

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11796-2018

## **BETWEEN:**

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

TOM KWING MING LI

Respondent

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Before:

Mr D Green (in the chair)

Mr P Davies

Mr A Lyon

Date of Hearing:

21 - 22 November 2022

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## **Appearances**

Andrew Bullock, Counsel, of the Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1 RN, for the Applicant.

The Respondent attended via telephone on the morning of Day 1 of the Substantive Hearing and represented himself.

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## **JUDGMENT**

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## **Allegations**

1. The allegations made against Mr Li, Tom Kwing Ming Li, by the SRA were that: -
  - 1.1 Between 10 May 2010 and February 2016, by failing to submit an application for permanent residence in the United Kingdom on behalf of his client Ms YQM when instructed or at all, he breached or failed to achieve any or all of:
    - 1.1.1 Rule 1.04 Solicitors Code of Conduct 2007;
    - 1.1.2 Rule 1.05 Solicitors Code of Conduct 2007;
    - 1.1.3 Rule 1.06 Solicitors Code of Conduct 2007;
    - 1.1.4 Principle 4 of the SRA Principles 2011;
    - 1.1.5 Principle 5 of the SRA Principles 2011;
    - 1.1.6 Principle 6 of the SRA Principles 2011; and
    - 1.1.7 Outcome 1.2 of the SRA Code of Conduct 2011.

(Allegation 1.1 and Allegations 1.1.1 - 1.1.7 were found [PROVED](#))

- 1.2 Between a date unknown in 2004 and January 2016, by failing to submit an application for Leave/Indefinite Leave to Remain in the UK on behalf of his client Mrs YTL when instructed or at all, he breached or failed to achieve any or all of:
  - 1.2.1 Rule 1 (c) Solicitors Practice Rules 1990;
  - 1.2.2 Rule 1 (d) Solicitors Practice Rules 1990;
  - 1.2.3 Rule 1 (e) Solicitors Practice Rules 1990;
  - 1.2.4 Rule 1.04 Solicitors Code of Conduct 2007;
  - 1.2.5 Rule 1.05 Solicitors Code of Conduct 2007;
  - 1.2.6 Rule 1.06 Solicitors Code of Conduct 2007;
  - 1.2.7 Principle 4 of the SRA Principles 2011;
  - 1.2.8 Principle 5 of the SRA Principles 2011;
  - 1.2.9 Principle 6 of the SRA Principles 2011; and
  - 1.2.10 Outcome 1.2 of the SRA Code of Conduct 2011.

(Allegation 1.2 and Allegations 1.2.1 - 1.2.10 were found [PROVED](#))

1.3 Between a date unknown in 2012 and February 2016, by making misleading and/or untrue statements to Ms YQM, and others, in respect of the progress of her application for leave to remain in the UK, he breached any or all of:

1.3.1 Principle 2 of the SRA Principles 2011;

1.3.2 Principle 4 of the SRA Principles 2011;

1.3.3 Principle 5 of the SRA Principles 2011; and

1.3.4 Principle 6 of the SRA Principles 2011.

(Allegation 1.3 and Allegations 1.3.1 - 1.3.4 were found [PROVED](#))

1.4 On or about 30 September 2015, by fabricating a letter purportedly sent by the Home Office, UK Border Agency in respect of Mrs YTL's application for leave to remain in the UK, he breached or failed to achieve any or all of:

1.4.1 Principle 2 of the SRA Principles 2011;

1.4.2 Principle 4 of the SRA Principles 2011;

1.4.3 Principle 5 of the SRA Principles 2011; and

1.4.4 Principles 6 of the SRA Principles 2011.

(Allegation 1.4 and Allegations 1.4.1 - 1.4.4 were found [PROVED](#))

1.5 Between 2006 and February 2016, by making misleading and/or untrue statements to Mrs YTL and others in respect of the progress of her application for leave to remain in the UK, he breached any or all of:

1.5.1 Rule 1 (c) Solicitors Practice Rules 1990;

1.5.2 Rule 1 (d) Solicitors Practice Rules 1990;

1.5.3 Rule 1 (e) Solicitors Practice Rules 1990;

1.5.4 Rule 1.04 Solicitors Code of Conduct 2007;

1.5.5 Rule 1.05 Solicitors Code of Conduct 2007;

1.5.6 Rule 1.06 Solicitors Code of Conduct 2007;

1.5.7 Principle 2 of the SRA Principles 2011;

1.5.8 Principle 4 of the SRA Principles 2011;

1.5.9 Principle 5 of the SRA Principles 2011; and

1.5.10 Principle 6 of the SRA Principles 2011.

(Allegation 1.5 and Allegations 1.5.1 - 1.5.10 were found [PROVED](#))

1.6 Between April 2016 and September 2017, by failing to cooperate with the investigation undertaken by the SRA into the work undertaken on behalf of his clients Ms YQM and Mrs YTL he breached or failed to achieve any or all of:

1.6.1 Principle 2 of the SRA Principles 2011;

1.6.2 Principle 6 of the SRA Principles 2011;

1.6.3 Principle 7 of the SRA Principles 2011;

1.6.4 Outcome (10.8) of the SRA Code of Conduct 2011; and

1.6.5 Outcome (10.9) of the SRA Code of Conduct 2011;

(Allegation 1.6 and Allegations 1.6.1 – 1.6.5 were found [PROVED](#))

2. While dishonesty is alleged with respect to the allegations at paragraphs 1.3, 1.4 and 1.5, proof of dishonesty is not an essential ingredient for proof of any of the allegations.

(Allegation 2 was found [PROVED](#))

### **Executive Summary**

3. Mr Li faced allegations regarding his conduct in relation to two clients and their instructions to apply for Indefinite Leave to Remain in the United Kingdom. Mr Li was found beyond reasonable doubt to have dishonestly misled both clients into believing that their applications had been submitted to the Home Office and the progress of their non-existent applications. He was further found beyond reasonable doubt to have sent a fabricated letter purportedly from the Home Office to a client and subsequently having failed to cooperate with the Applicant's investigation.

### **Sanction**

4. Mr Li was STRUCK OFF the Roll of Solicitors and Ordered to pay a contribution to the Applicant's costs in the sum of £37,500.00.

### **Documents**

5. The Tribunal considered all of the documents in the case which were contained in an electronic hearing bundle including:

- Rule 12 Statement dated 7 March 2018 and Exhibit EP1.
- Answer to the Rule 12 Statement dated 8 May 2018.
- Medical evidence namely in the form of reports and letters from:

- Dr Qureshi.
  - Dr Durrani.
  - Dr Prabhakar.
  - Dr Hussain.
  - Dr Garvey.
  - Dr Thomas.
- Mr Li’s application to adjourn the substantive hearing received by the Tribunal on 16 November 2022.
  - Applicant’s response to the application to adjourn dated 17 November 2022.
  - Memoranda/details of previous case management/adjourned substantive hearings convened on:
    - 19 May 2020.
    - 2 June 2020.
    - 3 June 2020.
    - 29 July 2020.
    - 20 October 2020.
    - 16 November 2020.
    - 24 February 2020.
    - 24 February 2021.
    - 6 September 2021.
    - 13 September 2021.
    - 13 December 2021.
    - 5 July 2022.

## **Preliminary Matters**

### 6. *Respondent’s application to adjourn*

#### 6.1 Mr Li applied to adjourn the substantive hearing in the following terms:

“... As I said at the Last Hearing (*sic*) before the SDT that I want to settle this matter because whilst I have made progress in my mental health, I have been advised that a Final Hearing will adversely damage my state of mental health...”

#### 6.2 Mr Li referred to previous letters he had sent to the Applicant dated 31 August 2022, 3 October 2022 and 1 November 2022 in which he referred to “settling” the proceedings by way of an Agreed Outcome.

#### 6.3 Mr Li maintained the position set out above in his oral submissions before the Tribunal. He stated that he had not received a proposed Agreed Outcome from the Applicant despite having been told that one had been sent to his registered address on either 15/16 November 2022. Mr Li confirmed that he did not have access to any form of electronic communication, as had been the case throughout the proceedings, and that he relied upon hard copy correspondence.

- 6.4 Mr Li submitted that if a short adjournment “until later in the year” were granted, it would give him the opportunity to review any proposed Agreed Outcome, seek legal advice and hopefully “settle” the proceedings.
- 6.5 Mr Li maintained that whilst he had not sought further medical evidence, he could obtain the same from Dr Qureshi, whom he last saw in December 2021/January 2022, if the Tribunal so required. Mr Li contended that when he last saw his GP in July 2022, he discussed whether he “could avoid the [substantive] hearing because it would have a detrimental effect on [his] wellbeing”.

#### Applicant’s Position

- 6.6 The Applicant replied by way of a letter dated 17 November 2022 which stated:

“... I have received a copy of your letter dated 16 November 2022 wherein you have asked for a short adjournment of the above hearing to allow you to receive and consider the proposed Agreed Outcome.

As you are aware, I had not received copies of your letters dated 31 August and 3 October until copies were forwarded with your letter of yesterday’s date, which I received at 12.41 this afternoon.

I have prepared a draft Agreed Outcome and this was sent to you by letter dated 15 November which I believe was sent to you by post yesterday so you should have received a copy today. I am available by telephone on 0121 295 3061 all day tomorrow, Friday, should you wish to discuss this in more detail.

We do not agree to your request for a short adjournment of the hearing. The latest report from Dr Garvey dated 30 May 2022 has stated, at paragraph 6.5, that you are fit to participate in proceedings. I have not seen any medical evidence that suggests that a final hearing will adversely damage your state of mental health, as claimed in your letter of 16 November 2022.

I am also mindful that this matter has already been adjourned on a number of occasions since proceedings were lodged in March 2018.

We do not therefore consider it to be proportionate or in the public interest for there to be an adjournment at this stage for us to start trying to reach an Agreed Outcome. However, Mr Bullock will be at the Tribunal building from 9.30am on Monday morning and you will therefore be able to update him as to your position before the hearing is due to start at 10.00am...”

- 6.7 Mr Bullock maintained that position in his oral submissions before the Tribunal.

#### The Tribunal’s Decision

- 6.8 The Tribunal carefully considered competing submissions and noted that:
- (a) Mr Li denied the allegations in full in his Answer to the Rule 12 Statement save for Allegations 1.6 (failure to cooperate) and Allegation 2 (dishonesty) in respect of

which he had not responded either within his Answer or at all during the proceedings to date.

- (b) The first recorded mention of Mr Li's desire to "settle" proceedings was at the Case Management Hearing on 5 July 2022.
- (c) Mr Li first notified the Tribunal of his efforts to secure an Agreed Outcome in his written application to adjourn received by the Tribunal on 16 November 2022.
- (d) The Applicant denied, and the Tribunal had no reason to doubt, having received the letters referred to by Mr Li which sought to secure an Agreed Outcome in August, October and November 2022.
- (e) Notwithstanding the lateness of notification by Mr Li of his inclination towards agreeing an outcome, the Applicant had sent him a proposed document on 15/16 November 2022 which Mr Li asserted he had not received.
- (f) Mr Li had not filed any medical evidence to support the contention that a substantive hearing would detrimentally impact his mental health.
- (g) The most up to date medical evidence before the Tribunal emanated from Dr Garvey (an independent medical expert) who had assessed Mr Li on several occasions throughout the proceedings. Dr Garvey's most recent report dated 30 May 2022 concluded that Mr Li was fit to participate in the proceedings so long as reasonable adjustments were made namely an "in person" hearing with regular breaks throughout the proceedings.

- 6.9 The Tribunal considered all of the factors set out above against the procedural background to the matter. Proceedings had been issued against Mr Li in March 2018. There had been nine Case Management Hearings convened to progress the matter to a substantive hearing. The substantive hearing had been listed and adjourned on eight previous occasions.
- 6.10 The Tribunal paid significant regard to the public interest which required the expeditious adjudication of allegations levelled against professionals. The Tribunal was cognisant of its function to protect the public from harm, declare and uphold proper standards within the profession and to maintain public confidence in the regulatory system.
- 6.11 The Tribunal was not satisfied that an adjournment would serve any useful purpose. Mr Li had been able to discuss the prospect of an Agreed Outcome at any time over the preceding 4.5 years but appeared only to do so a matter of days before the ninth listing of the substantive hearing.
- 6.12 Weighing all of the relevant considerations in the balance the Tribunal therefore REFUSED the application to adjourn. In so doing it advised Mr Li, who was present via telephone, that the substantive hearing would commence at 2.00pm. Mr Li therefore had approximately 2 hours to either attend the hearing in person from Camberley, Surrey or to re-join via telephone as he had done that morning.

6.13 [Prior to the hearing resuming, Mr Li telephoned the Tribunal and spoke to the Deputy Clerk who recorded the conversation in a telephone attendance note which stated:

“... ”

- The Tribunal received a telephone call from Mr Li at approximately 13:30 hours.
- Mr Li asked to speak to Miss Baljit.
- Mr Li stated to Miss Baljit that he would not be able to attend the substantive hearing due to commence at 14:00 hours as he was on the way to his Consultant Psychiatrist.
- Mr Li expressed his apologies to the Panel and asked for the same to be relayed to Mr Bullock.
- Miss Baljit assured Mr Li that his comments will be passed on to both the Panel and Mr Bullock...”

7. *Applicant’s application to proceed in the Respondent’s absence at 2.00pm*

7.1 Given the fact that Mr Li had failed to attend the hearing, Mr Bullock applied to proceed in his absence. He submitted that it had been made plain to Mr Li, when he attended by telephone that morning, that the Panel had (a) refused his application to adjourn and (b) proposed to proceed at 2.00pm. Mr Li had chosen not to attend and had therefore voluntarily absented himself.

7.2 Mr Bullock submitted that the Tribunal had the power to proceed in his absence in accordance with Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 as well as the principles promulgated in R v Hayward, Jones and Purvis [2001] QB, CA; GMC v Adeogba [2016] EWCA Civ 162; and GMC v Hayat [2018] EXCA Civ 2796.

### The Tribunal’s Decision

7.3 The Tribunal applied the legal framework alluded to by Mr Bullock namely:

7.3.1 The Solicitors (Disciplinary Proceedings) Rules 2007 Rule 16(2) which provides:

“... If the Tribunal is satisfied that notice of the hearing was served on the respondent in accordance with these Rules, the Tribunal shall have power to hear and determine an application notwithstanding that the Respondent fails to attend in person or is not represented at the hearing..”

7.3.2 R v Hayward, Jones and Purvis [2001] QB, CA in which Rose LJ at §22(5) held:

“... 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 namely:



- (1) A defendant has, in general, a right to be present at his trial and a right to be legally represented.
- (2) These rights can be waived, separately or together, wholly or in part, by the defendant himself. They may be wholly waived if, knowing, or having the means of knowledge as to when and where his trial is to take place, he deliberately and voluntarily absents himself and/or withdraws instructions from those representing him. They may be waived in part if, being present and represented at the outset, the defendant, during the course of the trial, behaves in a such a way as to obstruct the course of the proceedings and/or withdraws his instructions from those representing him.
- (3) The trial judge has a discretion as to whether a trial should take place or continue in the absence of the defendant and/or his legal representatives.
- (4) The discretion must be exercised with great care and it is only in rare and exceptional cases that it should be exercised in favour of a trial taking place or continuing, particularly if the defendant is unrepresented.
- (5) 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, 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;
  - (iv) ...
  - (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) the seriousness of the offence, which affects defendant, victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;

- (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) ...
- (xi) ...”

7.3.3 GMC v Adeogba [2016] EWCA Civ 162, in which 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 held:

“... 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 the 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.”

7.3.4 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 interest of the public also taken into account.”

7.3.5 The principles identified in Adeogba were affirmed by the Court of Appeal in GMC v Hayat [2018] EXCA Civ 2796.

7.4 The Tribunal noted that Mr Li was well aware of the substantive hearing date having attended via telephone that morning. The allegations he faced were serious (including dishonesty at 1.3, 1.4 and 1.5). The allegations were historic (some dating back to 2004) and the public interest required their expeditious adjudication. The medical evidence before the Tribunal disclosed that Mr Li was fit to participate in the proceedings in circumstances where reasonable adjustments, which had been deployed by the Tribunal, were in place. The Tribunal concluded that Mr Li had voluntarily absented himself from the proceedings.

7.5 The Tribunal therefore GRANTED the application to proceed in absence.

### **Factual Background**

8. Mr Li was admitted to the Roll in January 2006. Post admission, Mr Li was employed as an Associate Solicitors at Bells Potter Solicitors (“Bells Potter”) from 3 January 2006 to 31 May 2006 (having previously been employed by Bells Potter as a Legal Executive from 2004).
9. From 1 June 2006, Mr Li was one of two Members at Harrison Li Solicitors LLP, Camberley, Surrey, (“the Firm”) until 11 February 2016 when the Firm closed. From

12 February 2016 Mr Li was employed as a Consultant at TLSK which operated from the same business address as the Firm in Camberley, Surrey.

10. Mr Li last held a Practising Certificate for the practice year 2018/19.
11. In or around 2004, whilst employed at Bells Potter, Mr Li was instructed by Mrs YTL to apply to the Home Office for application for Leave, and then Indefinite Leave, to Remain in the UK as a spouse.
12. On 10 May 2010 Mr Li, whilst at the Firm, was instructed by Ms YQM to make an application for permanent residence in the UK.
13. Mr Li failed to make either application, when instructed by his clients Ms YQM and Mrs YTL or at all, with the subsequent result that they both remained in the UK unlawfully for several years.
14. On 17 March 2016 the Applicant received a complaint from Ms YQM, prepared by her friend Mrs Chiling Chan regarding the conduct of Mr Li (“the First Report”). Mrs Chiling Chan provided a witness statement to confirm that the report submitted was an accurate record of the report dictated to her by Ms YQM.
15. On 18 March 2016 the Applicant received a report from Mr Satinder Gill, counsel at Five Paper Chambers, on behalf of Mr Raymond Lee and Mrs YTL.
16. The Applicant subsequently commenced an investigation into the potential misconduct identified within the First and Second Reports. It served a production notice (“PN1”) dated 6 April 2017 upon Mr Li pursuant to Section 44B Solicitors Act 1974 requiring him, amongst other things, to produce the client matter files relating to Ms YQM and Mrs YTL. PN1 was not complied with.
17. The Applicant served a further production notice (“PN2”) dated 27 October 2016 upon Mr Li which repeated the request for client files and additional matters. PN2 was not complied with.
18. The Applicant therefore issued enforcement proceedings in the Chancery Division of the High Court which culminated in an Order dated 7 December 2017 requiring the production of all documents sought.

### **Witnesses**

19. The Tribunal did not receive any oral evidence. The written 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. 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.

## Findings of Fact and Law

20. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the standard applicable in criminal proceedings (beyond reasonable doubt). The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent's 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.
21. **Allegation 1.1 - Between 10 May 2010 and February 2016, Mr Li failed to submit an application for permanent residence in the UK on behalf of his client Ms YQM, when instructed or at all.**

### The Applicant's Case

- 21.1 Ms YQM arrived in the UK on 13 September 2008, and had a two-year spousal visa. On 10 May 2010 she instructed Mr Li to make an application for Permanent Residence in the UK. Ms YQM provided Mr Li with various documents, including her original passport; her husband's original passport; original marriage certificate (both Chinese and English versions); bank statements; wedding photos; and passport size photos.
- 21.2 Mr Li acknowledged receipt of these documents by telephone on 13 May 2010 however he failed to provide her with any client care information, or any details about the progress of her matter. Ms YQM began to ask Mr Li for updates nearly every month from 2012.
- 21.3 Ms YQM stated that Mr Li repeatedly advised that he needed to check with the Home Office and would "call her back". However, Mr Li never called her back and the position did not change until November 2015.
- 21.4 During the course of the investigation, an Intelligence Officer employed by the Applicant contacted the Home Office and was advised that no application for leave to remain or permanent residence in the United Kingdom had ever been made on behalf of Ms YQM.
- 21.5 On 30 November 2015, Ms YQM instructed a new solicitor, Mrs Ming Yan Gao of the Anglo Chinese Law Firm Limited. Mrs Gao made several attempts to retrieve Ms YQM's documents from Mr Li, but despite his assurances that he would post them to her, they were never received. Ms YQM and her husband also attempted to contact Mr Li on numerous occasions to retrieve the documents without success.
- 21.6 On 20 March 2017 Mr Li provided a witness statement to the Applicant, which exhibited a copy letter to Ms YQM, dated 7 January 2016 in which he purported to return her documents. He also provided a copy letter sent to Mrs Gao, dated 5 February 2016 advising that at Ms YQM's telephoned request on 7 January 2016 the file was posted back to her at her home address.

- 21.7 Ms YQM never received a copy of her file nor her original documents and the matter remained unresolved for just under six years during which time she remained in the UK unlawfully after her visa expired. During that period she was unable to return to China to visit family, or leave the UK at all. Ms YQM was unable to attend her father's funeral in China and was also unable to visit her elderly mother-in-law in hospital in 2015. At no time did Ms YQM receive her passport back or a decision regarding her Residence application.

#### *Regulatory Breaches*

- 21.8 Mr Bullock submitted that the following Principles and Rules were breached by virtue of Mr Li's misconduct:

**Principle 4 of the SRA Principles 2011** - "You must act in the best interests of your client".

**Principle 5 of the SRA Principles 2011** - "You must provide a proper standard of service to your clients".

**Principle 6 of the SRA Principles 2011** - "You must behave in a way that maintains the trust the public places in you and in the provision of legal services".

**Outcome 1.2 of the SRA Code of Conduct 2011** - "you provide services to your clients in a manner which protects their interests in their matter, subject to the proper administration of justice".

- 21.9 Mr Bullock advised the Tribunal that Rules 1.04, 1.05 and 1.06 Solicitors Code of Conduct 2007 were predicated on the same basis as the provisions of Principles 4, 5 and 6 of the SRA Principles 2011, although not identically worded.
- 21.10 Mr Bullock submitted that the public expected a solicitor to ensure that they promptly complied with any lawful instruction given by, or on behalf of, their client. By failing to make an application for Permanent Residence on behalf of Ms YQM, when he was first instructed or at all, Mr Li failed to act in her best interests, failed to provide a proper standard of service to her, and failed to act in a way which maintained the trust the public placed in him and in the provision of legal services. Mr Bullock averred that such failings therefore contravened Rules 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007 together with Principles 4, 5 and 6 of the SRA Principles 2011.
- 21.11 Mr Bullock further submitted that by failing to obtain a submit the application for Permanent Residence on behalf of Ms YQM, Mr Li also failed to provide services to her in a manner which protected her interests in the matter and subject to the proper administration of justice. Mr Li therefore failed to achieve Outcome 1.2 of the SRA Code of Conduct 2011.

#### Respondent's Position

- 21.12 The only response to the allegations advanced by Mr Li were contained within his Answer to the Rule 12 Statement dated 8 May 2018 ("Answer") which amplified to

some extent that which he set out in his response (“Response”) dated 31 May 2017 to the Applicant’s first “Explanation of Conduct” letter.

21.13 In his Response, Mr Li stated:

“... I was relying on my appointed agent...  
 ... [instructed] an agent who I thought had expertise to deal with this matter ...  
 ... was relying on my appointed agent ...  
 ... was informed by the appointed agent that Tsang & Co was instructed...”

21.14 In his Answer, Mr Li stated:

“...I accept that I acted on Ms YQM’s instructions in connection with her application for Leave to Remain in the United Kingdom by appointing an agent to act on my behalf.

Ms YQM was a family friend and her instructions were taken on for no fee.

My firm did not offer immigration advice and therefore, I instructed a third party agent who was recommended to me with the expertise to deal with the matter...”

#### The Tribunal’s Decision

21.15 The Tribunal noted that Mr Li accepted the Applicant’s case in that he had acted for Ms YQM and further that he had been instructed to make an application on her behalf for indefinite leave to remain. The Tribunal accepted the unchallenged evidence of the Home Office that no application was ever received.

21.16 The Tribunal considered Mr Li’s assertion that he had instructed an agent to undertake the same. Mr Li did not name the “appointed agent” either during the course of the investigation or during the proceedings. The Tribunal noted that on 22 April 2016, a supervisor employed by the Applicant contacted James Tsang & Co Solicitors. An attendance note of the same date provided:

“... EM spoke with both Mr Tsang and Mrs Tsang (both partners of the firm).

They confirmed that they have never been instructed by Mrs [YQM] or Mrs [YTL] and that they were not clients of the firm. Mr Tsang confirmed that Harrison Li Solicitors had been on the otherside (*sic*) of a conveyancing transaction in the past however he had never been instructed by him.

Mr Tsang stated that he would not take instructions from a third party and the client would have to instruct them directly and attend the firm to provide the necessary documentation.

Mr Tsang confirmed that he would confirm our telephone conversation in writing if required...”

- 21.17 Whilst the onus of proving the allegation beyond reasonable doubt rested on the Applicant, and Mr Li was not required to prove his innocence, the Tribunal was entitled (and indeed required) to scrutinise his assertions and assess the veracity of the position he had advanced. In circumstances where Mr Li had not named the “appointed agent” and given Mr Tsang’s denial of having ever acted for Ms YQM or Mrs YTL, the Tribunal rejected the evidence advanced by Mr Li.
- 21.18 In any event, even if Mr Li had instructed agents, the fact remained that he was the solicitor instructed by Ms YQM, he bore the responsibility of ensuring that her application for leave to remain had been made and progressed. Neither had been done.
- 21.19 The Tribunal therefore found the factual matrix of Allegation 1.1 PROVED beyond reasonable doubt. The Tribunal further found the regulatory breaches alleged in Allegations 1.1.1 – 1.1.7 PROVED beyond reasonable doubt for the reasons set out by Mr Bullock at paragraphs 21.8-21.11.
22. **Allegation 1.2 - Between 2004 and January 2016 Mr Li failed to submit an application for permanent residence in the UK on behalf of his client Mrs YTL, when instructed or at all.**

#### The Applicant’s Case

- 22.1 Mr Bullock reminded the Tribunal of Rule 1 of the Solicitors Practice Rules 1998 which provides:
- “... A solicitor shall not do anything in the course of practising as a solicitor, or permit another person to do anything on his or her behalf, which compromises or impairs or is likely to compromise or impair any of the following:
- (c) the solicitor’s duty to act in the best interests of the client;
- (d) the good repute of the solicitor or of the solicitor’s profession;
- (e) the solicitor’s proper standard of work...”
- 22.2 In or around 2004, when Mr Li was believed to have been employed at Bells Potter Solicitors, he was instructed by Mr Lee and Mrs YTL to apply for Leave, and then Indefinite Leave, for Mrs YTL to Remain in the UK as a spouse.
- 22.3 As part of her instructions, Mrs YTL provided Mr Li with her original Malaysian passport; bank statements; Mr Lee’s original passport; her marriage certificate; and her son’s birth certificate.
- 22.4 Mr Li failed to provide Mrs YTL with any client care information either at Bells Potter Solicitors or when she continued to instruct him after he moved to the Firm.
- 22.5 Mr Li advised Mr Lee and Mrs YTL that her application for Leave to Remain as a Spouse had been successful, and that she should apply for Indefinite Leave to Remain as a Spouse.

- 22.6 On 10 February 2006 Mr Li drafted a letter, on Bells Potter letterheaded paper, addressed to “The Practice Manager” which he gave to Mr Lee and Mrs YTL so that Mrs YTL could register with a medical general practitioner. In that letter Mr Li stated that he acted for Mr Lee and Mrs YTL and that they had applied for Indefinite Leave to Remain in the UK for Mrs YTL.
- 22.7 Mr Li advised them that he had made the necessary applications to the Home Office, and subsequently advised them in or around October 2015 that Mrs YTL had Indefinite Leave to Remain in the UK.
- 22.8 Mrs YTL never received her passport, and the Intelligence Officer was subsequently advised by the Home Office that no application for Leave to Remain had ever been made on her behalf.
- 22.9 On 4 January 2016, Mr Lee and Mrs YTL requested their papers back from Mr Li, who stated he would provide them as soon as it had been returned from “the agents”. The file was never returned, nor were their original documents, and although Mr Lee’s passport was returned to him at an earlier stage, it had actually expired.
- 22.10 Mr Lee and Mrs YTL subsequently instructed Mr Gill, counsel, who wrote to Mr Li on 13 January 2016, advising he had been instructed by them and requesting a copy of their papers.
- 22.11 On 18 February 2016, Mr Gill sent an email to Mr Li after Mr Lee and Mrs YTL discovered from the Harrison Li website that the Firm had closed. Neither Mr Gill nor Mr Lee and Mrs YTL received a response or any further communications from Mr Li. (They had not been previously notified beforehand of the planned closure of the Firm and what options they now had in relation to the progression of their matter.)
- 22.12 Mr Lee and Mrs YTL instructed Mr Li from approximately 2004 until January 2016. During that time Mr Li failed to make the application for leave to remain in the UK as instructed or at all. Mrs YTL remained unclear about her right to remain in the UK with her husband and son, and appeared to have unlawfully remained in the UK until at least February 2016.

### *Regulatory Breaches*

- 22.13 Mr Bullock submitted that the public expected a solicitor to ensure prompt compliance with any lawful instructions given by, or on behalf of, their client. By failing to make an application for permanent residence on behalf of Mrs YTL, when he was first instructed or at all, Mr Li failed to act in his client’s best interests, failed to provide a proper standard of service to her, and failed to act in a way which maintained the trust the public places in him and in the provision of legal services. Mr Bullock averred that such failings therefore contravened Rules 1 (c), (d) and (e) of the Solicitors Practice Rules 2007 and Rule 1.04, Rule 1.05 and 1.06 Solicitors Code of Conduct 2007 together with Principles 4, 5 and 6 of the SRA Principles 2011.
- 22.14 Mr Bullock further submitted that by failing to obtain or submit the application for Permanent Residence on behalf of Ms YTL, Mr Li also failed to provide services to her in a manner which protected her interests in the matter and subject to the proper



administration of justice. Mr Li therefore failed to achieve Outcome 1.2 of the SRA Code of Conduct 2011.

### The Respondent's Position

22.15 In his Answer, Mr Li stated:

“... I accept that I acted on Mrs YTL's instructions in connection with her application for Leave to Remain in the United Kingdom by appointing an agent to act on my behalf.

Ms YTL was a family friend and her instructions were taken on for no fee.

At the time of her instructions, I was in between firms and therefore I instructed a third party agent who was recommended to me with the expertise to deal with this matter...”

### The Tribunal's Decision

22.16 The Tribunal noted that Mr Li accepted the Applicant's case in that he had acted for Mrs YTL and further that he had been instructed to make an application on her behalf for permanent residence. The Tribunal accepted the unchallenged evidence of the Home Office that no application was ever received.

22.17 The Tribunal considered Mr Li's assertion that he had instructed an agent to undertake the same. Having rejected Mr Li's evidence in that regard, the Tribunal found the factual matrix of Allegation 1.2 PROVED beyond reasonable doubt for the reasons set out above at paragraphs 22.1-22.12. The Tribunal further found the regulatory breaches alleged in Allegations 1.2.1 – 1.2.10 PROVED beyond reasonable doubt for the reasons set out by Mr Bullock at paragraphs 22.13-22.14.

23. **Allegation 1.3 - Between 2012 and February 2016, Mr Li made misleading and/or untrue statements to his client Ms YQM regarding the progress of her application for leave to remain in the UK**

### The Applicant's Case

23.1 Mr Bullock reminded the Tribunal of Principle 2 of the SRA Principles 2011 which provides that “You must act with integrity”.

23.2 Mr Li gave numerous assurances to Ms YQM regarding the progress of her application, advising her it was being dealt with by the Home Office.

23.3 As her original passport remained with Mr Li, Ms YQM was unable to attend her father's funeral in China and was also unable to visit her elderly mother-in-law in hospital in 2015. On both occasions Ms YQM telephoned Mr Li asking for her passport. On the former occasion Mr Li stated that it would delay her application if she tried to take it from the Home Office, and on the latter occasion Mr Li informed Ms YQM that her passport had already been granted and that he was waiting for it to post to her.

- 23.4 Mr Li maintained that position into 2016 in circumstances where Ms YQM did not receive her passport or the decision regarding her residence application.
- 23.5 The Intelligence Officer contacted the Home Office and was advised that no application for Leave to Remain in the UK had ever been made on behalf of Ms YQM.
- 23.6 Mr Li was fully aware that the information he was giving to his client regarding the purported progress of her application for Permanent Residence was untrue at the time it was given, as he was fully aware that he had not made such an application on behalf of his client Ms YQM. He must have known that providing misleading information to his client would mislead her into thinking that her application had been properly submitted and progressed.
- 23.7 Mr Bullock submitted that the public expected solicitors of integrity to be truthful in all their client dealings, and not to give misleading information regarding the progress of a case. Moreover, the public expected solicitors to act in their client's best interests and to provide a proper standard of service at all times.
- 23.8 Mr Bullock further submitted that in knowingly giving his client information and updates which he knew to be misleading and untrue Mr Li failed to act with integrity, failed to act in the best interests of Ms YQM and failed to act in a way which maintains the trust the public places in him and in the legal profession contrary to Principles 2, 4, 5 and 6 of the SRA Principles 2011.

#### The Respondent's Position

- 23.9 In his Answer, Mr Li stated:

“... This is denied. I was relying on my appointed agent for progress reports which I then relayed to Ms YQM...”

#### The Tribunal's Decision

- 23.10 The Tribunal noted that Mr Li did not contest the fact that he made the statements alleged to Ms YQM. The Tribunal considered Mr Li's assertion that those statements were predicated on progress reports given to him by the “appointed agent”. Having rejected Mr Li's assertions in relation to the “appointed agent” the Tribunal proceeded to consider whether the statements he accepted he had made to Ms YQM were misleading and/or untrue.
- 23.11 Given the fact that no application had ever been made and the Tribunal's finding that the “appointed agent” was fictional, the Tribunal determined that Mr Li made numerous statements to Ms YQM which gave the converse impression that an application had been made which was being progressed in circumstances where it had not and was not. The Tribunal considered those statements and that impression to have been eminently misleading and definitively untrue.

- 23.12 The Tribunal therefore found the factual matrix of Allegation 1.3 PROVED beyond reasonable doubt. The Tribunal further found the regulatory breaches alleged in Allegations 1.3.1 – 1.3.4 PROVED beyond reasonable doubt for the reasons set out by Mr Bullock at paragraphs 23.1-23.8.
24. **Allegation 1.4 - On or around September 2015 Mr Li fabricated a letter, purportedly sent by the Home Office, UK Border Agency and dated 30 September 2015 in respect of his client Mrs YTL's application for leave to remain in the UK**

#### The Applicant's Case

- 24.1 In Autumn 2015, Mr Li informed Mr Lee and Mrs YTL that he had instructed Mr Gill (of No5 Chambers) to attend at the Home Office to collect Mrs YTL's passport with the required leave to remain endorsement. In support of that contention, Mr Li forwarded them, via an email dated 1 October 2015, a letter dated 30 September 2015 purportedly from the Home Office, UK Border Agency to No 5 Chambers ("the Letter").
- 24.2 The Letter stated:
- "... We acknowledge receipt of your authority of 29 September 2015 for your named staff to collect [Mrs YTL's] Passport, and will confirm a date with you in due course. We are aware of the urgency..."
- 24.3 The Intelligence Officer asked the Home Office about the Letter and was advised that the UK Border Agency ceased to exist in March 2013 and was replaced by the Home Office. The Home Office also confirmed that "they can find no record of such a letter being sent".
- 24.4 In or around October 2015 Mr Li attended at Mr Lee and Mrs YTL's house. He provided Mrs YTL with a copy Residence Permit Vignette, under number UK3316354, purportedly issued by the Home Office, with Mrs YTL's maiden name spelled incorrectly, giving the holder's date of birth as 21 August 2001, and bearing Mrs YTL photograph ("the Vignette").
- 24.5 During their subsequent enquiries with the Home Office, and with No 5 Chambers, Mr Lee and Mrs YTL were advised that:
- The Home Office held no record of Mrs YTL's application under the surnames L, nor her maiden name (other spelt correctly or incorrectly) with either her correct or incorrect date of birth;
  - The Home Office had no record of the Vignette numbered UK3316354.
  - Vignettes were not issued after 29 February 2012 for in-country immigration applications;
  - The reference L1156843 on the Home Office letter dated 30 September 2015 did not relate to Mrs YTL;

- No. 5 had no record of any instruction from Harrison Li Solicitors LLP in respect of Mrs YTL in either her maiden or her married name; and
- No. 5 had no recollection of an arrangement for their staff to collect Ms YTL's passport from the Home Office.

24.6 Mr Li was fully aware that the Letter and copy Vignette purportedly received from the Home Office were not genuine, as he knew that he had not made an application for Leave to Remain in the UK on behalf of his client Mrs YTL. He must also have known that providing these fabricated documents to his clients would mislead them into thinking that Mrs YTL's application had been properly submitted and progressed.

### *Regulatory Breaches*

24.7 Mr Bullock submitted that the public expected a solicitor of integrity to be truthful in all his dealings with his client. Moreover, the public expected a solicitor of integrity to ensure that all documents emanating from his office were strictly true and accurate. The public expected solicitors to ensure the provision of a proper standard of service to clients at all times, to act in their client's best interests and not to mislead them.

24.8 Mr Bullock further submitted that by deliberately sending a fabricated document to Mrs YTL, which he knew to be misleading and untrue, Mr Li failed to act with integrity, failed to act in her best interests, failed to provide a proper standard of service to her and failed to act in a way which maintained the trust the public places in him and in the legal profession. He therefore breached Principles 2, 4, 5 and 6 of the SRA Principles 2011.

### The Respondent's Position

24.9 In his Answer, Mr Li stated:

“... This is denied. I was relying on what my appointed agent had sent to me which I then forwarded onto Mrs YTL...”

### The Tribunal's Decision

24.10 The Tribunal noted that Mr Li did not contest the facts that he provided the “Home Office Border Agency” letter to Mrs YTL and that the offending letter was fabricated. The Tribunal considered Mr Li's assertion that he provided that which was sent to him by the “appointed agent”. Having rejected Mr Li's assertions in relation to the “appointed agent” the Tribunal further rejected his assertion that he merely passed on a document given to him.

24.11 The Tribunal therefore found the factual matrix of Allegation 1.4 PROVED beyond reasonable doubt. The Tribunal further found the regulatory breaches alleged in Allegations 1.4 – 1.4.4 PROVED beyond reasonable doubt for the reasons set out by Mr Bullock at paragraphs 24.7-24.8.

**25. Allegation 1.5 - Between 2006 and February 2016, Mr Li made misleading and / or untrue statements to his client Mrs YTL and others regarding the progress of her application for leave to remain in the UK**

The Applicant's Case

25.1 Mr Lee regularly contacted Mr Li for an update on his wife's application, however he stated that he:

“... got little good news, [Mr Li] always seemed to be telling me that it was nearly done. In Mid 2013, I can't remember the exact date, contacted [Mr Li] ... He told me that is done. I presumed this meant that my wife had been granted a residents permit. I did not receive any written confirmation of this from either [Mr Li] or the Home Office despite several calls to remind [Mr Li]...”

25.2 Mr Bullock relied upon the following statements which he submitted were misleading and untrue:

- In or around October 2015 when Mr Li attended at Mr Lee and Mrs YTL's home, he provided them with a photocopy of the Vignette, which he claimed was endorsed by the Home Office on Mrs YTL's passport when it was not.
- Mr Li subsequently advised Mr Lee and Mrs YTL that her passport had been returned to the Home Office for them to correct the misspelling of her maiden name and incorrect date of birth when it had not.
- Mr Li informed Mr Lee and Mrs YTL that he was not happy that Counsel had not noticed these errors, and subsequently informed Mr and Mrs L that he had sent the papers to agents at James Tsang & Co Solicitors. On 22 April 2016 a Supervisor employed by the Applicant contacted Mr Tsang, who confirmed that he never acted in the matter. He also confirmed that he would never accept instructions from a third party and would always require clients to attend and instruct him personally.
- On or around 4 January 2016, Mr and Mrs YTL requested their papers back from Mr Li, who he said would provide as soon as it had been returned from the agents when in fact there were no “papers”.
- Mr Li advised Mr Gill that he had submitted an application for Indefinite Leave to Remain in the UK for Mrs YTL and that on or about 4 January 2016 he had requested the file from James Tsang & Co Solicitors when he had not.
- In text messages from Mr Li to Mr Lee between 22 April and 5 November 2015, Mr Li advised:
  - “... The barrister has appealed against the Home Office delay. The HO confirms the documents are all ok but there is a delay in processing. You can cancel and take the passport out but this will cause a problem when you reapply. I have paid the barrister and he has guaranteed success within 7 days to get the passport issued. ...”

- “... The Barrister suggest you should not get the CAB involved because he has already send off the Appeal. He will update me in a few days time ...”
- “... our Barrister has informed me that our Appeal is going well and he expects it will be ready very soon ...”
- “... I spoke to the Barrister who I have paid to deal with the appeal. He has confirmed that the Passport dept is satisfied and will be issuing the visa any time now. As soon as he has a collection date, he will call me ...”
- “... I will speak to the Barrister today but the HO said it was sending yesterday ...”
- “... Saw the Barrister yesterday, and he is just waiting to receive the Passport back. He confirmed the Residency Visa has been issued ...”
- Mr Gill sent several further emails to Mr Li between 28 January and 18 February 2016. In an email dated 11 February 2018 Mr SG quoted from texts that Mr Li had sent to Mr Lee on 2 and 10 February 2016 stating he had paid the agent’s fee, was expecting the file back and was sorry for the delay.

### *Regulatory Breaches*

- 25.3 Mr Bullock submitted that Mr Li was fully aware that the information he was giving to Mr Lee and Mrs YTL as well as Mr Gill were untrue at the material time, as he was fully aware that he had not made an application for Leave to Remain on behalf of his client Mrs YTL. Therefore, he must have known that providing misleading information to his client would mislead her and others into thinking that the application had been properly submitted and progressed.
- 25.4 Mr Bullock contended that the public expected a solicitor of integrity to be truthful in all of their client dealings and not to give misleading information regarding the progress of a case. Moreover, the public expected solicitors to act in their client’s best interests and to provide a proper standard of service to the same.
- 25.5 Mr Bullock averred that by knowingly in giving Mrs YTL information and updates which he knew to be misleading and untrue Mr Li failed to act with integrity, failed to act in her best interest and failed to act in a way which maintains the trust the public places in him and in the legal profession. Mr Li therefore breached Principles 2, 4, 5 and 6 of the SRA Principles 2011.

### The Respondent’s Position

- 25.6 In his Answer, Mr Li stated:

“... This is denied. The information given to Mrs YTL was based on what was given to me by my appointed agent...”

### The Tribunal's Decision

- 25.7 The Tribunal noted that Mr Li did not contest the fact that he made the statements set out by Mr Bullock above to Mrs YTL. The Tribunal considered Mr Li's assertion that those statements were predicated on progress reports given to him by the "appointed agent". Having rejected Mr Li's assertions in relation to the "appointed agent" the Tribunal proceeded to consider whether the statements he accepted he had made to Mrs YTL were misleading and/or untrue.
- 25.8 Given the fact that no application had ever been made and the Tribunal's finding that the "appointed agent" was fictional, the Tribunal determined that Mr Li made numerous statements to Mrs YTL which gave the converse impression that an application had been made which was being progressed in circumstances where it had not and was not. The Tribunal considered those statements and that impression to have been eminently misleading and definitively untrue.
- 25.9 The Tribunal therefore found the factual matrix of Allegation 1.5 PROVED beyond reasonable doubt. The Tribunal further found the regulatory breaches alleged in Allegations 1.5.1 – 1.5.10 PROVED beyond reasonable doubt for the reasons set out by Mr Bullock at paragraphs 25.3-25.5.
26. **Allegation 1.6 - Between April 2016 and September 2017 Mr Li failed to cooperate with the SRA's investigation into the work undertaken on behalf of his clients Ms YQM and Mrs YTL**

### The Applicant's Case

- 26.1 Mr Bullock reminded the Tribunal of:

**Principle 7** - "You must comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner".

**Outcome (10.8)** - "You must comply promptly with any written notice from the SRA".

**Outcome (10.9)** - "Pursuant to a notice under Outcome 10.8, you:

- (a) Produce for inspection by the SRA documents held by you, or held under your control;
- (b) Provide all information and explanations requested; and
- (c) Comply with all requests from the SRA as to the form in which you produce any documents you hold electronically, and for photocopies of any documents to take away;

in connection with your practice or in connection with any trust of which you are, or formerly were, a trustee".

- 26.2 In order to investigate the First and Second Reports a Production Notice pursuant to section 44B of the Solicitors Act 1974 (PN2), was served on Mr Li on 6 April 2016, requiring his response by 5pm on 11 April 2016.
- 26.3 On 11 April 2016, Mr Li emailed the Supervisor employed by the Applicant (“the Supervisor”) who had sent him PN1, asking for an extension of the deadline until 19 April 2016 to enable him to provide “a full reply”. The Supervisor refused that request by email dated 11 April 2016 as Mr Li had failed to explain why the additional time was required.
- 26.4 Mr Li replied the following day saying he needed to retrieve the physical files from storage, which he would do by 16 April and asked for a short extension until 19 April 2016.
- 26.5 The Supervisor responded to Mr Li by e-mail dated 15 April 2016 again refusing his request for additional time, as he would not need to retrieve the files to enable him to provide at least some of the information requested in PN1 and advising that he was in breach of the same.
- 26.6 On 19 April 2016, Mr Li provided his response to PN1 wherein Mr Li stated that his client files were with the agents he instructed. (That contradicted his earlier comments that the files were in storage following the closure of his Firm and his previous assurance to Ms YQM that he had sent her file to her in January that year).
- 26.7 Mr Li also requested copies of the letters dated 10 February 2006 and 30 September 2015, which were provided to him by the Supervisor in an email on 21 April 2016. In that email the Supervisor advised Mr Li that he not complied with PN1 and requested clarification on various points including who his “agents” were. (Mr Li has never responded to this email and subsequently claimed that he had not received the same).
- 26.8 On 8 June 2016 the Applicant provided Mr Li with notice of an inspection due to commence at TLSK Solicitors (TLSK) (“the Notice of Inspection”), where he was practising. The inspection was to commence on 13 June 2016 by a Forensic Investigation Officer employed by the Applicant (“the FIO”).
- 26.9 When the FIO attended at TLSK Mr Li was not there. He subsequently informed the FIO that the Notice of Inspection had been received on 9 June 2016 but placed in the Firm’s correspondence basket by a staff member, so it was not brought to his attention until the FIO contacted him directly. Mr Li stated that he was unable to continue with the meeting with the FIO because of client meetings that afternoon.
- 26.10 Mr Li informed the FIO that the files for Ms YQM and Mrs YTL were in offsite storage (despite previously informing the Supervisor that he had requested the files from the offsite storage in April 2016).
- 26.11 At 5.43pm on 13 June 2016 Mr Li sent a text message to the FIO advising that he would not have the files back until 17 June and proposed meeting on 20/21 June 2016. The FIO responded that he would attend on 14 June as arranged to continue the initial meeting.



- 26.12 The FIO emailed Mr Li on 20 June 2016 saying he would attend his office at TLSK on 28 June 2016 at 10am, to which Mr Li agreed. However, on 27 June 2016 Mr Li emailed the FIO stating he needed to reschedule the meeting due to a medical appointment that he could not change.
- 26.13 The FIO exchanged several emails with Mr Li between 17 June and 1 July 2016, with the latter giving various explanations as to why the files relating to Ms YQM and Mrs YTL had not yet been retrieved.
- 26.14 Mr Li did not rearrange the meeting with the FIO, nor did he provide the requested files, so the FIO was therefore unable to continue the investigation.
- 26.15 PN2 was issued to Mr Li on 27 October 2016. Devonshires solicitors were instructed by the Applicant and wrote to Mr Li that same day.
- 26.16 Enforcement proceedings in the High Court were commenced due to Mr Li's non-compliance with PN1 and PN2 and an Order was made in Mr Li's absence on 6 December 2016 ("the Order").
- 26.17 The Order required Mr Li to send an email with the 'Information', requested in PN2 to a named Supervisor employed by the Applicant by 14 December 2016. Mr Li was also required, by 3 January 2017, to send a witness statement to that named Supervisor confirming the delivery of the documents and information requested; an explanation for any non-provision of documents and information; and details of any documents that were in his possession as at 1 January 2016 but which were no longer in his possession.
- 26.18 A Notice was sent to Mr Li by a Team Leader in the Supervision department of the Applicant on 9 December 2016 by email to [tomkml@hotmai.co.uk](mailto:tomkml@hotmai.co.uk) in accordance with the requirements of the Order and advised that the FIO would attend at TLSK to uplift the documents in accordance with the Order on 22 December 2016 at 12 noon.
- 26.19 On 12 December 2016, Mr Li sent a letter to the Supervisor, claiming that he had not received the Team Leader's email of 9 December 2016, nor had he received the Notice. He provided some of the documents requested but not the files for Ms YQM or Ms YTL, which he stated he was continuing to search for. Nevertheless, the Applicant's position was and remained that Mr Li was in contempt of court for non-compliance with the Order.
- 26.20 Mr Li also provided a witness statement dated 3 January 2017 stating that his searches to date had not identified the required files ("the First Witness Statement").
- 26.21 On 10 February 2017, Devonshires Solicitors wrote to Mr Li that he was in contempt of Court for non-compliance with the Order, and advising that the FIO would be attending at TLSK on 2 March 2017 to uplift the documents in accordance with the Order.
- 26.22 The FIO duly met Mr Li but was not provided with the required documents. Mr Li refused to provide copies of documents he stated he had located, namely a letter to Ms YQM dated 7 January 2016; and a letter to the Anglo Chinese Law Firm dated 5 February 2016. Those documents were eventually included by Mr Li in his second witness statement dated 20 March 2017 wherein he advised that he had previously sent

Ms YQM her file, and had searched his archive for Mrs YTL's file but had been unable to locate it.

### *Regulatory Breaches*

- 26.23 Mr Bullock submitted that the public expected solicitors of integrity to fully cooperate with their regulator in an open and timely manner, and would not expect them to fail to provide documentation and information when asked, and especially when ordered to do so in an Order of the High Court.
- 26.24 Mr Bullock further submitted that by deliberately and consistently failing to cooperate with the Applicant in an open and timely manner Mr Li failed to act with integrity, failed to act in the best interests of his client and failed to act in a way which maintained the trust the public placed in him and in the legal profession. He therefore breached Principles 2, 6 and 7 of the SRA Principles 2011.
- 26.25 Mr Bullock also submitted that by failing to comply promptly with the First and Second Production Notices Mr Li failed to achieve Outcomes (10.8) and (10.9) of the SRA Code of Conduct 2011.

### The Respondent's Position

- 26.26 Mr Li failed to comment on Allegation 1.6 in his Answer or at all throughout the proceedings.

### The Tribunal's Decision

- 26.27 The Tribunal considered evidence advanced by the Applicant in relation to attempts made to obtain information from Mr Li during the course of the investigation. The attempts began by way of written requests from the Applicant, proceeded to the issue of two production notices and culminated in enforcement proceedings with the resultant Order issued by the Chancery Division of the High Court. As at the time of the substantive hearing, much of the information sought through the various processes outlined above remained outstanding.
- 26.28 Mr Li provided no response to the allegation.
- 26.29 The Tribunal therefore found, on the evidence before it, the factual matrix of Allegation 1.6 PROVED beyond reasonable doubt. The Tribunal further found the regulatory breaches alleged in Allegations 1.6.1 – 1.6.5 PROVED beyond reasonable doubt for the reasons set out by Mr Bullock at paragraphs 26.23-26.25.

### **27. Allegation 2 - Dishonesty with regards Allegations 1.3, 1.4 and 1.5)**

### The Applicant's Case

- 27.1 Mr Bullock contended that Mr Li's actions were dishonest in accordance with the test for dishonesty laid down by the Supreme Court in Ivey v Genting Casinos UK t/a

Crockfords (Respondent) [2017] UKSC 67 in that it was dishonest by the standards of ordinary decent people.

27.2 Mr Bullock described Mr Li's knowledge of the facts at the material time as:

- Between 2011 and 2016 Mr Li repeatedly informed Ms YQM that he needed to check with the Home Office in respect of her application for Permanent Resident and would then call her back. He advised Mr Lee and Mrs YTL that Mrs YTL's application for Leave to Remain as a Spouse had been successful. All of his assertions were made in circumstances where he was fully aware that no applications had been made on behalf of either client.
- On 10 February 2006 Mr Li drafted a letter, on Bells Potter letterheaded paper, addressed to "The Practice Manager" wherein he stated that he acted for Mr Lee and Mrs YTL. He stated that they had applied for Indefinite Leave to Remain in the UK for Mrs YTL in circumstances where he was fully aware that no applications had been made.
- Mr Li deliberately informed Mr Lee and Mrs YTL that he had made the necessary applications to the Home Office, and subsequently advising them in or around October 2015 that Mrs YTL had Indefinite Leave to Remain in the UK when he had not.
- He informed Mr Lee and Mrs YTL that he would return their papers as soon as they were returned from the agents in circumstances where he was fully aware that no agents had been instructed.
- When Ms YQM telephoned Mr Li asking for her passport so she could return to China for her father's funeral and later to visit her sick mother-in-law, Mr Li gave her misleading information to explain why she could not have her passport, in particular advising her that her passport had already been granted and that he was waiting for it to post to her in circumstances where he was fully aware that no applications had been made on her behalf.
- In Autumn 2015, Mr Li informed Mr Lee and Mrs YTL that he had instructed Mr Gill at No. 5 Chambers to attend at the Home Office to collect Mrs YTL's passport with the required Leave to Remain endorsement in circumstances where he knew he had not.
- Mr Li forwarded a fabricated letter dated 30 September 2015 purportedly from the Home Office, UK Border Agency to No 5 Chambers on to Mr Lee and Mrs YTL to support his false assertions that (a) he had instructed No 5 Chambers and (b) that Mrs YTL's application was being properly progressed in circumstances where he knew that neither assertion was true.
- In or around October 2015 Mr Li attended at Mr Lee and Mrs YTL's home, and provided them with a fabricated photocopy of the Vignette, which he claimed was the Vignette endorsed by the Home Office on Mrs YTL's passport in circumstances where he knew that no such vignette had been received by the Home Office.

- He advised Mr Lee and Mrs YTL that her passport had been returned to the Home Office for them to correct the misspelling of her maiden name and erroneous date of birth date of birth in circumstances where he knew the document they were referring to was not genuine, and when it would be impossible for him to return it to the Home Office.
- He advised Mr Gill of counsel that he had submitted an application on Mrs YTL's behalf for Indefinite Leave to Remain in the UK as Mr L's spouse; and that on or about 4 January 2016 he had requested their file from James Tsang & Co Solicitors in circumstances where he knew that (a) he had not made such an application and (b) he had not instructed James Tsang & Co to act as agents.

27.3 Mr Bullock therefore averred that, in taking steps to provide misleading and untrue information to his clients Ms YQM and Mrs YTL as well as others instructed on their behalf regarding the progress of their applications to the Home Office for Permanent Resident and/or Leave to Remain in the UK, and by providing Mrs YTL with documents which he knew were not genuine to mislead them into thinking that progress was being made with their applications, Mr Li acted dishonestly according to the standards of ordinary decent people. An honest solicitor would not have deliberately and intentionally provided misleading and inaccurate information and documentation to his clients and those subsequently acting on their behalf.

#### The Respondent's Position

27.4 Mr Li failed to comment on Allegation 2 in his Answer or at all throughout the proceedings.

#### The Tribunal's Decision

27.5 The Tribunal applied the legal test promulgated in Ivey which provides:

“... ”

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

27.6 With regards to the first limb, the Tribunal determined that, at the material time, Mr Li (a) never filed an application for permanent residence on behalf of Ms YQM, (b) never filed an application for indefinite leave to remain on behalf of Mrs YTL, (c) never appointed an agent to do so on his behalf, (d) made numerous statements to Ms YQM

regarding the progress of an application which did not exist, (e) made numerous statements to Mrs YTL and others regarding the progress of an application that did not exist and (f) provided Mrs YTL with a falsified letter purportedly emanating from the Home Office, UK Border Agency.

27.7 With regards to the second limb, the Tribunal was in no doubt that ordinary decent people would consider such conduct dishonest.

27.8 The Tribunal therefore found Allegation 2 PROVED beyond reasonable doubt.

### **Previous Disciplinary Matters**

28. None.

### **Mitigation**

29. None.

### **Sanction**

30. The Tribunal referred to its Guidance Note on Sanctions (Tenth Edition: June 2022) when considering sanction. In so doing, and given the three findings of dishonesty absent any exceptional circumstances, the Tribunal determined that the only sanction which adequately served the overarching public interest was an Order striking Mr Li from the Roll of Solicitors.

### **Costs**

#### The Applicant's Application

31. Mr Bullock referred the Tribunal to the Applicant's Schedule of Costs dated 15 November 2022 in which a total sum of £43,364.80 was claimed. Mr Bullock acknowledged that the hearing had concluded in 1.5 days as opposed to the 3 days for which it was originally listed. Mr Bullock therefore applied for a reduced sum of £41,856.80.

32. The Tribunal challenged Mr Bullock with regards to the number of hours he had spent in preparation for hearings and the time spent by Emma Priest (solicitor employed by the Applicant) with regards "working on documents".

33. Mr Bullock reminded the Tribunal that proceedings were issued in March 2018, there had been at least six Case Management Hearings, six applications to adjourn and two substantive hearings listed. The case involved health matters which necessitated the instruction of a medical expert and consideration of a plethora of medical evidence served by Mr Li. Mr Bullock maintained that the revised costs claimed were reasonable and proportionate given the circumstances.

#### The Respondent's Position

34. Mr Li did not file a Statement of Means.

### The Tribunal's Decision

35. The Tribunal carefully considered the Schedule of Costs and noted that absence of any information from Mr Li regarding his financial position. The Tribunal noted that the proceedings had been protracted and complex with regards to the medical evidence and the partial engagement of Mr Li.
36. However, in applying the legal test of reasonableness and proportionality, the Tribunal remained of the view that the time spent by Mr Bullock and Ms Priest was excessive. The Tribunal therefore reduced the costs claimed to £37,500.00.

### **Statement of Full Order**

37. The Tribunal Ordered that the Respondent, Tom Kwing Ming Li, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £37,500.00.”

Dated this 9<sup>th</sup> day of December 2022

On behalf of the Tribunal

**JUDGMENT FILED WITH THE LAW SOCIETY**  
**9 DEC 2022**



D Green  
Chair

**Clerks Note: The decision set out in this judgment was reached by the Panel of three members who heard the case. However, due to the death of Mr Davies, solicitor member, the judgment has been reviewed by the remaining two members, Mr Green (in the Chair) and Mr Lyon, Lay Member, both of whom are content that it reflects the full Panel's decision.**