The Respondent appealed against the Order of the Solicitors Disciplinary Tribunal's dated 13 February 2019. On 15 October 2019 the Administrative Court approved a consent order quashing the decision of the Tribunal and remitted the allegations to the Tribunal for reconsideration.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11839-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

ZULFIQAR ALI — Respondent

Before:

Mrs J. Martineau (in the chair)
Mr J. Evans
Mrs L. Barnett

Date of Hearing: 12 and 13 February 2019

Appearances

David Bennett, counsel of Hailsham Chambers, 4 Paper Buildings, Temple, London EC4Y 7EX, instructed by the Applicant.

The Respondent represented himself.

JUDGMENT

Allegations

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

1.1 Whilst acting in relation to a property development scheme at 87-89 Plashet Road, London ("the Property") the Respondent caused and/or permitted client money, which included purchaser's deposit money, to be paid into his office account and thereby breached Rule 13.1 and/or 14.1 of the SRA Accounts Rules 2011 ("the SAR").

1.2 The Respondent made payments out and facilitated transactions which were dubious and/or bore the hallmarks of fraud when acting on behalf of his client Inner Court in relation to a property development scheme at the Property. The Respondent transferred a minimum of £828,796.00 of purchaser's deposit monies to Inner Court notwithstanding that he was aware that Inner Court did not own the Property and that purchasers' deposit monies were being placed at risk. The Respondent thereby breached any or all of Principles 2 and 6 of the SRA Principles 2011 ("the Principles") and failed to achieve Outcome 7.4 of the SRA Code of Conduct 2011 ("the Code of Conduct").

1.3 In April 2015 the Respondent advised Client A (an undercover reporter posing as an immigration client) regarding methods for circumventing the UK immigration system, namely by entering into a sham marriage. The Respondent thereby breached Principles 1, 2 and 6 of the Principles.

1.4 In April 2015 during a surreptitiously recorded conversation with Client A (an undercover reporter), the Respondent stated that he could prepare and/or submit paperwork in support of Client A's marriage and U.K. residency, notwithstanding that the Respondent was aware that the marriage would be bogus and arranged for the purpose of circumventing the UK immigration system. The Respondent thereby breached Principles 1, 2 and 6 of the Principles.

2. Recklessness was alleged with respect to the allegation at paragraph 1.2 however proof of recklessness was not an essential ingredient for proof of that allegation.

3. Dishonesty was alleged with respect to the allegations at paragraphs 1.3 and 1.4 however proof of dishonesty was not an essential ingredient for proof of those allegations.

Documents

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

- Rule 5 Statement and Exhibit SM1 dated 29 June 2018
- Respondent's Answer to the Rule 5 Statement dated 26 July 2018
- Respondent's Authorities Bundle
- Respondent's Statement dated 22 January 2019
- Applicant's Schedule of Costs dated 8 February 2019
- Respondent's Statement of Costs (undated)

Preliminary Matters

Privilege

5. The Respondent submitted that the documents relied on by the Applicant to prove dishonesty were subject to legal professional privilege. The advice he provided to his client related to legal services. The Applicant relied on a covert recording which purported to show the Respondent offering his services in relation to a sham marriage. The Tribunal was referred to Three Rivers in which it was found that all communication between a solicitor and his client relating to a transaction where legal advice was provided was privileged.

6. Mr Bennett noted that the Respondent, in his application, accepted that Client A was indeed a client and that legal advice had been provided. The privilege on which the Respondent sought to rely belonged to the client and not to the Respondent. The Tribunal was referred to Simms v Law Society [2005] EWHC 408 (Admin), where Mr S tried to assert privilege over documents that were privileged only in the hands of his client. That submission was rejected. The Divisional Court noted how difficult it would be for the Applicant to investigate misconduct where it was prevented from relying on documents that might be subject to privilege in the hands of the client. As part of the proceedings before the Tribunal, the Applicant applied to the High Court for the production company to produce the material upon which the Applicant relied. There was nothing in that material that was prejudicial to Client A who, in any event, was an undercover reporter.

Double Jeopardy

7. The Respondent also submitted that the programme on which the Applicant relied was broadcast in July 2015. In August 2015, the Respondent was interviewed by the Home Office. All of the Respondent's immigration work was checked by the Home Office as it was in possession of all the applications made by the Respondent on behalf of his clients. There was no evidence against him and the Home Office did not proceed with any matters. Following an SRA investigation, the Respondent was informed by the SRA that matters had been satisfactorily concluded. The Applicant now sought to reinstate these matters that had been satisfactorily dealt with in the instant proceedings.

8. Mr Bennett submitted that the Home Office investigation was completely irrelevant to these proceedings. The purpose of that investigation was wholly different to that of the Applicant. The Tribunal was referred to Ashraf v GDC [2014] EWHC 2618 (Admin), where Sir Brian Leveson found that there was no unfairness in professionals being the subject of both criminal and regulatory proceedings in relation to the same subject matter. The Tribunal was referred to the evidence of James Carruthers, the Forensic Investigation Officer who conducted the initial investigation into the Respondent. Mr Carruthers confirmed that at the time of his investigation, the Applicant had not been provided with any footage of the Respondent's activities.

The Tribunal's Findings

9. The Tribunal found that the privilege asserted by the Respondent was that of the client and not the Respondent. The Tribunal noted the comments in Simms. It was part of the Applicant's function to investigate and monitor solicitors. In order to do so, it needed to have access to, and the ability to rely on documents that were subject to legal professional privilege. Numerous cases that were heard before the Tribunal relied on such documents. That reliance did not amount to an abuse of process. The Tribunal did not consider that the material complained of ought to be excluded on the basis of privilege. Accordingly, that application was refused.

10. The Tribunal determined that the Respondent's application as regards double jeopardy was wholly misconceived. The Home Office investigation and its outcome was not determinative of the proceedings. The purpose of the proceedings before the Tribunal was to consider whether the Respondent's conduct amounted to misconduct such that he was in breach of his professional obligations. That was not the purpose of the Home Office investigation. There was no suggestion that, where Respondents appeared before the Tribunal following a criminal conviction, the regulatory proceedings were an abuse of process due to double jeopardy. For those reasons, the application was refused.

Amendment of the Rule 5 Statement

11. The Applicant applied to amend the Rule 5 Statement so that it accurately reflected the Respondent's place of employment at the relevant times. That application was not opposed. The amendment was allowed.

Factual Background

12. The Respondent was born in 1969 and was admitted as a solicitor in England and Wales in November 2010. His name remained on the Roll. The Respondent held a current Practising Certificate subject to conditions.

13. The Respondent was authorised as a sole practitioner in June 2015 and practised as ZA Solicitors Ltd ("the Firm"). A forensic investigation was commissioned and commenced on 15 March 2017. This arose from concerns regarding the Firm's involvement in conveyancing transactions. The Forensic Investigation Officer (FIO) interviewed the Respondent on 13 April 2017. The FIO produced a Forensic Investigation Report (FIR) dated 31 May 2017.

Witnesses

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

- Sarah Jane Taylor – Forensic Investigation Office in the employ of the Applicant
- Mrs Y – purchaser of a flat at the Property
- JJ – solicitor from JPG
- Zulfiqar Ali – Respondent

15. The following witnesses provided statements and were not required for cross-examination:

- James Carruthers
- VHLD – Production Coordinator

16. The written and oral evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence. 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

17. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Tribunal considered all the evidence before it, written and oral together with the submissions of both parties.

Dishonesty

18. The test for dishonesty was that set out in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 at [74] as follows:

> "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."

19. When considering dishonesty, the Tribunal firstly established the actual state of the Respondent's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held. It then considered whether that conduct was honest or dishonest by the standards of ordinary decent people. When considering dishonesty, the Tribunal had regard to the references supplied on the Respondent's behalf.

Integrity

20. The test for integrity was that set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366, as per Jackson LJ:

> "Integrity is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members … [Professionals] are required to live up their own professional standards … Integrity connotes adherence to the ethical standards of one's own profession".

Recklessness

21. The test for recklessness was as set out in Brett v SRA [2014] EWHC 2974 (Admin) as per Wilkie J:

> "I remind myself that the word "recklessly", in criminal statutes, is now settled as being satisfied; with respect to (i) a circumstance where he is aware of a risk that it exists or will exist and (ii) a result when he is aware that a risk will occur, and it is, in circumstances known to him, unreasonable for him to take the risk"

22. When considering recklessness, the Tribunal firstly established whether the Respondent appreciated any risk and then considered whether in the circumstances known to him, it was unreasonable for him to have taken the risk.

23. **Allegation 1.1 - Whilst acting in relation to a property development scheme at the Property the Respondent caused and/or permitted client money, which included purchaser's deposit money, to be paid into his office account and thereby breached Rule 13.1 and/or 14.1 of the SAR.**

The Applicant's Case

23.1 In the course of her investigation into the Respondent's involvement in the property development, the FIO noted a letter dated 11 November 2016 sent from the Firm to Inner Court. This letter was on the general file and stated, "We write to confirm our client bank account details as follows…" However, the letter detailed the Firm's office account details.

23.2 On 21 November 2016, £65,973.00 and £59,290.00 were remitted into the Firm's office account from Mr C. The monies related to deposits for units at the Property. The deposits remained in the office bank account until they were returned in full to Mr C on 19 January 2017.

23.3 On 25 November 2016, £89,172.00 was remitted into the Firm's office account from Ms LYD. The monies related to a deposit for a unit at the property. The deposit remained in the office bank account until it was sent to Inner Court in full on 30 November 2016.

23.4 During the interview with the FIO on 13 April 2017, the Respondent conceded that he had provided his office account details to Inner Court and attributed this to commercial pressure being applied from Inner Court whose marketing efforts had attracted interest from potential purchasers.

23.5 Rule 13.1 of the SAR required client money held or received to be kept in one or more client accounts. At the time of receipt of the monies, which were client monies, the Respondent did not have a client account. Rule 14.1 of the SAR required client money to be paid without delay into a client account and to be held in a client account. By retaining client money in his office account, the Respondent breached Rules 13.1 and 14.1 of the SAR.

The Respondent's Case

23.6 The Respondent admitted allegation 1.1. In his Answer he accepted that he ought to have had a client account when he received client money. He acknowledged that client money had been held in office account in breach of the SAR. He submitted that those monies were not used for any office purposes.

The Tribunal's Findings

23.7 It was clear on the evidence, as had been admitted, that the Respondent received client monies which were deposited into his office account and therein retained. The Respondent had accepted that this was the position both in his interview with the FIO and in his Answer in the proceedings. In his oral evidence, the Respondent stated that he had perhaps stated client account on the letter in error and that it should have said office account. The Tribunal did not accept that evidence. It was clear from the Respondent's Answer, his witness statement and his evidence that he was fully aware that to hold client money in office account was in breach of the SAR. That he had breached Rules 13.1 and 14.1 as alleged was evident beyond reasonable doubt. Accordingly, the Tribunal found allegation 1.1 proved beyond reasonable doubt.

24. **Allegation 1.2 - The Respondent made payments out and facilitated transactions which were dubious and/or bore the hallmarks of fraud when acting on behalf of his client Inner Court in relation to a property development scheme at the Property. The Respondent transferred a minimum of £828,796.00 of purchaser's deposit monies to Inner Court notwithstanding that he was aware that Inner Court did not own the Property and that purchasers deposit monies were being placed at risk. The Respondent thereby breached any or all of Principles 2 and 6 of the Principles and failed to achieve Outcome 7.4 of the Code of Conduct.**

The Applicant's Case

24.1 On 10 February 2017, the SRA received a complaint from JPG the solicitors acting on behalf of buyers who were purchasing flats that were under construction at the Property. The developer was Inner Court.

24.2 The Respondent was instructed to act on behalf of Inner Court. He informed the FIO that he had not done any conveyancing work until this instruction. He also confirmed that he was unaware of the Warning Notice issued by the SRA on 21 September 2016 which set out a number of concerns regarding investment schemes. It warned solicitors not to become involved in investment schemes that the solicitor did not understand or had not been independently and rigorously verified.

24.3 On the Respondent's case, he was approached by Mr K who stated that he was the Marketing Director of Inner Court. Mr K stated that the Respondent had been recommended by one of the Respondent's former immigration clients. Inner Court had instructed another firm, Chamber of Legal Advisors LLP ("Chambers"), in relation to the acquisition of the Property and wished to instruct the Respondent in respect of the sale of the units. Mr K instructed the Respondent to draft the contract of sale of the units and to effect exchange with the buyers' solicitors.

24.4 Mr Bennett noted that the Respondent did not advertise the firm as providing conveyancing services. The circumstances in which the Respondent was approached to undertake this work ought to have raised the Respondent's suspicions and served as a red flag. The Respondent made no enquiries as to why a property developer would instruct a solicitor with no experience in conveyancing in a large scale development .

24.5 On 26 October 2016, the Respondent received an email from AJ, the Sales and Marketing Manager at Inner Court, attaching a "proof of exchange". Also attached was a letter dated 15 August 2016 from Chambers, confirming that contracts on the Property had been exchanged. The letter stated:

> "To whom it may concern … We can confirm that we are instructed to act on behalf of Inner Court … in relation to their proposed acquisition of [the Property] and confirm that contract (sic) have been exchanged in relation to this acquisition . Inner Court … is therefore in a position to enter into sub sale agreements in relation to the same."

24.6 The Respondent made no attempt to contact Chambers. Had he done so he would have ascertained that Chambers (i) did not undertake conveyancing; (ii) had no knowledge of Inner Court; and (iii) had not written the letter dated 15 August 2016.

24.7 On 21 November 2016, £65,973.00 and £59,290.00 were remitted into the Firm's office account from Mr C. On 23 November the Respondent conducted a land registry search in the Property. The search showed that Inner Court were not the owners of the Property, it being owned by Mr AFP. Mr Bennett submitted that this was significant as it demonstrated that as from 23 November 2016, the Respondent was aware that he was acting on behalf of a property developer that did not own the property it was marketing. In the circumstances the Respondent ought to have made enquiries with Chambers to ascertain why Inner Court were not named as the proprietor of the Property. Had he done so, he would have discovered that the letter of 15 August 2016 was not genuine.

24.8 On 24 November 2016, the Respondent met with AK, the Director of Inner Court. The Respondent only obtained a copy of AK's driving licence as proof of his identity. Whilst he undertook a search at Companies House, the Respondent failed to undertake any other checks in relation to Inner Court or AK. The search showed that AK had only become the Director of Inner Court on 15 June 2016; prior to that the company had been dormant for many years. This, it was submitted, ought to have been another red flag to the Respondent.

24.9 In his client care letter of 24 November 2016 to Inner Court, the Respondent stated: "Currently you have acquired [the Property]." Mr Bennett submitted that the Respondent knew that statement to be inaccurate given the results of the Land Registry search undertaken by the Respondent the previous day.

24.10 The Firm's client account was opened on 25 November 2016. On 25 November, 23 December 2016, 17, 18, 25, 26, 27 January and 8 February 2017, various amounts were transferred into the Respondent's client account by JPG. Those amounts were then transferred to Inner Court shortly after receipt (£1,000.00 having been deducted in each case for the Firm's costs).

24.11 Mr Bennett exemplified 3 matters:

24.12 <u>Mr VT</u>

24.12.1 Mr VT was the purchaser of a unit at the price of £148,225.00. A deposit totalling £74,112.50 was required on exchange of contracts. On 27 January 2017, contracts were exchanged between the Respondent and JPG. JPG transferred the sum of £74,112.50 into the Firm's client bank account. On 28 January 2017, the Firm sent £73,112.50 to Inner Court, (£1,000.00 having been deducted for the Firm's costs).

24.13 <u>SSY</u>

24.13.1 SSY was purchasing a unit at the price of £164,394.00. A deposit totalling £82,467.00 was required on exchange of contract. On 25 January 2017 contracts were exchanged between the Respondent and JPG. On that date JPG transferred that sum into the Firm's client account. On 26 January 2017, the Firm sent £82,467.50 to Inner Court, (£1,000.00 having been deducted for the Firm's costs).

24.14 <u>Mrs Y</u>

24.14.1 Mrs Y, who was based in Hong Kong, intended to invest her husband's pension in a property in the UK, where her son was residing. The developer recommended the Respondent's Firm to her. Mrs Y's son attended the Respondent's offices on 24 November 2016 to hand over a cheque for the deposit in the sum of £59,290.00. Several days later, he again attended the Respondent's offices and was provided with a copy of the Contract of Sale.

24.14.2 When the Respondent was later contacted by members of Mrs Y's family, he referred queries to the developer. Mrs Y explained that she began to have concerns regarding the progress of the development owing to a lack of visible construction work at the property and, when she was informed by her children in August 2017 that there was still no work being undertaken at the property, she was sure she had been scammed.

24.14.3 Mrs Y stated that she was unable to contact the Respondent and discovered that the Firm had ceased trading. When her son in law spoke with the Respondent on a contact number provided by the SRA, he was informed by

the Respondent that the deposit monies had been transferred to the developer. When pressed for more information on the developer, the Respondent hung up terminating the call.

24.14.4 Mrs Y detailed the effect this matter has had on her families' financial circumstances. She states that the loss of the £59,290.00, representing the deposit monies provided to the Respondent and paid out by him to Inner Court, had eroded almost half of her husband's pension.

24.15 During his interview, the Respondent explained that, had he been acting for the buyers, he would have advised them not to proceed until there was "some kind of surety that [Inner Court] have acquired the property". The Respondent's frank acknowledgment of his understanding of Inner Court's business model and the risks posed to purchasers was clear. He acknowledged the development was a bad investment and that their deposits were at risk because Inner Court did not own the property or have planning permission to develop it. More worrying was the Respondent's understanding that Inner Court's business model was to generate money though initial deposits on a building they did not own and did not have planning permission to develop. The Respondent's release of purchaser's deposit monies to Inner Court was dubious and Inner Court's activities, which were apparent to the Respondent, bore the hallmarks of fraud.

24.16 The Respondent could not, as he had attempted to do, assign responsibility for risk to the purchaser's solicitors and adopt the position that, as he did not act for the purchasers, he need pay no heed to the wider implications and risks posed by his instructions from Inner Court, particularly where those risks were known to him. The Respondent recognised the risks to the purchasers at the time he released the deposit monies and yet between 25 November 2016 and 8 February 2017 he transferred £828,796.00 to Inner Court.

24.17 By paying out purchaser's deposit monies to Inner Court in the circumstances detailed, and facilitating transactions which were dubious and bore the hallmarks of fraud, the Respondent failed to act with integrity contrary to Principle 2.

24.18 The public would not expect a solicitor to accept instructions and continue to act in a property development when he was aware that purchaser's deposits were being placed at risk. By facilitating these payments, the Respondent failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services contrary to Principle 6. Likewise, the Respondent's conduct in releasing the deposit monies failed to achieve Outcome 7.4, which required him to monitor and take steps to address risks to money and assets entrusted to him by clients and others.

24.19 The Respondent's conduct was also reckless. He was aware of the risk posed to the deposit monies. Notwithstanding that knowledge, he transferred those monies to Inner Court. Given his knowledge of the risk posed to those monies, his conduct in transferring those monies was completely unreasonable and thus reckless.

The Respondent's Case

24.20 The Respondent accepted the factual matrix of allegation 1.2. He denied that his conduct breached Principles 2 or 6, that he had failed to achieve Outcome 7.4, or that his conduct was reckless. The Respondent explained that one of the main reasons he agreed to act for Inner Court in the sale of the units, was that JPG were the solicitors representing a number of the purchasers. It was not the Respondent's duty to look out for the interests of the purchasers; that obligation lay with JPG. Other firms were also representing purchasers. Those firms/solicitors were not satisfied with information provided by the Respondent and thus did not proceed to exchange. It was only JPG that agreed to exchange contracts on the available information. Accordingly, it was not the Respondent but JPG that had actually put the funds at risk. Notwithstanding that it was JPG that had caused the risk, JPG had not been investigated by the Applicant.

24.21 The Respondent submitted that he had, at all times, acted in the best interests of his clients. At no point did he provide false or misleading information to JPG or any of the other firms/solicitors representing purchasers. In an email to the Respondent dated 20 December 2016, JJ stated "the freehold title is currently owned by [AFP] and intended owner is Inner Court". It was clear from that email that JPG were fully aware that the Property was not owned by Inner Court, however it had proceeded to exchange of contracts. There were no conditions in the contract requiring the Respondent to retain the monies as stakeholder until such time as Inner Court owned the Property. JJ had failed to undertake her own independent enquiries on behalf of her clients. The Respondent had sought further information from Inner Court in an email dated 23 January 2017, where he requested the following:

- Planning permission application or grant of planning permission
- Architect's report
- Building regulation certificate from developers
- Agreement with landowner and seller
- Any other relevant practical steps taken/information in this matter

24.22 The Applicant relied on enquiries made by the FIO in this matter, namely enquiries made of Chambers and another firm of solicitors who had purportedly acted for Inner Court. Both firms confirmed that they had never acted for Inner Court. Such enquiries, the Respondent submitted, were enquiries that should have been conducted by JJ in her capacity as the solicitor for a number of purchasers of units at the Property; she failed to undertake such enquiries. The only clients that lost any monies as a result of the transactions, were clients of JPG. It was the failings of JJ that caused that loss. The Respondent submitted that it was not his responsibility to look after the clients of another solicitor; they were not his clients. Nor was it his responsibility to advise JPG's or any other firm's clients about the merits of the transaction. The Tribunal was referred to Orientfield Holdings Ltd v Bird & Bird LLP [2015] EWHC 1963 (Ch), in which HHJ Peeling QC stated at paragraph 31:

> "Solicitors do not generally advise on the business merits of transactions they are instructed to facilitate. The business judgments involved are those of the client, not the solicitor, and it is for the client to judge the impact of the material that may be relevant, not the solicitor. Whether the solicitor agrees

with the client's judgment, or with the grounds on which it is arrived at, is immaterial".

24.23 For those reasons, the Respondent did not accept that his conduct was in breach of the Principles or the Code of Conduct as alleged. Still less was his conduct reckless.

The Tribunal's Findings

24.24 The Respondent accepted the factual matters on which the Applicant relied. The decision for the Tribunal was whether the transactions were dubious and bore the hallmarks of fraud and whether the Respondent was aware that he was placing purchasers' monies at risk. The "red flags" alleged by the Applicant were considered in detail by the Tribunal. The circumstances of the Respondent's instruction ought to have caused him concern. It was noted that the Respondent's Firm advertised its services on its website. There was no mention on that website of conveyancing work being an area in which the Firm practised. It was clear that the Firm did not practice in this area, as it had no client account. The Tribunal accepted that it was not unusual for a firm to receive queries relating to areas of work in which it did not practice. However, the Tribunal found it extraordinary that the Respondent did not consider the instruction of his Firm in a multi-million pound investment, (given that he was not and did not advertise that he was a conveyancer), was suspicious. This was made all the more suspicious by Inner Court's inability to tell him who had recommended his Firm. The Tribunal did not accept the Respondent's evidence that Inner Court told him the name of the client but that he was unable to recall it. In his interview the FIO specifically asked the Respondent whether Inner Court had said who had recommended the Respondent to them. His response: "No, he was telling me some kind of client we act … for whom I acted sometime before …in immigration matter (sic)". The Respondent explained that he did not consider the actions of Inner Court to be suspicious, as it had been explained to him that Inner Court dealt with a number of different solicitors for its different projects. His lack of conveyancing experience was not material. The Respondent stated "As a solicitor we all start somewhere. When we get things we have books to consult by reading to equip yourself with the standard to act". The Tribunal found that explanation, in these circumstances, to be wholly implausible. It was inconceivable that a property developer, involved in a multi-million pound development, would instruct a solicitor with no experience to conduct the transactions. Still less was it likely that such a developer would continuously use different solicitors on different transactions. These matters alone were enough for the Respondent to have been on notice that the transactions were potentially dubious or bore the hallmarks of fraud.

24.25 The Respondent accepted that he was aware that Chambers were not a firm of solicitors but were in fact immigration advisors. In his evidence, the Respondent explained that whilst he was so aware, this raised no suspicion. In his experience, he had seen people making agreements between themselves; that was perfectly fine - there was no need to have a solicitor. During his interview he stated that he had explained that Chambers were not solicitors to Inner Court, and had told Inner Court to "make sure you do it through proper solicitors". In his evidence the Respondent explained that it was his job to advise and not to force Inner Court to do anything. Inner Court was in possession of all the information and could make its own decisions. The Tribunal was astonished by such an explanation. The Respondent was

not only aware of his own inexperience, but was aware that Inner Court had instructed a company that was not a firm of solicitors in the purchase of the Property. That this raised no suspicion in the Respondent's mind as to the nature of the transactions was incredible. It should also have been of concern, in the circumstances, that the Respondent had been instructed in the sale of the units, but not in the purchase of the Property. The Tribunal determined that these circumstances were, on their own, enough to raise suspicions as to the nature of the transactions. Taken together with the circumstances of his instruction, the Respondent ought to have been extremely concerned as to the nature of the transaction and should have recognised that the transactions were dubious given the clear hallmarks of fraud.

24.26 The Respondent failed to make any enquiries of Chambers. The letter from Chambers of 15 August 2016, provided to the Respondent by Inner Court, was suspicious in both format and content. The Tribunal accepted the Respondent's evidence that he was unaware that that letter was not genuine. In his evidence the Respondent explained that he asked a friend whether the owner of the Property was selling it. That friend explained that he had spoken to the landlord who confirmed that he was selling the property but would not disclose who he was selling the Property to. On receiving that information, the Respondent explained that he was more confident in the transaction; he accepted that there may be ongoing negotiations such that the landlord did not want to name the purchaser. The Tribunal found this to be an unconventional and inappropriate way to ascertain the landlord's intentions as to the sale of the property. As a solicitor, the Respondent should not be reliant on anecdotal evidence, particularly when he need only have contacted Chambers who, as the alleged representatives on the purchase, could have updated him as to the progress of that purchase.

24.27 The Tribunal was extremely concerned to note that the Respondent had no suspicions in relation to Inner Court's instructions that he should receive deposit monies, notwithstanding its awareness that the Respondent had no client account. In his interview, the Respondent explained that he was telling Inner Court to wait as he did not have a client account, but that as they had launched the project on the internet, and there was interest from purchasers who were ready to exchange, they wanted to go ahead with exchange. Inner Court did not want to wait for the client account to be opened. That the Respondent had no suspicions was incredible. The Tribunal considered that no reputable property developer would require the Respondent to receive monies from purchasers into his account in breach of the SAR. That this was Inner Court's position ought to have been ringing alarm bells for the Respondent.

24.28 The Respondent failed to undertake basic money laundering checks and failed to comply with his own money laundering procedures. He did not obtain the documentation from his client that he ought to have. The Respondent should have been scrupulous in ensuring that money laundering checks were properly carried out. It ought to have concerned him that whilst AK stated he would provide the relevant documentation, he failed to do so.

24.29 The limited checks undertaken and documents received by the Respondent highlighted issues which he should have investigated further, however he failed to do so. The Companies House check showed that the company had been dormant for a number of years; the Respondent made no enquiries of his client in relation to this.

His evidence was that Inner Court instructed that it created a new company for new developments. This was not a new company, but a company that had been dormant for some time. The Respondent was aware that Inner Court did not own the property, but made no further enquiries as to when it was likely to own the property, and made no contact with Chambers who were purportedly acting in the purchase. The contract for the sale of the Property to Inner Court recorded a different firm as acting for Inner Court, and that Chambers were acting for the seller. The Respondent, in his evidence, explained that he did not notice this when the contract was provided to him.

24.30 The Tribunal found that taken together, the above evidence overwhelmingly demonstrated that the transactions were dubious and bore the hallmarks of fraud. For the Respondent to transfer monies in those circumstances was grossly incompetent and demonstrable of a cavalier attitude to client money. That such conduct was in breach of Principle 6 was plain. Members of the public would expect a solicitor to safeguard client money in accordance with the SAR. In releasing the deposit monies to Inner Court, the Respondent failed to take steps to address the risk to the monies entrusted to him by the purchasers. Thus he failed to achieve Outcome 7.4.

24.31 The Tribunal considered that no solicitor acting with integrity would have conducted themselves as the Respondent did. He completely ignored all the red flags as regards the likelihood that the transactions were dubious and bore the hallmarks of fraud. He focussed solely on the terms of the contract and paid no account to his regulatory obligations. By paying out monies in the circumstances, the Respondent's conduct fell well below the standard society expected of him, and the standards expected by other solicitors. The Tribunal did not consider that the expectation of the Respondent to have acted in accordance with his professional obligation was unrealistically high – he was not required to be a paragon of virtue. The expectation was that he would act in accordance with the ethical standards of the profession; that he had failed to do so was plain. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent breached Principles 2 and 6 and failed to achieve Outcome 7.4, and thus found allegation 1.2 proved to the requisite standard.

24.32 The Tribunal considered whether the Respondent's conduct had been reckless. The Tribunal determined that the Respondent did not perceive that there was any real risk to the purchasers' deposit monies. Whilst it was clear that he would have advised his own clients that it might have been a bad investment, the Tribunal considered that the Respondent did not perceive that there was any risk that the monies would be lost or not returned to the purchasers. He had no experience in transactions of this nature and considered that acting in accordance with the terms of the contracts was sufficient. He also believed that it was not for him to consider the stewardship of the deposit monies; that was a matter for JPG and JJ as she was the solicitor instructed to act on behalf of the purchasers. Having determined that the Respondent did not perceive the risk, the Tribunal was not required to consider the second limb of the test for recklessness, and did not find that recklessness had been proved. Accordingly, the Tribunal dismissed that part of allegation 1.2

24.33 The Tribunal considered that the Respondent's conduct of his defence, and in particular his cross-examination of Mrs Y was, at best, distasteful. He had sought to blame her for the loss of her monies, criticising her for her failure to either instruct lawyers herself or have her son do so on her behalf, and for failing to provide him

with the sales particulars in which it was stated that a quarter of the deposit would be paid to the developer with the remainder being retained by solicitors. It was clear from the documents produced by Mrs Y, that she believed that the Respondent's firm was acting on her behalf, and that she had been told that only part of her deposit would be released to the developer. The Respondent also sought to blame JJ and JPG for the loss of client monies, suggesting that the Applicant's motives in pursuing him were improper. He had defended allegation 1.2 on the basis that it was alleged that his motive in transferring the monies had been nefarious, and had thus sought to shift the blame for his actions onto JPG and those who had lost monies. The allegation had not been put on that basis; there was no suggestion that his actions were nefarious. The allegation, as detailed in the Rule 5, and put to the Respondent in cross-examination, was that he had facilitated transactions which were dubious and bore the hallmarks of fraud. As detailed above, the Tribunal found allegation 1.2 to be proved beyond reasonable doubt, save that recklessness was not proved.

25. **Allegation 1.3 - In April 2015 the Respondent advised Client A (an undercover reporter posing as an immigration client) regarding methods for circumventing the UK immigration system, namely by entering into a sham marriage. The Respondent thereby breached Principles 1, 2 and 6 of the Principles.**

Allegation 1.4 - In April 2015 during a surreptitiously recorded conversation with Client A (an undercover reporter), Respondent stated that he could prepare and/or submit paperwork in support of Client A's marriage and U.K. residency, notwithstanding that the Respondent was aware that the marriage would be bogus and arranged for the purpose of circumventing the UK immigration system. The Respondent thereby breached Principles 1, 2 and 6 of the Principles.

The Applicant's Case

25.1 The Respondent was surreptitiously recorded discussing a sham marriage with Client A who was, unbeknownst to the Respondent, an undercover reporter. Client A asked the Respondent how he could extend his stay in the UK and ultimately secure permanent residency/citizenship by means of a sham marriage. The Applicant secured a court Order requiring the production company to provide the full footage obtained.

25.2 Client A explained to the Respondent that he was seeking a way to stay in the UK for longer. He was unable to do another degree and he could not afford the entrepreneurial option. The Respondent explained that the only option left was "getting married". When asked by Client A how he could pursue the marriage option, the Respondent replied "Go and find some suitable person…well you maybe chat online you know dating sites … marriage … you never know when luck gonna knock on your door ... you never know … girls are there, boys are there, so they want to get married and you are a smart handsome guy so you can get somebody easily."

25.3 In response to the question "what if I pay someone to marry me" the Respondent replied "It totally depends on you". When asked "would you be able to help me out with that, I mean do the paperwork and everything" the Respondent stated "yes we will be able to do the paperwork, visa, certificate but at the end of the day it's a very costly business". The Respondent explained that the cost would be in the region of

£12,000 - £13,000. This would pay "to do all the work … pay her, pay the solicitor". He further explained that this was a permanent solution as if Client A got a European girl he would get "five years residence, spouse visa and then after five years you can get indefinite … so that is kind of permanent, yes".

25.4 When asked about the risk of getting caught the Respondent explained "Risk is … of course there's a risk. If you got caught and you don't, cannot produce your wife and then they will say it wasn't a genuine marriage … but other procedure is, if you only complete three years, then you can do is, after that you can apply for the divorce and get divorce and apply for indefinite leave. You have to complete three years. You can wish her to die before three years … you can wish her to die after one years (sic) … you can produce a death certificate … then you're fine".

25.5 Client A stated that the laws on marriage were changing. The Respondent advised "The marriage law has already been changed. But they are not restricting people not to get married, they are just checking if the relationship is genuine and they are basically putting the people back a few months before you get the marriage registered. Because once the marriage is registered, once you register the marriage you got better chances to get the visa than people who don't have. So that's why they are putting people off, putting but more restriction but it is only when they suspect something but if you have confidence, you are together, you hold each other then that's not a problem."

25.6 Client A asked "so even if it's like, it's not a genuine marriage? Do you do this?" the Respondent replied "It's up to people to do it, genuine or not" When Client A asked: "So you help out in any case whether it's genuine and the Home Office don't think it's genuine or it's not genuine and the Home Office think it's genuine" the Respondent replied: "Yes. I mean we act on client's instruction not our own instruction. They come to us and say they're genuine and we believe them. It's not my job to find out whether they're living together or not".

25.7 Client A clarified: "Ok, so the risk would be deported or something like that". The Respondent advised: "I mean think, in your case, … if you're applying in time for your British passport you need to take the risk, if you don't take the risk you're not going to get the passport anyway. So you need to take the risk … If you don't take the risk that is yours but passport will be yours, risk is yours. Understand? … Visa will be yours, passport will be yours, so you have to take the risk not me."

25.8 The Respondent advised Client A as to the evidence that might be required in support of any application: "It's just simply getting all the paperwork, putting bills together, making name together making photographs, where you live you have to understand where you live, you know the area, your house, I'm in this room somebody say what else is in the room you need to be able to explain this situation what is in the room, practise, with all these things. The same thing they're gonna, they don't ask the question something out the blue, something people don't know what they're talking about so it is definitely on small facts, where do you live, what kind of house it is, how many bedrooms, what colour the bath what colour is the bedsheet, if there is any extra furniture here. I mean if something yes tell them yes or no. It's not difficult. It's up to you how you do that." The Respondent also explained that questions would be asked "according to your circumstances … Of course they definitely going to ask

about your circumstances, what you are doing here, where … you live, what you eat, what … you wear, habits, you know all these daily routines they are going to ask you as well."

25.9 Mr Bennett submitted by offering a client advice regarding subverting the immigration system by means of a sham marriage and offering to prepare and submit paperwork in support of a bogus marriage, the Respondent breached the Principles as alleged. Such conduct failed to uphold the rule of law, undermined public confidence in the legal profession and fell below the standards the public and the profession expected of solicitors.

Dishonesty

25.10 The Respondent's conduct was dishonest for the following reasons:

- It was clear to the Respondent that Client A was raising the possibility of a sham marriage for the purpose of securing his continued residence in the U.K. The Respondent, far from declining to act or advising the client that what he proposed was illegal, offered to assist in bringing about a sham marriage by preparing the supporting paperwork and advised Client A on the likely costs. This, it was submitted, indicated that the Respondent was willing to be complicit in Client A's intended course of action.

- The Respondent's reference to paying the girl when clarifying the cost was demonstrable of his awareness that the spouse was to be offered money to participate in the sham marriage.

- He offered advice as to how to circumvent the UK immigration system.

- He advised as to the risks of being caught, stating that it was for Client A to take that risk.

- He advised as to the requisite evidence to support any application and as to the knowledge of his domestic circumstances that would need to be provided in any interview.

25.11 The Respondent was unambiguous in his responses to Client A. He understood that what was being proposed was a sham marriage. He was fully complicit when advising Client A on his options for entering into such a marriage. The Respondent's actual state of mind was clear on the facts presented. Solicitors were trusted by the public to perform their duties honestly and played a vital role in the effective maintenance of judicial and administrative functions. Ordinary and decent people would regard it as dishonest for a solicitor to provide a client with advice on forming a sham marriage to circumvent the immigration rules so as to secure residency in the U.K. based on a false pretext. Further, ordinary and decent people would regard it as dishonest for a solicitor to offer to submit paperwork in support of a sham marriage.

The Respondent's Case

25.12 The Respondent denied that he had breached the Principles as alleged, or that his conduct was dishonest. The Respondent denied that he would have carried out any work for Client A if it had been proved or even suspected that he was not a genuine client. The firm had a supervision system which meant that the Respondent's work would have been checked by the Principal. If the Principal came to the conclusion that Client A was not genuine, the Respondent would not have acted.

25.13 The Respondent's suggestion that Client A should find a suitable person meant that he should find someone who suited his personality. In his statement the Respondent explained that he advised Client A about the risks involved if he entered a sham marriage. He also advised him about the legal framework for visas. At no stage did he enter into a contract to carry out work for Client A in relation to his sham marriage. It was not the Respondent's responsibility to ascertain whether the marriage was genuine; that was a matter for the Home Office.

25.14 The Respondent was concerned that the Tribunal had not viewed the entire documentary, as it had only been shown the full undercover interview. He explained that he was only on the broadcast programme for a very short time, as he was not the centre of the investigation. In seeing the full interview, and not the broadcast programme, the Tribunal did not have the full picture as to how the Respondent was portrayed in the programme.

25.15 The Respondent denied that he had advised Client A in a way that would allow him to circumvent the immigration system. The advice he had given had been in accordance with the applicable immigration rules and laws. As Client A had no other lawful ways to remain in the UK (Client A having ruled all other options out), the Respondent advised him that his only other option was to marry. That advice was right in all the circumstances. It was not clear to the Respondent that Client A was suggesting entering into a sham marriage. As regards his price quotation, the reference to paying the girl was a reference to the general cost of marriage. In the Respondent's culture it was usual for a husband to provide jewellery, a dowry and clothing.

25.16 When Client A asked about risk, the Respondent advised him of the risks of entering into a sham marriage. However, Client A's question was conditional, "if"; it was not evidence that he was entering into a sham marriage. The Respondent's firm had a strict policy and would not involve itself in sham marriages. The Respondent referred the Tribunal to the Home Office investigation. As the Home Office was in possession of all applications submitted by the Respondent, it was in the best position to consider the Respondent's work. The Home Office had found no wrong doing.

25.17 The Respondent explained all the advice provided to Client A was correct and in accordance with the law. The advice provided as to the likely checks that would be undertaken by the Home Office was based on information that was widely available, including on the Home Office website. The advice as to divorce was not unusual. Client A wanted to know when he would be free of immigration control. The advice given was proper and appropriate in that regard.

25.18 The Respondent submitted that he had a soft nature; he continued with the interview when he should perhaps have stopped Client A "as soon as he asked for paper marriage (sic)".

25.19 The Respondent denied that his conduct had been dishonest. He submitted that the Applicant had no evidence that his conduct had been dishonest, as it had failed to establish any actions or intentions showing that the Respondent had been dishonest.

The Tribunal's Findings

25.20 The Tribunal considered the recording and the transcript thereof, together with the Respondent's written and oral evidence in detail. The Tribunal found the Respondent's oral evidence unconvincing. The Tribunal had no doubt that the Respondent was aware that Client A was suggesting a sham marriage:

Client A: "Ok. What if I pay someone to marry me?"

Respondent: "It totally depends on you"

Client A: "Would you be able to help me with that? I mean do the paperwork and everything?"

Respondent: "Yes we will be able to do the paperwork, visa, certificate but end of the day (sic) … it's a very costly business."

25.21 The Tribunal determined that the above extract from the meeting with Client A plainly evidenced Client A's intentions, and that those intentions were clear to the Respondent at the time. The Tribunal did not accept the Respondent's explanation that Client A's instructions were conditional by virtue of the fact that he said "if". The extract clearly demonstrated the Respondent's willingness to act for Client A even where the marriage was not genuine.

25.22 Not only was it clear at the outset, but it was clear throughout the interview that Client A intended to enter into a sham marriage. The Tribunal found that the Respondent, in the knowledge that it was Client A's intention to enter into a sham marriage so as to remain in the UK once his visa had expired, provided advice throughout the interview to Client A. The Tribunal considered that the Respondent clearly knew of the nature of any proposed marriage as:

- Client A had made it clear that he was not in a relationship but was prepared to marry so that he could remain in the UK.
- He spoke of paying someone to marry him.
- He asked the Respondent how he could find someone to marry.
- He asked about the risk if he were to be caught.
- He asked whether it was necessary for him to reside with his spouse.
- He asked about the cost of the marriage and paying the girl.
- He asked whether the Respondent would be prepared to act where the marriage was not genuine and if he would submit the necessary documentation.

25.23 Towards the end of the interview, Client A again made it clear that he was seeking representation from the Respondent in relation to a sham marriage:

> Client A: "So like even if it's not a genuine marriage? Do you do this?"
>
> Respondent: "It is up to these people to do it, genuine or not"
>
> …
>
> Client A: "So you do it … So you help out in any case … So if it's genuine but the Home Office thinks it's not genuine, or it's not genuine and the think it's genuine like?"
>
> Respondent: "Yes. I mean we instruct, we act on client's instructions not our own instruction … They come to us and say they are genuine, we believe them."

This was, again, clear evidence that Client A was seeking assistance with a marriage that was not genuine.

25.24 The Respondent then advised Client A that "… you need to take the risk, if you don't take the risk you're not going to get the passport anyway. So you need to take the risk ... you have to take the risk, not me." During cross-examination, the Respondent accepted that he had advised Client A that there was a risk if he entered a sham marriage. The Tribunal considered that the only proper advice that the Respondent could have given in response was that such a marriage was not genuine, was in contravention of immigration rules and that he would not act in those circumstances. The Respondent had suggested that this was implicit in the advice he gave. The Tribunal found the contrary, not only was it not implicit, but the Respondent explicitly stated that he would act, knowing that Client A was intending to enter a sham marriage.

25.25 The Respondent also provided advice on how long Client A would need to remain married before he could get a divorce and then apply for indefinite leave to remain in the UK, or apply for citizenship. The Tribunal did not accept that this advice was provided so as to inform Client A when he would be free of immigration control. The context of the conversation made it clear that Client A was intending to divorce as soon as he would be able to do so and remain in the UK. The Tribunal found that it was plain to the Respondent that Client A was proposing a marriage for the purposes of circumventing the immigration rules, and that he intended to divorce as soon as he could do so whilst achieving the objective of remaining in the UK. The Respondent, if acting properly, would not have provided the advice that he did.

25.26 The Respondent argued that his advice was in accordance with the prevailing immigration rules. The Tribunal determined that, whilst the advice was technically correct, the Respondent knew that he was advising on a sham marriage – in the circumstances the correctness of the advice was not relevant. The allegations faced by the Respondent related to his advice in the knowledge that the marriage would be a bogus marriage so as to circumvent immigration rules, and not as to whether he had correctly cited procedures and options.

25.27 The Tribunal found beyond reasonable doubt that in advising Client A on how to circumvent the immigration system by entering into a sham marriage and offering to prepare and submit paperwork in support of such a marriage, the Respondent had failed to uphold the rule of law and the administration of justice in breach of Principle 1. That such conduct was also in breach of Principle 6 was evident beyond doubt. Members of the public expected solicitors to comply with and uphold the rule of law. It would cause great concern to know that solicitors were using their expertise to circumvent immigration rules by advising on and offering to assist in the making of false applications.

25.28 The Tribunal determined that no solicitor acting with integrity would advise a client on his options for entering into a sham marriage. Still less would a solicitor of integrity agree to do all the paperwork in support of such a marriage. The Respondent's conduct in this regard had fallen well below the standards expected of him both by the public and members of the profession. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent's conduct was in breach of Principle 2.

25.29 The Tribunal then considered whether the Respondent's conduct had been dishonest. As regards the Respondent's subjective knowledge, the Tribunal had found that the Respondent knew that what was being suggested was a sham marriage; he had offered advice on entering into such a marriage; and had agreed to complete the supporting paperwork for any application based on such a marriage. The Tribunal found that ordinary and reasonable people would consider that, advising a client on a sham marriage such as to circumvent immigration rules, and offering to submit the paperwork in support of such a marriage was dishonest. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent's conduct had been dishonest.

25.30 For the reasons detailed above, the Tribunal found allegations 1.3 and 1.4 proved beyond reasonable doubt, including that the Respondent's conduct had been dishonest.

Previous Disciplinary Matters

26. None.

Mitigation

27. The Respondent submitted the advice to Client A had taken place 4 years ago. It was not a serious matter such that it should attract a serious punishment. He had learnt from the experience and would not repeat it; he was now very careful. His conduct was not intentional. There had been no issues with his advice after this matter. There had been no repetition, and there would be no repetition. He now had conditions on his practising certificate and worked under supervision. The advice was one off and a single event, where he had been tricked by an undercover reporter. No harm had been caused to anyone, and he had not exploited or misled his client, nor had he misled the SRA.

28. The Respondent submitted that the appropriate order in this matter was no order, however, if the Tribunal were minded to impose a harsher punishment, it should impose a fine in the sum of no more than £500. This was 10 times the amount he received for the advice given to Client A. Any punishment more severe than that would affect his practice and his ability to support his family.

29. As to any exceptional circumstances, the Respondent relied on the nature of his conduct and his circumstances. He also relied on his Answer, Statement and oral evidence.

Sanction

30. The Tribunal had regard to the Guidance Note on Sanctions (6th Edition). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

31. The Tribunal accepted the Respondent's submissions that he did not stand to gain financially from the advice he provided to Client A. His actions as regards that advice were spontaneous. His misconduct in relation to the property transactions arose from his failure to have proper regard for his obligations in relation to client monies. He had completely ignored the numerous and obvious red flags which indicated that the transactions were dubious and bore the hallmarks of fraud. He was in direct control of the circumstances giving rise to the misconduct in relation to both sets of allegations. He had very limited experience in conveyancing, and no experience in a commercial conveyancing transaction of that nature. He was an extremely experienced immigration practitioner and had used that experience to provide advice designed to circumvent the rules.

32. His conduct had caused harm to the reputation of the profession and had directly affected the purchasers of the properties. Mrs Y had lost a substantial amount of her husband's retirement monies which had not been returned to her. At the commencement of her cross-examination, the Respondent stated that he was sorry for her loss, but that he had lost his business. He had no intention to defraud her. In response, Mrs Y stated that she did not need his apology, she simply wanted her money back. That this matter had had a huge impact on Mrs Y was clear from her evidence. Given the numerous and obvious indications that the transactions were dubious and bore the hallmarks of fraud, the Tribunal determined that the harm caused, both to the purchasers and the reputation of the profession was reasonably foreseeable as a result of the Respondent's conduct.

33. The Respondent's conduct was aggravated by his proven dishonesty, which was in material breach of his obligation to protect the public and maintain public confidence in the reputation of the profession; as per Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin at paragraph 34:

> "There is harm to the public every time that a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be "trusted to the ends of the earth"."

34. His conduct as regards allegations 1.3 and 1.4 was deliberate; the Respondent knew that the advice he was providing and the offer to complete the paperwork related to a sham marriage with the sole purpose of circumventing immigration rules. That such conduct was in material breach of his obligations as an officer of the Court was clear.

35. The Respondent had not made good the loss suffered by those purchasers whose monies had been transferred by him to Inner Court. As was clear from his cross-examination of Mrs Y, the Respondent's concern, whilst expressing his apology for her loss, was the loss that he had suffered as a result. The Tribunal found this to be further evidence of the Respondent's lack of insight into the consequences of his conduct, and a further aggravating feature.

36. In mitigation, the Tribunal found that the misconduct as regards allegations 1.3 and 1.4 was a single episode of brief duration in a previously unblemished career. He had at all times co-operated with the Applicant in the investigation of all matters.

37. Given the serious nature of the allegations, the Tribunal considered and rejected the lesser sanctions within its sentencing powers such as no order, a reprimand or restrictions. The Tribunal had regard to the case of Bolton v Law Society [1994] 2 All ER 486 in which Sir Thomas Bingham stated:

> "….Lapses from the required standard (of complete integrity, probity and trustworthiness)….may….be of varying degrees. The most serious involves proven dishonesty….In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced by the solicitor, ordered that he be struck off the roll of solicitors."

38. The Tribunal found the Respondent's suggestion of no order, or at most a financial penalty, to be entirely unrealistic and demonstrable of his complete lack of insight into his conduct. It was settled law that, save in exceptional circumstances, a finding of dishonesty would almost invariably lead to the sanction of being struck off the Roll. The Respondent's submission that this was not a serious matter was rejected; a finding of dishonesty was an extremely serious matter.

39. The Tribunal did not find any circumstances that were enough to bring the Respondent in line with the residual exceptional circumstances category referred to in the case of Sharma. The Tribunal decided that, in view of the serious nature of the misconduct, in that it involved dishonesty, the only appropriate and proportionate sanction was to strike the Respondent off the Roll of Solicitors.

40. The Tribunal considered that the Respondent's conduct had fallen extremely short of acceptable standards. The substantial departures from integrity, probity and trustworthiness the Respondent had displayed were very serious. His misconduct was at the highest level. The Tribunal considered that, even if it had not found the Respondent's conduct to have been dishonest, his failings were such that the protection of the public and the reputation of the profession warranted that he be struck off the Roll. His conduct as regards allegations 1.1 and 1.2 had been grossly incompetent and cavalier. His conduct as regards allegations 1.3 and 1.4 had been designed to circumvent immigration rules and thus the rule of law. Even absent

dishonesty, public confidence in the profession demanded no lesser sanction than striking the Respondent from the Roll.

Costs

41. Mr Bennett applied for costs in the sum of £18,940.40. This amount took account of the reduced hearing time and the additional expense incurred for the interpreter's attendance at the Tribunal. It was submitted that whilst the Respondent had provided a statement of his means, he had failed to provide any documents in support of that statement. The Applicant's costs recovery team would always take into account the Respondent's means when seeking to recover costs. The Respondent's financial statement showed that his monthly surplus was very low.

42. The Tribunal considered that the costs claimed by the Applicant in this matter were reasonable given the nature of the case. It took account of the Respondent's limited means as shown in the statement provided. However the Respondent had not complied with Standard Direction 7, issued by the Tribunal on 3 July 2018, which required that he provide documentary evidence in support of his statement of means.

43. The Tribunal considered the hourly rates claimed by the Applicant were reasonable, as were the number of hours claimed. The Tribunal also considered that the fee charged by Mr Bennett was appropriate and proportionate having regard to the nature of the case. Further, that fee had been reduced to reflect the reduced hearing time. In the circumstances, the Tribunal found the costs claimed by the Applicant to be reasonable, appropriate and proportionate. The Tribunal was aware that the Applicant's recovery department would take an appropriate and sensible approach in recovery of any costs ordered. The Tribunal did not consider that any further reduction in costs was warranted. Accordingly, it ordered that the Respondent pay costs in the sum of £18,940.40.

Statement of Full Order

44. The Tribunal Ordered that the Respondent ZULFIQAR ALI, 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 in the sum of £18,940.40.

DATED this 28th day of March 2019
On behalf of the Tribunal

J. Martineau
Chair