised by the Second Respondent in particular.

Second Respondent's Application to adjourn

22. The Second Respondent had applied to adjourn the substantive hearing for reasons not connected to his non-attendance. The basis of the application was contained in his document 'Application to Adjourn' and in his emails of 28 February 2018 and 1 March 2018, together with documents attached to those emails. The thrust of the Second Respondent's argument was that he had applied for leave to appeal his conviction because he had fresh evidence undermining the safety of that conviction, and that these proceedings should await the outcome of any appeal. As part of the application to adjourn he sought to have his case severed from that of the First Respondent.

23. The Second Respondent referred the Tribunal to a case of SRA v King in which the Tribunal had granted adjournments while criminal proceedings against a Respondent were ongoing including in the Court of Appeal. He further referred to Constantinides v Law Society (not cited but believed to be [2006] EWHC 725 (Admin)) in which the Tribunal had adjourned the first instance proceedings pending the resolution of Chancery proceedings. The Second Respondent submitted that the Tribunal could therefore grant an adjournment. He told the Tribunal that he had offered to remove himself from the Roll but that the Applicant had rejected this suggestion.

24. The Second Respondent submitted that he intended, at the substantive hearing, to rely on the documents he had provided to assert that there was fresh evidence such that the exceptional circumstances referred to in SDPR Rule 15(2) were engaged. The Second Respondent had set out in detail a number of matters which he said undermined the safety of the conviction and which would form part of his appeal. The principal point he raised in that regard was, in summary, the fact that crucial evidence was not deployed during the trial which, had it been so, would have enabled him to present a more compelling defence to the jury. The Second Respondent provided transcripts of parts of the Crown Court proceedings in support of his submissions. He told the Tribunal that he had made an application under "section 23 of the Court of Appeal Act 1968" (presumably he intended to refer to the Criminal Appeal Act 1968) to call fresh evidence.

25. The Second Respondent referred the Tribunal to Re a Solicitor 1996 (not cited but believed to be CO/3076/95) in which the Tribunal had struck-off a solicitor who had been convicted of fraud in the Crown Court. That solicitor appealed on the grounds that the Tribunal had not permitted evidence to be adduced to show that the solicitor had been wrongly convicted. The appeal was dismissed and the Court had held that an attack on a criminal conviction by means of civil proceedings would be an abuse of process unless fresh evidence obtained after conviction was of such probative value that it justified an exception being made. The Respondent told the Tribunal that he was not seeking to launch a collateral attack, but that the evidence fell within the criteria of the exception described in Re a Solicitor.

26. The Second Respondent told the Tribunal that his appeal against conviction had been lodged and was awaiting a decision of a single judge. He explained, however, that he was not seeking an adjournment "purely on the basis of a pending appeal but more importantly on the fresh evidence being an exception under SDPR 15(2)".

27. The Second Respondent applied to be severed as part of the second ground of his application for an adjournment, on the basis that he was unfairly prejudiced by being tried with the First Respondent.

Applicant's Submissions

28. Mr Moran opposed the application for an adjournment. SDPR Rule 21(5) provided a remedy if the matters were to be proved and the Second Respondent's appeal against conviction was to subsequently be successful. The appeal appeared to be at a very early stage and the matters raised were matters for that appeal. The waters of justice would not be muddied by the Tribunal proceeding to hear the matter and, in light of Rule 21(5), there was no prejudice to the Respondent in the matter being heard now.

29. The purposes of the respective proceedings were different. The Tribunal should not entertain any attempt to go behind the conviction.

The Tribunal's Decision

30. The Tribunal had read all the material provided by the Second Respondent including his written submissions. It also noted the submissions of the Applicant, set out in the email from the SRA dated 28 February 2018 and Mr Moran's oral submissions.

31. The Policy/Practice Note on Adjournments (4 October 2002) stated that:

> "The following reasons will NOT generally be regarded as providing justification for an adjournment:
>
> (a) The Existence of Other Proceedings.
>
> The existence or possibility of criminal proceedings unless the criminal proceedings relate to the same or substantially the same underlying facts as form the basis of the proceedings before the Tribunal AND there is a genuine risk that the proceedings before the Tribunal may 'muddy the waters of justice' so far as concerns the criminal proceedings. Proceedings which are not imminent will not usually meet this criterion. Civil proceedings are even less likely to do so".

32. The Second Respondent had not based his adjournment application purely on the basis that he had an appeal pending but the Tribunal nevertheless considered whether to adjourn, in part, on that basis out of fairness to him. The Second Respondent had already been tried, convicted and sentenced. The Second Respondent's appeal had been lodged very recently, and long outside the permitted time limit for doing so, and it was awaiting permission. The Tribunal noted that there was no evidence as to whether the Second Respondent had sought permission to appeal out of time. The proceedings were therefore not imminent.

33. The Second Respondent had invited the Tribunal to consider facts which he submitted would undermine his conviction. That was beyond the remit of the Tribunal. It was not for the Tribunal to examine evidence or consider whether or not the conviction was safe. It would be wholly wrong for the Tribunal to embark on such an exercise.

The correct forum for consideration of the sorts of matters the Second Respondent was raising was the Court of Appeal, if it granted leave. The waters of justice would not be muddied by the Tribunal proceeding, as any proceedings in the Court of Appeal would be entirely separate, and the Tribunal's decision would have no bearing on any matter falling to be considered by the Court of Appeal.

34. The Second Respondent had based his application on the grounds that fresh evidence would both undermine the safety of the conviction and also fall within the exceptional circumstances in which a criminal conviction may not be admissible as conclusive proof of those facts as described in Rule SDPR Rule 15(2).

35. Rule 21(5) of the SDPR stated:

> "Where the Tribunal has made a finding based solely upon the certificate of conviction for a criminal offence which is subsequently quashed the Tribunal may, on the application of the Law Society or the Respondent to the application in respect of which the finding arose, revoke its finding an make such order as to costs as shall appear just in the circumstances".

36. This Rule dealt specifically with the point raised by the Second Respondent. The Allegations were based exclusively on the certificate of conviction in this case. If the Tribunal found the matters proved and if the Second Respondent was subsequently successful in the Court of Appeal such that his conviction was quashed then it would be open to him to apply to the Tribunal to revoke its finding. The effect of this safeguard was that the Second Respondent would not be prejudiced if the Tribunal made a finding based on the certificate of conviction.

37. The Second Respondent had made reference to SRA v King but had not provided the case or a citation. In any event, the Tribunal was not bound by decisions in other cases before the Tribunal. In that case, based on the Second Respondent's reference, the criminal proceedings were well underway and the trial was, at least initially, awaited. That distinguished it from this case. The Second Respondent also referred to Constantinedes but the Tribunal noted that this pre-dated the SDPR, which took effect on 14 January 2008, and it was unclear how this case assisted the Second Respondent. The safeguard under Rule 21(5) was now in place. The same point applied to Re a Solicitor.

38. There was a public interest that required the prompt resolution of these matters. Unless the case against the First Respondent was to be heard separately from the case against the Second Respondent, an adjournment would mean that the resolution of the case against the First Respondent would be delayed, and it was clearly not in the interests of either the First Respondent or the public for that to occur. To overcome that difficulty, the Second Respondent had invited the Tribunal to sever his case from that of the First Respondent in order to allow the case against him alone to be adjourned. However, the criteria for an adjournment had not been met, and there was no other basis for suggesting that the cases against the First and Second Respondents should be severed. The Tribunal noted that the Second Respondent was not practising but that did not eliminate the need to resolve matters in a timely fashion. It would not be in the interests of justice to adjourn this hearing.

39. The Second Respondent's application to adjourn was refused.

40. The Tribunal remained satisfied that it was in the interests of justice to hear the substantive matter in the absence of both Respondents.

Factual Background

41. The First Respondent was born in 1985 and was admitted to the Roll of Solicitors on 15 December 2010.

42. The Second Respondent was born on 3 December 1987 and was admitted to the Roll on 15 August 2012.

43. At time of the hearing the First and Second Respondents remained on the Roll of Solicitors but did not hold current Practising Certificates.

44. On 6 March 2017, in the Crown Court at Liverpool, the First Respondent had pleaded guilty to two counts of Conspire to Defraud. On 21 March 2017 the Second Respondent had been tried and convicted upon indictment of one count of Conspire to Defraud.

45. On 7 April 2017, the First Respondent and Second Respondents were sentenced by His Honour Judge Aubrey QC. The First Respondent was sentenced to four years imprisonment in respect of the first charge, and 18 months imprisonment in respect of the second charge, those sentences to run concurrently. The Second Respondent was sentenced to two years imprisonment. At the time of the Tribunal hearing the First Respondent was a serving prisoner. The Second Respondent had been released from prison on 23 November 2017.

46. The Respondents' convictions arose out of their involvement in frauds that included the establishment of sham companies through which fraudulent claims were made within personal injury claims. Those personal injury claims were conducted through the firm where the First Respondent worked. Both the First and Second Respondents were involved in making dishonest claims in respect of replacement vehicles following road traffic accidents, and exaggerating claims as to hire and storage charges.

47. In passing sentence on 7 April 2017, the learned Judge made the following comments:-

> "The court has received a victim impact statement from a partner at [the First Respondent's former firm]. He makes reference to the damage to their reputation. Further, over 1,000 partner hours have been expended in the review of clients' files and the increase in their professional indemnity insurance is quite frankly staggering…. Fraudulent conduct such as this impacts upon the confidence that the public have in the whole of the legal profession"
>
> "The court must now proceed to sentence each of you, each of you being not only of good character, impeccable character, but professional men and not

only professional men but men who have done much good in their local communities. Many, many references have been received by the court speaking of your charitable work, your work within the Muslim community and being described by many as good, caring, loving members of your respectable families. The other side of course is one describing you as the elite group - - and I am not referring to those factors which the court has just stated but your fraudulent activities".

"Behind the veneer of respectability, professionalism and upstanding within your respective communities you were conning people. You were conning those with whom you worked, you were conning insurance companies and you were conning policy holders. You were doing so to line your own pockets, to drive a Porsche or whatever, and to seek to live the good life. You were captivated by greed and such frauds that you perpetrated required planning, skill and guile, but it was all bogus, a sham and the companies were all a scam…They were formed as vehicles for fraud, doctor's reports were being altered in road traffic claims, physiotherapists either did not exist or there was no treatment or the dishonest claims were being bulked up".

"Having presided over the trial the court is satisfied that you, Aadiel Salya, acted throughout the operation of the company as its shadow director and it was you who was pulling the strings and in effect running the show. You would represent the company in size and stature to be something it simply was not and during the course of the trial you failed to accept that the representations were totally false such was your warped perception of good and honest business practice".

"Before I turn to each of you individually and having reflected carefully overnight on the submissions made by each counsel in the judgment of the court the offences to which each of you have either pleaded guilty or been found guilty by a jury are so serious that only an immediate custodial sentence is justified. The court has asked itself the question as to whether it is inevitable in respect of each of you that you serve that custodial sentence immediately or whether it can properly suspend that sentence. That court has come to the conclusion that notwithstanding personal mitigation it would be inconsistent with its public duty to suspend any sentence".

"Nadir Suleman, you were a solicitor at … and had been since 2010 and you are to be sentenced in respect of your involvement in counts 1 and 2. You pleaded guilty to count 1 at the plea and trial preparation and to count 2 on the day of the trial. The duration of your sentences will be reduced by one third to reflect the fact that you pleaded guilty and the stage of the proceedings that you entered those pleas.

The combined actual loss in your case to others is assessed at £402,191.93 with potential loss for a further loss of £107,500. In your case the judgment of the court your culpability is high. The court has heard references in the evidence to you describing yourself as the boss. You were playing a leading role, you abused your position of responsibility, the frauds were sophisticated and elaborate and committed over a sustained period of time.

You are 31 years of age, you have a young child and your wife is pregnant. The court has received references on your behalf, you have been waiting a long time for sentence. I have read your letter in which you express deep regret, in your words your whole world has come crushing down but with respect you should have thought of that and indeed your family before you embarked upon this elaborate fraud."

"Aadiel Salya, you are before the court in respect of count two alone and you were convicted after trial. This court having presided over your trial is satisfied so that it is sure that you were playing an intrinsic part in the management of and operation of …. And doing so, the jury found, for fraudulent purposes ……

You were hiding your identity by using the name Adam and the text that the jury received into evidence 'Don't use my name, it's only director's name' is, in the judgment of the court, telling. The court is satisfied you were pulling the strings behind the scenes and the court is satisfied that you were playing a leading role.

As far as the loss is concerned the Crown submit that the actual loss was £1,166.93 with potential for a further loss of £107,500. The defence admit that the loss is lower, and much lower, because the claims were being inflated but that they rose out of genuine accidents and genuine damage to motor vehicles.

However, it is to be noted that the repairs were never done and thus the whole of ….. was a sham from start to finish ….. You were in it for the good life, you were out to make money and it is fortunate that the fraud was stopped in the initial stages.

The court has received many references on your behalf. They speak of the good work you do for others at the Preston Muslim Society and within the community. Your Imam states that you are remorseful but the court is bound to say that no remorse was apparent or witnessed when you denied any fraudulent activity during the course of your trial. Of course that does not aggravate your position but it provides no mitigation.

You too have done much charitable work. ….. You are married, your wife is also pregnant and you have a young son. It was your mother's dying wish that you pursued a law degree, you did so and did so successfully before again greed and fraudulent activities consumed you".

48. On 16 May 2017, the SRA sent an Explanation With Warning letter ("EWW") to the First and Second Respondents, asking for their response to the allegations against them.

49. On 30 May 2017 the First Respondent provided his response to the EWW and stated that:

> "I am fully aware the mistakes I have made will potentially result in me being struck off the solicitors roll, however I am of the view that my mistakes were out of character and due to a lack of effective supervision from my employer. I would like to apologise for my conduct and how I have brought the profession into disrepute. I am more than happy to undertake this reform and rehabilitation as punishment from my conduct. I would be grateful if my licence is not revoked, and that instead specific conditions are attached so that I am able to continue in my employment as a solicitor and help those that are in need".
>
> "There is no real explanation of my conduct apart from a stupid mistake that I have made and regret for the rest of my life. I now want to help the profession and to give back to it what it has lost as a result of my conduct ….. I have lost everything. I have lost my career which I had worked so hard for".

50. On 1 June 2017 the Second Respondent provided his response to the EWW. He denied that he had breached Principles 1, 2 and 6 of the SRA Principles 2011, and denied that he had acted dishonestly. He stated that "whilst I respect the jury's verdict, I do not accept it and it is my intention to appeal the conviction on the basis that key evidence that should have been put to the jury had been suppressed. This evidence would have shown that not only was there no conspiracy but that I had no knowledge of the conspiracy".

Witnesses

51. None.

Findings of Fact and Law

52. 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 life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

53. **Allegation 1.1 against the First Respondent - By virtue of his conviction for the offence described below, he breached any or all of:**

1.1.1 Principle 1 of the SRA Principles 2011;

1.1.2 Principle 2 of the SRA Principles 2011; and

1.1.3 Principle 6 of the SRA Principles 2011.

53.1 The First Respondent admitted this Allegation and the Tribunal found the matter proved in full beyond reasonable doubt.

54. **Allegation 2.1 against the Second Respondent- By virtue of his conviction for the offence described below, he breached any or all of:**

2.1.1 Principle 1 of the SRA Principles 2011;

2.1.2 Principle 2 of the SRA Principles 2011; and

2.1.3 Principle 6 of the SRA Principles 2011.

Applicant's Submissions

54.1 Mr Moran took the Tribunal through the certificate of conviction and the Judge's sentencing remarks. The Second Respondent was submitting that there was evidence that, had it been available to him at the trial, would have helped him prove his innocence, and that this amounted to exceptional circumstances. Mr Moran told the Tribunal that the Second Respondent had not stated what those exceptional circumstances were. He reiterated a number of points that he had made in responding to the adjournment application.

54.2 Mr Moran submitted that the Second Respondent was attempting to invite the Tribunal to go behind the conviction and to rehearse his appeal in the wrong forum.

Second Respondent's Submissions

54.3 The Second Respondent denied the Allegation in full. In his Answer he had stated that, while he respected the jury's verdict against him, he did not accept it. He did not agree with the conviction and his Answer, together with his Legal Submissions for Substantive Hearing, set out in detail his reasons for this position. He had also enclosed a large number of documents in support of his submissions, all of which the Tribunal read. The majority of the documents contained details of what he submitted were deficiencies in the trial process. Many of the points that he had made in support of his application for an adjournment were repeated in the submissions. The Tribunal considered them again as the test for an adjournment was different to the test that the Tribunal was required to apply when considering whether the matters were proved, namely whether the Applicant had satisfied the Tribunal beyond reasonable doubt.

54.4 The Second Respondent submitted that relevant material was not disclosed during the trial despite being of fundamental importance to his defence. The Second Respondent again told the Tribunal that he had made an application under "section 23 of the Court of Appeal Act 1968" (again, presumably the Criminal Appeal Act 1968) to call fresh evidence. The Second Respondent submitted that the fresh evidence established an exception such that the Tribunal could consider the evidence behind the certificate of conviction. He argued that this material was of such a nature and probative value that it fell within the criteria of fresh evidence as described in Hunter v Chief Constable of West Midlands Police (not cited but believed to be [1982] AC 529) and Re a Solicitor. The Second Respondent invited the Tribunal to "decide on liability based upon the fresh evidence…" The Tribunal was further invited to take account of the character references that had been placed before the sentencing judge on 7 April 2017.

The Tribunal's Decision

54.5 The Applicant's case was based on the certificate of conviction exhibited to the Rule 5 statement. Rule 15 (2) stated as follows:

> "A conviction for a criminal offence may be proved by the production of a certified copy of the certificate of conviction relating to the offence and proof of a conviction shall constitute evidence that the person in question was guilty of the offence. The findings of fact upon which that conviction was based shall be admissible as conclusive proof of those facts save in exceptional circumstances".

54.6 The first question for the Tribunal was whether the Second Respondent had demonstrated exceptional circumstances such as would allow the Tribunal not to regard the certificate of conviction as conclusive proof of those facts.

54.7 The Second Respondent clearly felt aggrieved at the fact he had been convicted and was of the view that he had been deprived of the opportunity to deploy evidence in support of his defence during the trial. Those complaints were matters to be considered by the Court of Appeal, if it granted the Second Respondent leave. It was not for the Tribunal to assess whether in fact the Second Respondent was in possession of fresh evidence or whether such evidence made the conviction unsafe.

54.8 The fact that the Second Respondent was raising issues concerning fresh evidence did not amount to exceptional circumstances. The Tribunal was required to proceed on the basis that the Second Respondent had been convicted and sentenced as set out in the certificate of conviction. The Tribunal, having carefully read all the material placed before it, found there to be no exceptional circumstances, and it therefore treated the certificate of conviction as conclusive proof of those facts.

54.9 The Tribunal moved on to consider the alleged breaches of the SRA Principles 2011. The Second Respondent had been convicted of a serious offence of dishonesty and had therefore failed to uphold the rule of law or the proper administration of justice. It was not possible to uphold the rule of law while at same time breaking it. The Tribunal was satisfied beyond reasonable doubt that the Second Respondent had breached Principle 1.

54.10 In considering whether the Second Respondent had lacked integrity (Principle 2) the Tribunal had regard to the remarks of the Crown Court Judge. The Tribunal had been invited to have regard to the character references that had been before the Crown Court Judge. These had not been provided to the Tribunal, but it noted the Judge's references to the Second Respondent's previous "impeccable" character based on the character references before him. The Tribunal took these fully into account in the Second Respondent's favour. The judge had found that the Second Respondent had played an "intrinsic part in the management and operation of Replace My Car and doing so, as the jury found, for fraudulent purposes, specifically for the purpose of inflating fees for the cost of replacement vehicles". This was a substantial and sustained fraud and the Tribunal was satisfied beyond reasonable doubt that the Second Respondent had clearly lacked moral soundness in committing it. The Tribunal found beyond reasonable doubt that in participating in the frauds the Second Respondent had lacked integrity.

54.11 The Tribunal, in considering whether the Second Respondent had breached Principle 6, noted that he had failed to uphold the rule of law and failed to act with integrity. This had manifested itself in his conviction for a serious criminal offence.

The Tribunal found beyond reasonable doubt that the Second Respondent had failed to behave in a way that maintained the trust the public would have placed in him and in the provision of legal services.

54.12 The Tribunal found Allegation 2 proved in full beyond reasonable doubt.

Previous Disciplinary Matters

55. None in respect of either Respondent.

Mitigation

First Respondent

56. The First Respondent, in his letter/Answer of 6 February 2018 had stated:

> "Having considered all the papers, I am of the view that I cannot disagree with the charges put before the Solicitors Disciplinary Tribunal, and as an effort of being co-operative, save unnecessary costs and the predicament in which I find myself, I would like to agree to an outcome whereby I am removed from the roll of solicitors".

57. He had continued:

> "I am very sorry for the crimes that I have committed, which has brought the profession into disrepute. I hope that one day I can make amends and try to put right the harm I have done. Please accept this letter as full acceptance of the charges put before the Solicitors Disciplinary Tribunal".

58. The sentencing Judge had identified matters in mitigation in the context of the criminal proceedings as set out above and the Tribunal had regard to those matters.

Second Respondent

59. The Second Respondent had not advanced mitigation specifically. However in his Legal Submissions for Substantive Hearing he had stated that he did not practise and had "sought to resile from the profession and therefore in balancing his interest with the public interest the Second Respondent submits that…he does not present a risk to the public interest".

60. He had continued:

> "The Second Respondent's personal circumstances are that he is a married man with a young family, he has served his prison sentence, he is seeking to get back on his feet and would urge upon the panel to give sympathetic consideration when making a decision which would greatly support and give him confidence in getting back on his feet".

61. The Second Respondent had referred to the character references before the Crown Court Judge in the context of his overall submissions, and the Tribunal also included this in consideration of his mitigation.

Sanction

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

First Respondent

63. The First Respondent had been motivated by greed. The offence was, by definition, pre-planned and the First Respondent had breached the trust of others by his actions. The Tribunal noted that he was of sufficient experience to know that committing a criminal offence was serious misconduct.

64. The harm caused was substantial. The figures were very significant and the damage to the reputation of the profession was very high in any case where a solicitor conspired to defraud.

65. The matters were aggravated by the fact that the First Respondent had been convicted of an offence of dishonesty. His conduct had been deliberate, calculated and repeated and the nature of the offence involved concealment.

66. The matters were mitigated, however, by the First Respondent's admission to the Allegations before the Tribunal. He had demonstrated some insight, which was reflected in his plea of guilty in the Crown Court and his expression of remorse both there and to the Tribunal. He had co-operated with his regulator and the Tribunal noted that he had a previously unblemished record.

67. The Tribunal noted the sentencing remarks of the Judge and found that the misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the First Respondent. The misconduct was at the highest level and the only appropriate sanction was a Strike Off. The protection of the public and of the reputation of the profession demanded nothing less. In SRA v Farrimond [2017] EWHC 321 (Admin), Sir Brian Leveson had stated:

> "In my judgment, it is beyond argument that a solicitor sentenced to any substantial term of imprisonment should not be permitted to remain on the Roll even if suspended indefinitely".

The First Respondent had received sentences totalling four years imprisonment, which was clearly substantial.

68. The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. The Tribunal found there to be nothing that would justify imposing an indefinite suspension instead of a striking-off. The

only appropriate and proportionate sanction was that the Respondent be Struck-off the Roll.

Second Respondent

69. The Second Respondent had also been motivated by greed and, again, the offence had been pre-planned. He, too, had breached the trust of others and was experienced.

70. The sums involved were less than in the case of the First Respondent and the Tribunal noted that the Second Respondent had received a shorter custodial sentence. However the Second Respondent had still been found guilty of an offence of dishonesty and while the sums involved were lower, they were still significant.

71. These matters were aggravated by the nature of the offence and the fact that, as with the First Respondent, the conduct had been deliberate, calculated and repeated. Unlike the First Respondent, the Second Respondent had contested the matter to trial and had also denied the Allegations before the Tribunal. To that extent, he had sought to conceal his wrongdoing and had demonstrated no insight. The Tribunal further noted that the Second Respondent had tried to stall the proceedings.

72. The matters were mitigated by the fact that the Second Respondent also had a previously unblemished career, and there had been a degree of co-operation with the regulator.

73. The misconduct was, again, so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the Second Respondent. While the Tribunal noted the differences between the First and Second Respondents' cases, the misconduct on the part of the Second Respondent was nevertheless also at the highest level and the principles in Farrimond referred to above applied here too. The only appropriate sanction was a Strike-off. The protection of the public and of the reputation of the profession demanded nothing less.

74. The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. The Tribunal found there to be nothing that would justify imposing an indefinite suspension instead of a striking off. The only appropriate and proportionate sanction was that the Respondent be Struck-off the Roll.

Costs

75. Mr Moran applied for costs in the sum of £5,365.40.

76. The First Respondent, in his letter to the Tribunal of 26 February 2018, had expressed concerns about costs. He had stated:

> "I am deeply concerned, having read your Statement of Costs. As you will note and in fairness to me, the total costs should be apportioned between both Respondents. I should not be made to pay towards the cost of the hearing

dated 15 February 2018, as that was predominantly in respect of the Second Respondent, which should in my opinion not be attributed to me.

I would like to reiterate, I do not have any financial means to pay these disproportionate costs. It is my view that the costs associated with me should be apportioned to reflect the work done, and my early admissions. I would also argue that the travelling costs are relatively high and so is the initial costs of £1692.00. I am aware the final hearing is listed for 1 March 2018, I would be grateful if the matter of costs could be expeditiously dealt with in fairness to all parties".

77. He had concluded by asking for the letter to be placed before the Tribunal so that it was aware of his financial position and the First Respondent's position "in respect of the extortionate costs".

78. The Second Respondent had not made submissions on costs and neither Respondent had filed a statement of means.

79. The Tribunal was satisfied that the overall level of costs was reasonable and proportionate in the circumstances. It did not regard them as extortionate or disproportionate. Costs at the date of issue had been £1,692.00 and this figure was reasonable in view of the fact that the Applicant had been required to investigate the conduct of two Respondents. The Tribunal determined that this figure should be divided equally between the two Respondents.

80. The Tribunal recognised that the first Respondent had made early admissions and that the vast majority of time spent following the issue of proceedings was concerned with the Second Respondent's applications and his denial of the allegations. The Tribunal determined that the Second Respondent should bear those costs.

81. The Tribunal decided that the First Respondent should pay £846.00, reflecting 50% of the Applicant's costs as at the date of issue. The Second Respondent should pay £4,519.40, reflecting 50% of the Applicant's costs as at the date of issue together with the costs of the proceedings thereafter.

Statement of Full Order

82. The Tribunal Ordered that the Respondent, NADIR SULEMAN, 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 £846.00.

83. The Tribunal Ordered that the Respondent, AADIEL SALYA, 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 £4,519.40.

Dated this 28th day of March 2018
On behalf of the Tribunal

J. C. Chesterton
Chairman