

The Respondent appealed to the High Court against the Tribunal's decision dated 13 May 2019. The Respondent's appeal was dismissed by Lord Justice Flaux and Mr Justice Fordham on 2 June 2020. Naqvi v Solicitors Regulation Authority [2020] EWHC 1394 (Admin).

On 19 February 2021 the Court of Appeal Civil Division refused Mr Naqvi's application for permission to appeal the judgment of the Divisional Court.

## SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11871-2018

### **BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

SYED MUZAHER NAQVI

Respondent

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Before:

Mr J. C. Chesterton (in the chair)

Mr W. Ellerton

Mrs L. McMahon-Hathway

Date of Hearing: 15-17 April and 13 May 2019

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### **Appearances**

David Bennett, counsel of Hailsham Chambers, 4 Paper Buildings, Temple, London EC4Y 7EX, instructed by Capsticks Solicitors LLP of 1 St Georges Road, London, SW19 4DR, for the Applicant.

Alper Riza QC, counsel of Goldsmith Chambers, Goldsmith Building, Temple, London EC4Y 7BL for the Respondent.

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## **JUDGMENT**

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## **Allegations**

The Allegations against the Respondent were that on or about 27 March 2015, while in practice as a sole practitioner at Naqvi & Co Solicitors (“the Firm”);

1. While advising Client A on a possible application for a visa:
  - 1.1 He failed to advise Client A that applying for a visa as a spouse or partner, on the basis of a relationship which was not genuine, was unlawful, and by reason of such failure breached any or all of Principles 2, 4 and 6 of the SRA Principles 2011 (“the Principles”);
  - 1.2 He advised Client A that, in the event that Client A wished to apply for a visa as a spouse or partner on the basis of a relationship that was not genuine, Client A should not disclose this fact to him, and by reason of such failure breached any or all of Principles 1, 2, 3 and 6 of the Principles;
  - 1.3 He indicated that he was willing to advise and/or assist Client A on the process of applying for a visa as a spouse or partner after Client A made clear that he intended or was likely to make the application based on a relationship that was not genuine, and by reason of such failure breached any or all of Principles 1, 2, 3 and 6 of the Principles.
  - 1.4 He advised Client A on steps that could be taken by Client A to increase the prospects of an application for a visa as a spouse or partner being successful when he knew or ought to have known that the relationship on which the purported application would rely was not genuine and by reason of such failure breached any or all of Principles 1, 2 and 6 of the Principles.

It was the Applicant’s case that the Respondent acted dishonestly in respect of Allegations 1.2, 1.3 and 1.4. Dishonesty was not an essential ingredient to the Allegations above and it was open to the Tribunal to find these Allegations proved with or without a finding of dishonesty.

## **Documents**

2. The Tribunal had before it an agreed hearing bundle which included the witness statements and exhibits relied upon by the Applicant. It also included the witness statement and exhibits relied upon by the Respondent as well as other documents including correspondence that the Respondent wished to rely on.

## **Factual Background**

3. The Respondent was admitted to the Roll on 16 March 2009. At the material time he was the Firm’s Compliance Officer for Legal Practice, Compliance Officer for Finance and Administration, Money Laundering Reporting Officer and Financial Conduct Authority compliance officer. At the time of the hearing he held a practising certificate free from conditions.

4. The Allegations arose out of material obtained in the course of an investigative documentary produced for television by Hardcash Productions. This involved two meetings between the Respondent and an undercover reporter, referred to in this Judgment as Client A. The topic of the documentary was assistance allegedly being given to individuals in relation to applications made to the Home Office on the basis of marriages that were allegedly not based on genuine relationships.
5. Client A had visited the Respondent at his office on two occasions, an initial meeting (“the first interview”) and a second meeting on 27 March 2015 (“the second interview”). It was the conversation that occurred during the second interview that formed the basis of the Allegations. Both interviews were recorded by Client A. The second interview was recorded on both audio and video. The first interview had only been recorded on audio.
6. On 30 June 2015 the Respondent had notified the SRA of the documentary, following correspondence between himself and Hardcash. The SRA closed the matter on 7 January 2016 but on 28 November 2017 having reviewed the matter, the SRA obtained a court Order requiring disclosure of all recorded material both visual and audio from the documentary. The investigation concluded with a decision to refer the Respondent to the Tribunal on 27 April 2018.
7. The Applicant did not play the broadcast documentary to the Tribunal but presented what it described as the unedited material from both interviews. The Respondent disputed that it was unedited. The Applicant relied on a translated transcript of the interviews prepared by a transcription company, as they were only partially conducted in English. The Respondent took issue with the accuracy and reliability of the translation and the transcription. The Tribunal rejected those complaints for the reasons set out under the heading of ‘Findings of Fact and Law’ below.
8. As noted above, no Allegations arose out of the first interview. However reference was made to it in the course of submissions by Mr Riza and, in turn, Mr Bennett. The Respondent referred to it in his evidence. The transcript of the first interview is therefore referred to in this Judgment in order to provide the full context of the second interview.

### The Applicant’s Case

9. The Applicant’s case was that Client A attended the Respondent’s office for the first interview for the purposes of ascertaining whether there was a sufficient basis to carry out a second interview, which would be video recorded. At the first interview, on the Applicant’s case, the following relevant exchanges took place:-

A = Client A

N = the Respondent

A: Hello

N: Hello

A: I was looking for some advice

N: Yeah. Regarding?

A: Regarding immigration, so I’m a student

N: Yeah, take, just take a seat there, yeah. [Pause] [Inaudible]  
A: Ok  
N: [Inaudible] We charge for the advice?  
A: Mm-hmm. How much?  
N: £75  
A: Mm-hmm. For the student?  
N: Student. So we can have a concession, but what have you been doing, what you are –  
A: I'm, basically, doing a diploma in computer sciences and my visa is running out, expiring in, it's going to expire in end of summer.  
N: End of summer?  
A: Yeah. So, I'm just, basically, looking at my options or trying to explore my options and see how I can manage to stay at ...  
N: Do you have permission to work?  
A: I have, yes, 20 hours per week.  
N: Ok. So, £50 we will charge –  
A: Right, mm-hmm.  
N: - and whatever the questions you have –  
A: Mm-hmm.  
N: we'll try to give you the solution for that.  
A: Ok  
N: And any further areas you want to discuss –  
A: Mm-hmm  
N: - that you think is relevant  
A: Mm-hmm, ok, ok. That's fine, I can pay £50, that's ok.  
N: Good  
A: So, ok. So, I mean, so, yes, what options, in your view, do I have?  
N: We just write [down your details?] first and then we proceed with your questions.  
A: Sure  
N: Today is 20<sup>th</sup> [inaudible]. So, where you are basically from?  
A: I'm from Pakistan  
N: Pakistan. Which place?  
A: Lahore.  
N: Your name?  
A: [Client A]  
N: Anybody gave you our number of you just came here?  
A: No, I just came directly  
N: Ok. And your mobile number or anything [number provided]  
N: Ok. When did you come?  
A: I came in October 2013  
A: So October 2013, my diploma is for 2 years and is about to finish. So, basically it will be difficult for me to do another degree. I will need more money. I don't have more money.  
N: In which year did you come here?  
A: 2013  
N: 2013, '14, so it has been approximately 1.5 years.  
A: So basically, I mean, what options do I have? It is difficult for me to get a job after diploma obviously. And

N: You might not even get the permission to work according to the current conditions. You came here 1.5 years back, you were lucky you got it.

A: Mm-hmm. Now, we don't get?

N: To get yourself a, no not now

A: You have to think,

N: Either if you have the money, 200,000 -

A: Mm-hmm

N: - or -

A: To invest?

N: Huh?

A: Invest.

N: Yeah, invest in the Visa and bank card, yeah -

A: Mm-hmm

N: They have closed the entrepreneur visa or you will have to get a letter for further studies in the University.

A: Mm-hmm.

N: And, take admission

A: Yeah, fine.

N: But you have done the diploma after which education, what education?

A: A-levels

N: A-levels. So, diploma, it will be equivalent you can just study further?

A: Sorry?

N: What, or what level you will -

A: Oh, after that it can be undergrad. This is the problem. If I had £200,000 then, I would have no problems.

N: Yes, that's the problem

A: Yeah

N: Now we are looking for student.

A: That too at least 12,000 - 13,000 Rupees. This is also too much for me. I can't give at this time.

N: Mm-hmm

A: It will be too much. Maybe 2 - 3 years later I can do the undergraduate. And what about the entrepreneur, entrepreneur visa. What do we have to do for that?

N: As you know, they have closed the Entrepreneur's Visa. Everybody who have already paid, those are lucky who have got -

A: Mm-hmm

N: - for, they have stopped all the people because all the people were doing a job and also has a business.

A: Ah, I see.

N: That is very risky

A: Mm-hmm.

N: Further, your options are go to see all country like -

A: Mm-hmm

N: US, Canada, Australia -

A: Mm-hmm

N: If you go for those options then you will have to see how much finances you can afford.

A: In Britain to stay here

N: when is your visa valid 'til?  
A: 'Til October, I think before that. [Inaudible]  
N: So, we can set you in Ireland?  
A: Mm-hmm  
N: Basically, your problem is not to leave UK  
A: Mm-hmm  
N: - Europe  
A: Ok  
N: So Ireland you can just go and you can just work here as a team and just –  
A: How do you apply for Ireland?  
N: We gather all the situation over there.  
A: Mm-hmm  
N: We have to search the workforce [inaudible] there.  
A: I see  
N: We have to register you as a national insurance number  
A: Mm-hmm  
N: We will apply for a job or business for you and write a procedure to apply further for you and I can –  
A: mm-hmm  
N: - or [inaudible]. But we have to go there first time –  
A: Mm-hmm  
N: - and you have to, you will have to sponsor us to make the ground level for you  
A: Mm-hmm. I didn't understand.  
N: We will call and co-ordinate with our associates there and ask them whatever documentation is required.  
A: Mm-hmm.  
N: Based on your specific circumstances.  
A: Mm-hmm  
N: So, then you can proceed with that.  
A: Mm-hmm  
N: If you would like then we will –  
A: So, on what basis will I go to Ireland?  
N: It can be as a student or for work.  
A: What kind of work?  
N: We will get you a job apply for your National Insurance number.  
A: Mm-hmm  
N: If you want to do business, then we will have to get the registration. We will have to show if you have an agreement or as an employee  
A: Yes, in understand  
N: You're lucky because you still have your valid visa.  
A: Mm-hmm  
N: And if you lose this chance...  
N: Ok. So, the matter is that we have to lay the foundations for you.  
A: Mm-hmm  
N: - and whoever comes to me or escalate any but we don't take that risk. We are white-collar people.  
A: I know some people who are married and they are staying here.  
N: Married? Here?

A: Yes  
N: Yes, sometimes it is natural but sometimes people hook up. That is risky. We have got the visa for 5 years but those are genuine girls, but according to their circumstances, we provide them with legal aid.  
A: Mm-hmm  
N: I think that is quite odd.  
A: Ok, ok.  
N: in your circumstances, I will for you it's easier because you want  
A: Mm-hmm  
N: to settle here  
A: Mm-hmm  
N: But you are a little bit secure because you can come here  
A: Mm-hmm. How long do we have to stay in Ireland?  
N: Basically, you will get for 5 years but while working there and living there you can still come here.  
A: Mm-hmm  
N: But when are get job there then why would you can come here? If you will get permanent passport. You can, you can live here.  
A: Mm-hmm  
N: Why you will come here so you get someone [inaudible]  
A: Mm-hmm. If I get permanent visa?  
N: [inaudible] why you come here?  
A: Oh, I didn't think it was possible. Once I get a permanent visa.  
N: Yeah, what is the issue? You can go anywhere, you can –  
A: Yeah, but is the visa equal?  
N: Mm-hmm, yes, yes.  
A: So you saying that people hook up for marriages?  
N: Yes, it happens  
A: Is it not possible?  
N: Yes, it is possible. What can a person do?  
A: Mm-hmm  
N: You do that [inaudible]  
A: Mm-hmm. And -  
N: Again, I'll have to do it like they are telling here they are couple. We have applied for unmarried couple and for same sex partner.  
A: Mm-hmm  
N: Whoever comes  
A: Mm-hmm.  
N: to apply they give the affidavit. If they sign it then we don't have any problem.  
A: Mm-hmm. So how much to do charge for one case?  
N: It is for to lay the foundations, the grounds and for documentation, everything and to, to have. We will charge [unclear]  
A: Mm-hmm  
N: That includes basically all your foundation work. Further, there will be charges for the application. Ok. We hire the services so there could be a charge of 400 or 700. We provide a package.  
A: Mm-hmm  
N: It will depend on ...  
A: Mm-hmm. All general –

N: It will depend on, we can have all that, yeah. The thing is that we have to see, if you have everything, [inaudible] your visa and the papers we have to, your visa and the papers we have to sort out.

A: Mm-hmm

N: - this is the timing you will, [inaudible] this is the time after how much you [inaudible]. This was, this was the time after you will your right passport.

A: yeah

N: Will give you in black and white

A: Mm-hmm

N: We have to sit down with our –

A: Yeah

N: - associates over there and just sign off that.

A: Ok. I think we have a few options. So there's 2 things. I like the option for Ireland. The second option, the married one, right? So, and in terms of that, in terms of the latter, I want to ask that, is it easy to get it approved and all that?

N: In the start you will have to do that and they will ask you questions.

A: What kind of questions?

N: They will ask questions related to your application

A: Mm-hmm

N: I have been living with this person. They will ask about your relations then they will ask are you positive or negative? All these kinds of questions. How long have you living together. Like we would [inaudible] and then your association develop –

A: Mm-hmm

N: - and how did your relation develop

A: Mm-hmm. But, can you help with the answers?

N: We'll discuss everything.

A: Mm-hmm. Also, obviously, you know, can I search? -

N: For?

A: - for a partner?

N: No, we can't.

A: So you said, depending on the case exactly between £500 - £1,000

N: For?

A: For, sorry, for, that was for Ireland, no?

N: For Ireland, yes and we will give you then after handing it over. Because we don't know whoever comes their circumstances are different.

A: Mm-hmm

N: And we have to check what is the matter and the circumstances.

A: Mm-hmm

N: For everybody it depends on these three factors, the matter on their circumstances and the future plans in England.

A: Ok

N: We have to decide on whatever, is the recommendations, the nature and the length of time, the money you want and the fee, we're not going to negotiate it now.

A: I see. And with the marriage option, how would you help?



N: We will have to see, if on the basis of marriage, you must apply for FLMR [unclear] ok. Mostly because I ask for –  
A: Ok, mm-hmm.  
N: - so in that application form for your statement and for your preparation for your, any interview or for any cross-examination prepare, preparation for, everything, 2,000 we will charge.  
A: Mm-hmm  
N: And for all the stages after the decision is done.  
A: Mm-hmm ok  
N: We are going for  
A: Yeah, 2,000, mm-hmm.  
N: Yeah  
A: Great. So, please give me your card. I will discuss the options with my uncle and aunty. I'll discuss and give you a call. Yeah, I could [inaudible] drop by maybe next week. So, where is your card? Do you have any change? Are you related to Pakistan? All right, I think.

10. Following this interview, Hardcash obtained authorisation from ITV to carry out a further covert recording, including by video, during a second interview with the Respondent. This took place on 27 March 2015 and, on the Applicant's case, the following relevant exchanges took place:

A = Client A

N = the Respondent

N: How is it going?  
A: I was busy with exams. I took them and then I thought I should return.  
N: [Inaudible] this is good yeah. What exams are you taking?  
A: I am studying computer science which includes graphics and this and that. It's alright but I haven't well enough to think that I would get a job.  
N: [Laughter]. Where are you studying?  
A: I am studying at the University of the Arts. So, basically, I don't know if you remember me of how much you remember you told me about some options. But I am thinking if we could have a quick recap about them.  
N: Did we agree on an appointment fee with you earlier?  
A: Yes. Sure.  
N: Would you give it to me and I will note your name and number –  
A: That is fine  
N: - so that we could start the discussion.  
A: [A reaches down to his left]. 75, right?  
N: What is your full name?  
A: [Client A]  
N: Where are you from? Pakistan?  
A: Lahore  
N: Yes. And do you have the number?  
A: [Number provided] and here is £80. [A hands the money to N]  
N: So what do you do here? Studies? When did you come here?  
A: I came here in October 2013. It was one and a half year.

N: How much do I need to give you? Did I say 75?  
A: Mmm  
N: Have you got a tenner?  
A: No  
N: Okay, keep it. [N hands A a receipt]  
A: thank you  
N: So, basically, what did you do from Pakistan?  
A: I did A Levels from Pakistan, yeah.  
N: From where?  
A: Beaconhouse, Lahore.  
N: Right.  
A: Then I came here and did a diploma. But now it is becoming hard to live here.  
N: What does your father do?  
A: He is a businessman.  
N: Where?  
A: Trade of Freelancer.  
N: Government contractor?  
A: No, no, no, private.  
N: [inaudible] private.  
A: Some reckon the entrepreneur [visa] way is expensive.  
N: They don't say anything to businessmen [or it's not difficult for businessmen]  
A: No, businessman is just a term. There are many degrees within this term.  
[Laughter]  
N: Ok  
A: So, I mean, you told me about the Ireland option; it seemed to me to be a bit out of the way and a bit difficult. Then we discussed the marriage option  
N: Is your visa still valid?  
A: Yes  
N: Why does the Ireland option seem difficult to you?  
A: Because  
N: If you comfortably get status made, if you get admission there  
A: Mmm  
N: If you do one [course] for 2 years, 3 years  
A: Mmm  
N: Then you again [inaudible]  
A: I think  
N: Afterwards, you are getting your own, you can run your own business there.  
A: Firstly, it is Ireland. And secondly, I mean  
N: English language is commonly used there  
A: English language is used there but I do not have money to pay more tuition fees. Therefore, I am looking for a permanent solution if I could find one.  
N: People run towards London to find a permanent solution but it has become very difficult here.  
A: Mmm.

N: Either you go properly towards a marriage  
A: Mmm.  
N: That is, if you have an offer and someone is available  
A: Mmm.  
N: Like you have some relatives on whom you can trust or someone similar. Then you can go for that.  
A: Mmm.  
N: Otherwise if you will give money for it, then that is very shaky  
A: Mmm.  
N: It is doubtful.  
A: I see  
N: They will take the money, 2, 3,000, 5,000, 10,000, and then they will vanish.  
A: Mm-hmm.  
N: And at the eleventh hour from the marriage centre, civil centre, if you are caught, that is also very shameful.  
A: Mmm. But, I mean, there is somewhat risk in it but it is that something that, I mean, if I decide to go ahead with it, [Urdu] what will happen? Is it possible or impossible?  
N: It is possible but depends on your own ties.  
A: Mmm. If I, I mean, if it is not obviously a genuine relationship, it is not, I mean, if I find someone – a girl, who is willing to arrange it with me  
N: You will come to us and say: We are doing this marriage; these are our details and –  
A: [Urdu] that's the arrangement [Urdu]  
N: [Urdu], we will proceed with that  
A: Mmm.  
N: But if you say that we find one for you –  
A: No, no.  
N: We cannot do that  
A: Ok  
N: Nothing like that.  
A: But if I bring one, I mean,  
N: Mmm  
A: If we both come to you, how can you help in this?  
N: In that case, we will advise you to go to the Council and register it and then, further, we will lodge your application stating: These are the proofs of our joint living. You need to immediately start making joint living proofs. Until when is your visa valid – as you told me?  
A: October, October.  
N: You are very lucky.  
A: Mm-hmm.  
N: Believe me.  
A: Mm-hmm  
N: Here, people come here and beat themselves up [saying]: O my God! Why didn't we look for this when we had a valid visa. Therefore, immediately start whatever you want. Don't delay a single day.  
A: Mm-hmm  
N: Immediately start making your proofs.

A: But how? I mean, actually I cannot live with her.  
N: Why?  
A: So you are saying [drops the sentence]. Because it is not a genuine relationship in any case.  
N: Then don't tell me. I don't know that.  
A: Mm-hmm.  
N: As far as I am concerned, you will bring evidence and give it to me –  
A: Right, right, right.  
N: Whether it is genuine or not, I don't know that. Whoever comes to me is a genuine man giving me authority to certify the papers to proceed the application.  
A: Mmm  
N: I don't know if one is genuine or not.  
A: Right. So if I, right.  
N: If for example, they say it is not genuine but your intimacy with them has started, the day you start living together –  
A: Mmm.  
N: - for 30 years, 40 years, no one can say anything.  
A: Mmm. If it is not genuine at the time of the beginning, and it is not genuine at the time the application was filed, then what?  
N: I don't know that.  
A: Ok  
N: You will provide evidence that these are our joint living proofs.  
A: So you just show your joint living proofs?  
N: What else do you need? Her ID, your ID for the purpose of getting your marriage registered. Once that is registered, you can go for a spouse visa.  
A: I see. So, other than proof of address you don't need anything else. So, its ID and proof of address?  
N: Evidence, very solid evidence, like surgery letters in the name of both of you at the same address. Your bank statements in the same name, in the same bank, even if it is not in the same bank account you name should be there from the, at the same address though from the different banks, but your bank statements should be coming at the same address.  
A: Mm-hmm.  
N: And then the council tax –  
A: I see  
N: - or utility bill, gas bill, Asda card, Tesco card, Sainsburys –  
A: So –  
N: You know  
A: And then should the girl be a British National or European? [Urdu]. Which of the two is easier?  
N: It is good for back home but if she is from the European Union [Urdu] it would be easier.  
A: Okay. So is there any age etc?  
N: She should be exercising her [European Union] Treaty Rights. [Urdu] She must be living here and working here.  
A: Ok  
N: Mmm.  
A: She should be living here and working.

N: Mmm.  
A: And if she is working  
N: Or she should be studying here even. Even then it is ok.  
A: I see, I see. And how long is the process? After how much time will I get my visa?  
N: Normally within 3 – 4 months it should come.  
A: Right  
N: The application has been lodged, decide it, that's all, this is evidence –  
A: I see  
N: This is decided normally, but there is no any specific time [Urdu] to tell that we will do it within this time and it would come. This is all on their workload, depends on their workload and all that.  
A: How will they check, I mean, if the marriage is genuine or wrong?  
N: Look at this for example, we have lodged these cases. In this case –  
A: Mmm.  
N: we have sent an appeal  
A: Mm-hmm.  
N: It was a Spouse Visa [Urdu] case.  
A: Really?  
N: And this case, this too is a spouse case.  
A: Mm-hmm.  
N: It depends on the cases, on the merits of the cases.  
A: Was this a genuine relationship?  
N: Yes, yes.  
A: What are the chances that they summon you and ask you to explain, I mean?  
N: In this case, they had an interview. They had an interview.  
A: Mmm.  
N: And they did it.  
A: What did they ask in the interview?  
N: In the interview [Urdu], they ask how you met each other, where you met, how, where, when, what happened?  
A: When you will submit the file, what would you have to write in it? Will you pass on all that evidence you mentioned?  
N: Yes. There will be evidence; your statements should be ready; we will prepare your declarations.  
A: What will be there in the declaration?  
N: Your statements. Declaration is such a thing as you cannot later deny because that is a legal document. But we will only give a statement because sometimes something gets over emphasised or under emphasised, and one can cover it up.  
A: So what will you write in that statement?  
N: It will be like how your relationship developed –  
A: Ok.  
N: - and your statuses –  
A: Mmm.  
N: - and how it turned up into the relationship, genuine relationship, and how you became indispensable for each other –  
A: Mmm.

N: - or how many time your, for instance, since how long you are living together.

A: Mmm.

N: Any evidences you have –

A: Sure

N: - since then, yeah.

A: And if living together is not possible, then what? Is it absolutely difficult in that case?

N: If living together is not possible

A: Because [drops the sentence]. Can it not be done like this? Because I am Pakistani Muslim, and living together with a partner before marriage is against the culture?

N: They don't bother with the boyfriend/girlfriend living together. They allow it. It is not their perception that there must be a marriage.

A: No, no, but if I

N: you must have seen in the form too that for marriage, for a spouse, same sex partner

A: Mmm.

N: Everything is allowed.

A: So, because of this, it will be essential for me to live with my partner or with the girl that I will find.

N: In order to provide the “intend to have” evidence, it means that you are living together.

A: So that is a condition of being eligible to marry? Is that true?

N: Look, the specified evidence is that you people are providing evidence. It means that you are living together.

A: Mmm.

N: Where you are living together or not, when you assert –

A: Mmm.

N: - that we are living together, this is our evidence. There is no question about whether you are living together or not, it means that you are living together.

A: Ok. So how can one make those documents?

N: That you will have to do. You go and open your accounts in a bank, give your names and tell this is our address –

A: Ah.

N: Where different banks are, you provide them. This is our rent agreement, here we have moved –

A: Mm-hmm.

N: - transfer our bank statements here –

A: Mmm

N: - for the post to deliver.

A: Whether in reality we are living there or not

N: I don't know this. You are living there – it's not for me. [Laughs]

A: Ok.

N: [Urdu] I believe –

A: Yeah

N: - what you say to me.

A: I see. I see. I understand. Do you have any previous experience in doing this?

N: No, I've told you.  
A: Yes, Ok.  
N: I have been doing for 5 years almost just immigration [Inaudible]  
A: Mmm. So, after two and two four months I will get my indefinite leave to remain? Or not?  
N: Your  
A: Spouse visa  
N: You see, the thing is, you get further leave to remain as a spouse.  
A: As a spouse? Ok. And for how long will this continue?  
N: You should get it for two and a half years.  
A: Ok  
N: And then extension two and a half years.  
A: And with this, will I be allowed to work for these two and a half years?  
N: Yes, you can.  
A: And then after that I will apply for a British passport?  
N: Yeah, after 5 years  
A: After 5?  
N: Two and a half years, then extension of two and a half years.  
A: On this extension on spouse?  
N: Spouse.  
A: Alright. Ok.  
N: Because previously, it used to be 2 years – you know perhaps.  
A: Ok  
N: And they used to come here from Pakistan and apply from here too. And after two years one could be able to apply for indefinite leave.  
A: Right, tight.  
N: But now they have done it to five years.  
A: Ok, Ok. I see, so making it harder, basically.  
N: yeah  
A: right. I had another question. Yes exactly, I was looking up the other day on the internet, and I saw that some law has been changed about marriages, there's some kind of a law change. Are you aware of that?  
N: No. As such there hasn't been something here. European Court of Justice and International Court of Justice keep issuing judgments but UK says: We have our own system.  
A: Ok. And could you tell me once again what your costs would be?  
N: Costs, for the application there is one cost £600 which Home Office takes. And we normally charge 1,500 for the application and for correspondence. We don't know how much correspondence we may have to go for.  
A: Mmm.  
N: They may ask further, queries, such as they may call for interview; they may ask for further statements.  
A: I see.  
N: There are many cases.  
A: Yes, ok.  
N: So we charge 1500 and we are bound until the decision of the matter. Once the decision is made, then if the matter is decided in your favour, no need to continue for that. You get the visa. The case of the adverse

decision, God forbid, then we, if we have to go to appeal, then for appeal, we have to settle the appeal.

A: Mm-hmm.

N: The fee, that is our legal fee, this is the barrister fee –

A: Ok

N: - and in black and white, whatever we will write down at this stage, Clientele letter, how we will work for you, and if the matter comes in the appeal, we will write down, this is the fee this is the rate.

A: Extra fee. I see.

[discussion about barrister's fee]

N: With any application, with any appeal –

A: Of course.

N: - I will first receive fee for the appeal handling and for appeal for the barrister fee, then only I will proceed.

A: I see

N: Because of very hard experience.

A: Yeah.

N: By Allah's grace, I have been in this profession for almost 22 years. I think you age would be a year more than my experience. What is your age?

A: 25

N: 25, three years more than my experience. In 1993 I started –

A: Wow, ok.

N: - my practice.

A: Right.

N: So I –

A: In London?

N: In –

A: In England?

N: In Pakistan I worked for Ministry of Law and Justice and Human Rights, and Federal Board of Revenue

[discussion about the Respondent's work in Pakistan]

A: Ok. A question comes to mind, if I go and file an application and my partner is suppose Eastern European, European girl, whose English is let's say a bit weak. Would they not ask how, I mean, how you guys are marrying each other? Why are you doing it?

N: Yes they will ask. This is a very demerit in the case.

A: Mmm.

N: Because how you communicate.

A: So it's, right, right, I see. And then there's, I'm sure there's other concerns as well, like, besides communication?

N: It's just about evidence. There are concerns about evidence.

A: Mm-hmm

N: Evidence concerns me.

A: So, within evidence if you, right, basically you are saying that I have to do all this about evidence myself.

N: Obviously. We are not concerned, we just have been provided, this is the evidence; these are the people; they are just giving their own evidence. So, we, there is no other responsibility –

A: Ok



N: - because we are not taking any undue money, like, 10,000, 15,000, 20,000 as there are people doing it. We are not doing it like that; we are just charging whatever is just the services –

A: Yeah, regardless –

N: - legal services

A: Regardless of whether the relationship is genuine or not.

N: You see, we will work only when you will give us your undertaking. We believe in your declaration.

A: Ok. I see, I see.

A: That is fine. I will keep in contact with you.

N: Ok?

A: Ok. Then I will phone you or perhaps come again to see how to move forward. What do you say? My visa is expiring in October. So when should I start this?

N: I have said to you that not even a single day you don't even, you shouldn't delay because you have a valid visa, you are lucky. Just last night a lad was here who was beating himself about why he didn't do it. No one will give you residence when you will not have the visa.

A: Mmm.

N: So how will you ask then to give you proof of residence.

A: Mmm

N: What will you provide? You will not get council tax, you will not have a utility bill no one will give you a bank statement people will not allow you to use their address.

A: So ...

N: You won't [stand anywhere?]

A: I see. So, I will try to find a girl who would want to marry me and then I will come to you.

N: Ok

A: Ok. Thank you very much.

N: Ok

### **Preliminary Matters**

11. The principle preliminary matter for consideration by the Tribunal was a submission of Abuse of Process made by Mr Riza.
12. The Tribunal had previously received a written application to adjourn the substantive hearing from the Respondent dated 19 March 2019. This was not pursued at the substantive hearing. However the basis of the application to adjourn formed the basis of the Abuse of Process submissions. The Tribunal therefore considered the points raised in that context.
13. If the Tribunal had, at any stage, considered that it was in the interests of justice to adjourn the proceedings it would have done so.
14. The Tribunal had further received a counter notice under Rule 13(3) of the Solicitors (Disciplinary Proceedings) Rules 2007 (“SDPR”) from the Respondent dated 5 April 2019. This document raised complaints about the timing of the disclosure of the audio recording of the first interview. It also included submissions that the

Respondent had been entrapped and that the Applicant had engaged in prosecutorial misconduct. It also included submissions that the video and translations had been edited. It further contained a request for disclosure. The points raised in this document were all incorporated in to the submissions in relation to the Abuse of Process argument and were considered by the Tribunal in that context.

15. The Tribunal had also previously received a copy of a request for disclosure from the Respondent addressed to the Applicant dated 9 April 2019. No application for disclosure was pursued at the hearing but reference was made to it in the Respondent's own submissions and the Tribunal noted the Respondent's position. The Tribunal addressed the question of disclosure as part of its consideration as to whether there had been an Abuse of Process.
16. Mr Riza told the Tribunal that he would only be advancing the submissions referred to in his Skeleton Argument but that the Respondent himself may choose to make additional submissions. In the event the Respondent did not make any additional oral submissions to those made by Mr Riza. However the Tribunal had regard to points raised in the Respondent's written submissions filed prior to the hearing.
17. Abuse of Process
  - 17.1 Respondent's Submissions - Mr Riza told the Tribunal that it was not disputed that Client A was an undercover agent of Hardcash. However there was no evidence that the Respondent had engaged in activities involving sham marriages. The Respondent was being proceeded against on the evidence of this undercover reporter. Mr Riza described it as "a quantum leap" for the profession to punish and sanction on the basis of evidence from a single source, which Mr Riza submitted was a suspect one. Mr Riza told the Tribunal that the Respondent had served notice to admit this fact.
  - 17.2 Mr Riza reminded the Tribunal that there was a key difference between arranged marriages and sham marriages. An arranged marriage was not unlawful, was common in the Indian subcontinent and would be arranged through someone's ties. They were often successful marriages that lasted.
  - 17.3 On the other hand, in a sham marriage arrangement the parties had no intention to live as husband and wife. A sham marriage would often be arranged but in that context the term 'arranged' did not refer to an arranged marriage.
  - 17.4 Mr Riza described this distinction as very important and submitted that this was where Client A had sought to take advantage. Client A had talked in terms of one type of marriage (a sham) when the Respondent was understanding the other type (an arranged marriage). They were talking at cross purposes. In order for the Tribunal to fully appreciate the case against the Respondent it needed to consider the whole of the relationship between Client A and the Respondent in the context of both interviews. Client A had "weaved" the topic of marriage into the conversation in order to induce the Respondent unwittingly to make mistakes to provide material that was subsequently used on television.

- 17.5 Mr Riza asked for the first interview to be played. He then made a number of submissions with reference to the transcript, which he told the Tribunal the Respondent had observed was not correct. The first time there was any reference to marriage was when Client A asked the Respondent about it, well into the meeting.
- 17.6 Mr Riza told the Tribunal that one of the reasons he wanted to be able to cross-examine Client A was to find out why he had decided to arrange a second visit. This was important because it was clear he had been “fishing and caught no fish”. Client A had therefore felt had had to go back and manipulate the situation in order to get something. Mr Riza submitted that it amounted to an abuse of process to rely on such evidence against a solicitor, who was an officer of the court.
- 17.7 Mr Riza took the Tribunal to the part of the transcript of the first interview in which Client A stated that he was looking into “options”. The use of word ‘options’ was significant because what Client A was really doing was trying to find out if the Respondent was a crooked solicitor and this is why he had raised the marriage option. The Respondent was not telling him to marry and stay in the UK. He had advised Client A that he had the ‘Ireland option’, the ‘student option’ and the ‘entrepreneur option’. If the Respondent was engaging in advising on sham marriages he would have been the one to suggest it, but he had not. On the contrary, he had advised that the ‘Ireland option’ was the best one.
- 17.8 Mr Riza addressed the use of the term “hook up” in the transcript. The Respondent disputed that this was an accurate transcription of the words used. The Respondent had used the word “tankah” that meant “in a relationship” in the sense of boyfriend/girlfriend.
- 17.9 Mr Riza took the Tribunal to the section of the transcript in which Client A asked the Respondent what sort of questions the Home Office might ask. Mr Riza submitted that there was no suggestion that a solicitor could not advise on this. This was not coaching. The Respondent had dealt with questions related to Client A’s potential application, which was proper and correct advice. Client A had then asked if the Respondent would help with the answers but he got nothing at all from the Respondent. It was the Respondent’s right to put this to Client A in cross-examination as part of a fair procedure.
- 17.10 Mr Riza submitted that the memorandum from the investigating officer at the SRA dated 18 April 2018 came close to saying that solicitors had to act as immigration officials. While it was obvious that solicitors must not break the law and must follow the ethical code, the Home Office could not subcontract its responsibilities to solicitors.
- 17.11 Mr Riza also raised the issue of delay in bringing these proceedings. He submitted that it could not be right for the Respondent to have had the “sword of Damocles” hanging over his head three years after the case had been initially closed and only brought on the evidence of one undercover agent. He described it as wholly disproportionate, unfair and oppressive.

- 17.12 Mr Riza asked for the second interview to be played, which included video as well as audio. This was, according to the Applicant, the unedited footage. The Respondent, in the course of his evidence, disputed this.
- 17.13 In relation to the second interview, Mr Riza drew attention to the fact that it was, again, Client A who broached the subject of marriage. The Respondent's understanding was that this was a reference to an arranged marriage, as he had been talking about relatives. The Respondent had told Client A that he must not approach the issue of marriage based on money as that would be "shaky" and "shameful" and might result in him losing money.
- 17.14 Mr Riza took the Tribunal to the section in the second transcript when Client A had said "Regardless of whether the relationship is genuine or not?" Mr Riza submitted that this was evidence of Client A "luring" and putting words into the Respondent's mouth.
- 17.15 Mr Riza referred to R v Loosley [2001] UKHL 53. He submitted that the principles in that case did not just apply to entrapment by state agents and that they applied, with even more force, to non-state agents. He submitted that The Council for the Regulation of Healthcare Professionals v General Medical Council and Saluja [2006] EWHC 2784 (Admin), cited by the Applicant, was not applicable as that related to doctors. This was different as solicitors were officers of the court and were therefore subject to a different regime with more onerous duties more akin to judges.
- 17.16 Mr Riza submitted that if the Tribunal concluded that it was arguable that there had been an abuse of process then the case could not proceed any further without the Respondent having an opportunity to put the questions to Client A. He reminded the Tribunal of the importance of this case to the Respondent's professional life.
- 17.17 Mr Riza told the Tribunal that the most that he could put to Ms Potts, who was from Hardcash and was available to give evidence, would be to ask her who decided after the first interview to send Client A again and why. It was unfair that the Respondent could not challenge his main accuser who had deceived him through entrapment.
- 17.18 Mr Riza further relied on the submissions contained in his Supplementary Skeleton Argument dated 15 April 2019, which had formed the basis of his oral submissions. The Tribunal also had regard to Mr Riza's Skeleton Argument dated 9 April 2019.
- 17.19 The Respondent began to make a submission concerning disclosure. After a short break in proceedings, Mr Riza assisted by explaining that the Respondent wanted disclosure of what had happened in other similar cases. He submitted that it was only fair he and the Tribunal should know how persons who featured in same programme, pursuant to this undercover operation were dealt with. This had been raised in correspondence between the parties. The Tribunal's attention was drawn to the Respondent's letter to the Applicant's solicitors dated 4 April 2019.
- 17.20 Mr Riza told the Tribunal that his principle submission on the Abuse of Process argument was the absence of Client A and the consequence inability for him to be cross-examined.

- 17.21 *Applicant's Submissions* - Mr Bennett called Ms Potts as part of his response to the Abuse of Process submissions. Her evidence is summarised below and Mr Bennett relied on her evidence in resisting Mr Riza's application.
- 17.22 Mr Bennett invited the Tribunal to consider the totality of the evidence including the audio of the first interview and the video of the second interview as well as the evidence of Ms Potts.
- 17.23 Mr Bennett submitted that there was no abuse of process. The correct approach was Saluja. Mr Bennett submitted that a journalist posing as a patient was not dissimilar to this case. To impose a stay had been described at [79] of Saluja as "exceptional". Mr Bennett submitted that Loosley was concerned with state agents. At [81] of Saluja the Court had stated "Third, as both domestic and European Authority make plain, the position as far as the misconduct of non-state agents is concerned, is wholly different". At [84] the Court had gone on to state that "It would not be appropriate for an FPP to approach the conduct of journalists as though they were agents of the state".
- 17.24 There was a significant degree of difference in the nature of proceedings and it would be an error of law for the Tribunal not to have those differences in mind. In this case, Mr Bennett submitted, the bar was not reached at all. There had been no misconduct and certainly no gross misconduct. At the first interview, far from being pushed into answering, the Respondent had responded to questions that had been put to him in a neutral and non-leading way.
- 17.25 The Respondent now took issue with the word "hook up" but Mr Bennett submitted that it was plain that he was referring to something unnatural or risky.
- 17.26 In relation to the second interview, it was the Respondent who had introduced idea of "risky" options and of money being paid over.
- 17.27 Mr Bennett told the Tribunal that there had been no Police investigation into Hardcash and no complaint to Ofcom. Client A had been asking exactly the sort of questions he had been instructed to. At all times it had been open to the Respondent to tell Client A that he could not act for him. Instead he had accepted payment to do so.
- 17.28 In all the circumstances Mr Bennett submitted that the application must fail.
- 17.29 *Further submissions on behalf of the Respondent* - Mr Riza responded to Mr Bennett's submissions, which had concluded after Ms Potts had given her evidence.
- 17.30 Mr Riza submitted that the decision in Saluja was to do with the GMC and that the SRA was in a completely different position because of its role in the administration of justice. This was wholly distinguishable from doctors who were not officers of the Court. The SRA therefore had even higher obligations than state law enforcement agents. Mr Riza submitted that Mr Bennett's argument had no validity in law, fact or logic and reiterated his earlier submission that the appropriate authority was Loosley. The principle was that the law would be brought into disrepute if the Law Society were to allow itself and its procedures to be infected by illegality and criminality. The

Tribunal had a duty to uphold the law and could not do so if it allowed itself to take into account evidence obtained by breach of criminal law.

- 17.31 Mr Riza also repeated his submission that the Tribunal could not decide on the abuse submission without Client A being present to be cross-examined. If the Applicant was confident in its case it would have ensured his attendance.
- 17.32 Mr Riza told the Tribunal that it would have been “churlish” for him not to put his case to Ms Potts but that he had done so accepting she was the proper person to be cross-examined.
- 17.33 Mr Riza told the Tribunal that the Respondent took issue with the transcript and did not accept that it was not edited. In response to a request for clarification from the Chairman, Mr Riza confirmed that this point was not part of the abuse of process submissions.
- 17.34 *Evidence of Joanna Potts in relation to Abuse of Process argument* - Ms Potts adopted her witness statement of 26 March 2019 as her evidence. She explained that Hardcash was an independent television production company making documentaries for a range of broadcasters. Ms Potts was brought into the project once the production had been commissioned by ITV. She was responsible for overseeing the editing and delivery of the programme. The idea behind the programme came from the number of sham marriages that Home Office statistics showed were taking place. Ms Potts explained that they conducted initial research which involved reading official reports and undertaking online research. They then identified potential individuals who might be involved. This included solicitors and immigration advisers. Hardcash had gathered the initial evidence and then applied to ITV for permission to covertly film. This approval was given and the filming had taken place.
- 17.35 Client A was involved as he had been employed to do the secret filming and to pose as a person wanting to stay in the United Kingdom and to find out what his options were for achieving that. The first meeting that he had undertaken with the Respondent had not been filmed that had been recorded with audio only. The purpose of that recording was for note taking purposes. Ms Potts explained that the term “rushes” was a reference to everything that was filmed. The rushes would then be edited for use in the final broadcast documentary. Ms Potts told the Tribunal that the first meeting between Client A and the Respondent had been part of the research and following a review of that meeting they had sought permission from ITV to covertly record as they believed that there was evidence from the first interview of a willingness on the part of the Respondent to facilitate something that might have been a sham marriage. Ms Potts told the Tribunal that before each meeting between Client A and the Respondent she had a briefing session with Client A. He was told that he was not allowed to ask leading questions and it was very important that he was aware that he should not do anything that would not allow the situation to develop naturally. After the interviews, Ms Potts would hold a debriefing session in which she would review the material that he had obtained.
- 17.36 In cross-examination Ms Potts was asked where Client A presently was. Ms Potts stated that she was not sure as he was not a permanent employee and has only been engaged for this production. Mr Riza put to Ms Potts that it was Client A that he

wanted to cross examine rather than her. Ms Potts responded that she did not believe that there was anything that she could not answer in relation to the investigation.

- 17.37 Mr Riza asked Ms Potts whether she was aware that encouraging a person to apply to the Home Office to make an application to the Home Office on the basis of a sham marriage could be regarded as facilitating a criminal offence. Ms Potts told the Tribunal that every stage in the process was discussed at length with the ITV legal team and no issues had been raised.
- 17.38 Ms Potts confirmed that she oversaw and made the production for ITV. She told the Tribunal that she had not spoken to the Home Office beforehand but she had done so afterwards as part of offering a right of reply.
- 17.39 Ms Potts told the Tribunal that she had met Client A straight after the first meeting and had collected the audio recording from which she had made notes. She had been assisted by a colleague who spoke Urdu. Mr Riza asked Ms Potts on what basis she had decided that the Respondent was a proper target to be visited again. Ms Potts responded that there were a number of examples of the transcript where it was clear that Client A was potentially not in a genuine relationship and the Respondent had appeared as though he might be nevertheless willing to act for him. In response to a question from Mr Riza, Ms Potts confirmed that she understood the difference between an arranged marriage and a sham marriage. Mr Riza put to her that the Respondent had been encouraging Client A to consider the Ireland option and that when Client A had not got anything from the first meeting he went back having been advised to try harder. Ms Potts told the Tribunal that this was absolutely not the case. She denied the suggestion by Mr Riza that the first visit had been a “dismal failure” and stated that they would not have got permission if anybody involved the process had thought that. Ms Potts reiterated her evidence that the advice she gave to Client A was that he was not to ask leading questions. Mr Riza put to Ms Potts that in the second meeting Client A had pushed quite a lot. Ms Potts disputed this and told the Tribunal that in her view it was very clear in the meeting that Client A was not in a genuine relationship and the Respondent would have been happy to take him on as a Client. Mr Riza asked Ms Potts if she had told Client A to press the Respondent to the point of suggesting that he was embarking on a sham marriage. Ms Potts stated that she would never push, but would advise Client A to have an open-ended conversation. Ms Potts denied the suggestion that the Respondent’s words had been twisted. She also denied that Client A put words in the Respondent’s mouth.
- 17.40 Mr Riza put to Ms Potts that in fact the Respondent had been discouraging Client A from going down and the sham marriage route by advising that it was shaky and shameful. Ms Potts responded that the point was whether the Respondent was willing to take someone on who was not involved in a genuine relationship for the purposes of making an application to the Home Office based on marriage. In response to Mr Riza’s point that the Respondent had made clear to Client A that there had to be a life together, Ms Potts described this as an attempt to make it look genuine.
- 17.41 Mr Riza put to Ms Potts that a criminal offence may have been committed in that Client A had encouraged the Respondent to be party to an offence under the Immigration Act 1971. Ms Potts told the Tribunal in re-examination that Hardcash took advice from ITV lawyers at every stage. Ms Potts told the Tribunal that she had

no concerns about the questions that Client A had asked and the material would not have been included in the programme if she had. The investigation had been done “fairly and properly”.

- 17.42 Ms Potts told the Tribunal that there had been no approach from the Police with concerns about how the programme had been made and there was no contact from Ofcom. Having reviewed the transcripts Ms Potts was satisfied that Client A had acted according to the instructions she had given him.

### The Tribunal’s Decision

- 17.43 The Tribunal considered the oral and written submissions of both parties and the evidence referred to in those submissions.
- 17.44 The first question for the Tribunal was whether it could reach a determination on the abuse of process submission in the absence of Client A. The Respondent was arguing that he had been unlawfully entrapped and the submission was that the Tribunal could not determine this without hearing from Client A.
- 17.45 The Tribunal rejected this submission. The nature of the conversation between Client A and the Respondent had been captured in its entirety on audio and the second interview had also been visually recorded. The entirety of Client A’s involvement and interaction with the Respondent was therefore before the Tribunal in the form of the recordings and the transcripts. The interpretation of those discussions, the fairness of the questions and the meaning of the Respondent’s advice was a matter for evidence before the Tribunal.
- 17.46 Client A’s role in this case had taken place at the direction and instruction of Ms Potts. The reason behind his questions and the parameters of his approach had been determined by Ms Potts. Ms Potts had given evidence and had been robustly cross-examined at length by Mr Riza. Her evidence dealt with the basis of Client A’s attendance at the Firm’s offices.
- 17.47 She was the person responsible for the research and production, and for ensuring full compliance with Ofcom and the requirements for undercover journalism. The Tribunal considered that she was in a position to give more directly relevant evidence than Client A. If Client A had set out to entrap the Respondent then either Ms Potts was responsible for this or she could have told the Tribunal that Client A had strayed beyond his remit. In either scenario she would have been the right person to answer questions about this. Mr Riza had put squarely to Ms Potts that Client A had entrapped the Respondent and had conducted himself unfairly. She had responded to that line of questioning fully. The Tribunal did not consider that there was anything that Client A could usefully add to the evidence that Ms Potts had given.
- 17.48 The Tribunal was satisfied that it could consider the abuse of process submissions without having heard from Client A.
- 17.49 The Tribunal considered whether Client A’s absence was in itself an abuse of process. For the reasons set out above, the Tribunal did not find that the Respondent was hamstrung by Client A’s absence as Ms Potts had been able to give evidence about



her instructions to Client A, his remit, the de-briefing and whether, on her review of the material he gathered, he had acted outside his instructions. His conduct itself was on audio and video and there was no evidence that he had deviated from the instructions given to him by Ms Potts.

17.50 The Tribunal then considered the point in the written submissions to the effect that the Applicant had referred the matter to the Tribunal in April 2018 without being in possession of the audio recording of the first interview. The Applicant may not have had the recording but it did have the transcript. The recording had subsequently been served on the Respondent in March 2019. In her evidence Ms Potts had stated that the first interview was part of the research stage. The Tribunal found that it assisted with understanding the context of the second interview. The fact that the recording was not in the hands of the Applicant did not constitute an abuse of process. The Tribunal was satisfied that the case would still have been certified as showing a case to answer. The Tribunal considered that there was enough evidence from the second interview to justify the referral to the Tribunal.

17.51 The Tribunal considered the submission that the Respondent had been the victim of entrapment. The Tribunal considered the cases of Loosley and Saluja.

17.52 In Loosley, Lord Nicholls stated at the outset of the Judgment the following:

“1. Every court has an inherent power and duty to prevent abuse of its process. This is a fundamental principle of the rule of law. By recourse to this principle courts ensure that executive agents of the state do not misuse the coercive, law enforcement functions of the courts and thereby oppress citizens of the state. Entrapment, with which these two appeals are concerned, is an instance where such misuse may occur. It is simply not acceptable that the state through its agents should lure its citizens into committing acts forbidden by the law and then seek to prosecute them for doing so. That would be entrapment. That would be a misuse of state power, and an abuse of the process of the courts. The unattractive consequences, frightening and sinister in extreme cases, which state conduct of this nature could have are obvious. The role of the courts is to stand between the state and its citizens and make sure this does not happen.”

17.53 It was clear that from the outset, Loosley was concerned with the conduct of “state agents” and “executive agents” of the state. The Judgment made repeated reference to the Police, unsurprisingly given that it was a criminal case.

17.54 At [25] the following sentence was relevant:-

“Ultimately the overall consideration is always whether the conduct of the police or other law enforcement agency was so seriously improper as to bring the administration of justice into disrepute.”

17.55 The reference to “police or other law enforcement agency” reinforced the point that this Judgment was dealing with Allegations of impropriety by state agents. It was clear that Hardcash was not a law enforcement agency and neither was ITV. They were not state agents and the Tribunal was therefore not assisted by Loosley.

17.56 In contrast, Saluja was concerned with the conduct of a journalist pretending to be a patient and the consequent regulatory proceedings brought against the doctor. The Court held there to be significant differences between the considerations present in a criminal prosecution and a professional regulatory proceedings. At [84] the Court stated:-

“It would not be appropriate for an FPP to approach the conduct of journalists as though they were agents of the state”.

17.57 At [82] Goldring J stated:

“As will become apparent, I do not accept that for a journalist to go into a doctor’s surgery and pretend to be a patient in circumstances such as the present is similar to abuse of power by an agent of the state”.

17.58 The Tribunal was entirely satisfied that the applicable and relevant authority in this area was Saluja and not Loosley as it addressed the issues of entrapment within the context of the professional regulatory framework.

17.59 The Tribunal also rejected Mr Riza’s submission that it had no applicability to the regulation of solicitors or that the SRA, in relying on such evidence, was under a greater duty of care than the Police on account of solicitors’ status as officers of the Court. There was no authority to support such a submission.

17.60 The questions put by Client A to the Respondent in the interviews appeared open and fair. Crucially, the questions could have led to a different answer being provided by the Respondent to that which was given. The Tribunal did not find that Client A’s role amounted to entrapment. The effect of those questions on the Respondent would be a matter for the Tribunal to determine after hearing all the evidence in the case. That would be the appropriate point to consider matters such as whether they had been talking at cross-purposes.

17.61 The Tribunal considered Mr Riza’s submission that the material forming the evidence against the Respondent had been obtained through criminality. Ms Potts had been cross-examined extensively. She said she would have not have broadcast the material if she had any concerns as to the way in which the interviews had been conducted. There had been no Police investigation into her, into Hardcash or into ITV. There had been no complaint or finding by Ofcom. At all relevant stages of the process Ms Potts had been required to obtain clearance from the legal team at ITV. The Tribunal found no evidence that the material in this case had been obtained by criminality.

17.62 The Tribunal noted that it had been suggested that the transcripts were inaccurate and had been edited. The meaning of individual words was a matter for evidence. The suggestion of deliberate manipulation of the transcript and/or the audio and video material, if that was what was being suggested, was not supported by any evidence and was no more than assertion and speculation on the part of the Respondent. It would have been open to the Respondent to produce his own transcripts if he believed that the one adduced by the Applicant was inaccurate. He had not done so despite having the transcript and video of the second interview from the outset of the proceedings.

- 17.63 The Tribunal then considered the question of delay. There was a transcript together with the full, unedited audio and video recording of the events in question. The effect of fading memories was diminished by this contemporaneous material. The length of delay in this case did not amount to an abuse as it did not prevent a fair hearing. The report to the SRA was in 2015, with the investigation being re-opened in 2017. The Tribunal was well equipped to hear cases relating to events that took place some years previously.
- 17.64 The Tribunal considered the question of disclosure. The material that the Respondent sought was not relevant to the facts on which the Tribunal had to make a determination in this case. If a different decision had been taken in respect of different individuals, albeit in similar circumstances, that did not mean that the case against the Respondent should be halted and did to make that material relevant. The question for the Tribunal at the conclusion of the evidence and submissions would be whether it was satisfied beyond reasonable doubt that the Respondent was guilty of the professional misconduct alleged by the Applicant. The basis of the Allegations was limited to those matters contained in the Rule 5 Statement. The conclusion that may or may not have been reached in other cases was of no relevance. The Tribunal saw no basis to order disclosure and therefore did not consider that the absence of such material amounted to an abuse of process.
- 17.65 The Tribunal rejected the abuse of process submissions in their entirety and directed that the case should proceed.
18. Mr Bennett proceeded to open the case and present the Applicant's evidence.

### **Applicant's Live witnesses**

19. Joanna Potts

- 19.1 Ms Potts was re-sworn and gave evidence in the substantive hearing. She again confirmed that her witness statement was true to the best of her knowledge and belief. She repeated the evidence she had given in relation to the Abuse of Process application concerning her role and that of Client A in this documentary and her level of control. Ms Potts confirmed that all material captured had been sent to the SRA.
- 19.2 In cross-examination, Ms Potts explained that the reason that the SRA had been required to obtain a Court order for the production of the material was that this was standard procedure.
- 19.3 Mr Riza asked Ms Potts on more than one occasion if she had contact details of Client A as he wanted to contact him overnight. Ms Potts told the Tribunal that she did not know if she had his current details and that in any event she would need to take advice from the ITV legal team before disclosing this due to anonymity issues.

20. The Respondent

- 20.1 The Respondent told the Tribunal that at the time he filed his Answer to the Rule 5 Statement and his witness statement he did not have knowledge of the audio recording of the first interview. He confirmed that his Answer and witness statement were true

to the best of his knowledge and belief within the limits of the information he had before him at the time of making them. The Respondent also relied on all his submissions and replies since 2015 including his reply to the investigating officer dated 5 April 2018.

- 20.2 The Respondent told the Tribunal that in April 2019 he had got in touch with another firm, GL. That firm had also been the subject of a similar television programme involving the same production company, albeit broadcast on a different date. GL had told him that the video in their case had been edited. This information had caused the Respondent to question the veracity of the material relied upon by the Applicant.
- 20.3 The Respondent told the Tribunal that he had not entered into a retainer with Client A. If he had intended to create one then the next step would have been to obtain identity documents including proofs of addresses.
- 20.4 The Respondent told the Tribunal that he had understood that Client A was referring to an arranged marriage when he raised the topic of marriage in the context of receiving advice about options as to his status in the United Kingdom. Client A had said that he would discuss these options with his auntie and uncle and this was important because this led him to believe that an arrangement marriage was what was envisaged as the auntie and uncle could be the people who would arrange the relationship. If Client A had intended to make an application on the basis of a genuine arranged marriage, the Respondent told the Tribunal that he would have met the families and would have asked them to produce identification and proofs of address. He would also have asked them what connections they had and if the father of the prospective spouse came forward that he would see him as well. The Respondent told the Tribunal that he saw it as part of his function to make a judgement about the nature of the marriage.
- 20.5 The Respondent told the Tribunal that he had not had any complaints from the Home Office about applications that he had made where there was an arranged marriage. In August 2015 the Respondent had been interviewed by two Home Office officials and no Allegations of involvement in sham marriages had been put to him. There had been no follow-up to this interview and the Respondent had never been arrested.
- 20.6 The Respondent referred to the abuse of process issue, the disclosure point and his Allegations of prosecutorial misconduct. The chairman reminded the Respondent that the Tribunal had made its ruling in respect of those matters.
- 20.7 Returning to the substance of the Allegations, the Respondent told the Tribunal that he did not understand when Client A first came to his office that he was asking about a purely sham marriage. The Respondent told the Tribunal that the editing gave the wrong impression and that he felt aggrieved by this. The Respondent told the Tribunal that he knew the difference between an arranged marriage and a sham marriage and that he understood that a sham marriage was simply for the purposes of convenience in order to take advantage of the immigration rules. By contrast an arranged marriage was intended to last. The Respondent told the Tribunal that Ms Potts had been “absolutely wrong and incorrect” when she had told the Tribunal that he would have been prepared to make an application on behalf of Client A even if it was in respect of a sham marriage. The Respondent told the Tribunal that he had understood that Client

A was referring to an arranged marriage when he raised the topic of marriage in the context of receiving generic advice about options as to his status in the United Kingdom.

- 20.8 In cross-examination the Respondent confirmed that he had not made a written record of the first interview. He told the Tribunal that he had considered that it would be rude to ask for money straightaway. Mr Bennett put to the Respondent that in that first interview he has presented Client A with two marriage options, firstly one which was natural and secondly one in which people 'hooked up'. The Respondent took issue with the translation of the phrase 'hook up' and told the Tribunal that all of this was in the context of giving generic advice. The Respondent told the Tribunal that the correct translation would have referred to family ties in which two families could be joined for the purposes of a marital relationship, in other words an arranged marriage. Mr Bennett asked the Respondent why he would describe this as a risky option if that was the case. The Respondent replied that he could not rule out that the possibility of editing. He made reference to how he believed matters had being conducted in relation to GL and told the Tribunal that the translators were not independent. He denied that he was sounding out Client A as to his interest in a sham marriage. Mr Bennett put to him that he had been testing Client A's reaction. The Respondent stated that he would wish to see the video and the audio and made further references to editing and his disclosure submissions. Mr Bennett put to the Respondent that Client A had been seeking clarification and that in response the Respondent had told Client A that marriages that were not genuine did happen. The Respondent denied saying this. He again referred to the editing point and suggested that this had been done for monetary gain by Hardcash.
- 20.9 Mr Bennett asked the Respondent if he agreed that at no point had Client A suggested that he was in a genuine relationship. The Respondent confirmed that he had not said that, but he had been enquiring and the Respondent had been giving different options to him. Client A then mentioned marriage but the Respondent had not given advice on a particular type of marriage, rather he had advised about the Ireland option and the Canada options amongst others.
- 20.10 In respect of the second interview the Respondent confirmed that he had not made a file note of that meeting but had noted Client A's name in his diary. He agreed with Mr Bennett that he had given advice as a solicitor and taken money for that advice. Mr Bennett put to the Respondent that Client A had asked neutrally about the marriage option in the singular. The Respondent agreed with this. Mr Bennett then put to him that he had presented two options, one of which was to go properly towards a marriage and the other one was to give money for it. The Respondent told the Tribunal that he was there to advise Client A and that anyone coming for advice would be told that he was a staunch believer that any marriage should be genuine. Mr Bennett put to the Respondent that when Client A had stated "actually I cannot live with her" he was making it abundantly clear that this was not to be a genuine relationship. The Respondent referred to "patched sentences" and stated that he was uncertain about those words but that he reiterated that he was a staunch believer in genuine marriage. Mr Bennett put to the Respondent that Client A had made it clear that the marriage would not be genuine and the Respondent had told him not to tell this. The Respondent stated that the thought process was ongoing and the conversation took place in three different languages. He stated that the translations

could give any impression based on sequence of words. Mr Bennett put to the Respondent that the exchange immediately before related to a relationship that was not genuine and the words immediately afterwards were “I don’t know that”. The Respondent replied that the translator had been “fixing the sentences”. Mr Bennett put to the Respondent that he knew what Client A had been saying to him and he knew that he should not be aware of this. The Respondent disagreed. The Respondent denied that these exchanges exposed the fact that he realised that he was talking about entering into a non-genuine marriage, something that the Respondent knew was wrong. Mr Bennett further put to the Respondent that the exchanges exposed the fact that he knew he should not be aware of information of the sort given to him by Client A and that he should not act for him. The Respondent stated that he had advised Client A in his best interests and as an honest solicitor. He was advising him as to a genuine marriage and he referred the Tribunal to the section in which he had explained that the day the couple begin living together was the point at which no one could say that the marriage was not genuine.

20.11 Mr Bennett put to the Respondent that he could have simply said that he would absolutely not be able to act for Client A was what he was suggesting would be an offence. The Respondent stated that in his mind he was only discussing a genuine marriage. He had to politely deal with the client as he had a newly established firm and it was his duty to give him all the options and advised him that he must have a marriage that was genuine. Mr Bennett referred the Respondent to the section in the transcript in which he said “whether it’s genuine or not I don’t know that” and put to the Respondent that he had said this having been told that the marriage would not be genuine. The Respondent repeated his point about editing and referred the Tribunal to his written statement. The Respondent denied the suggestion that he did not care if the relationship was genuine or not as long as the Client signed the document. The Respondent also denied suggesting a strategy in case anyone questioned it later. He told the Tribunal that he was simply giving the client all his options. Mr Bennett put to the Respondent that Client A was telling him explicitly that the marriage would not be genuine. The Respondent referred to the editing point he had made previously. Mr Bennett suggested that despite what he knew, the Respondent was prepared to help Client A make his application successful. The Respondent stated that he and Client A were talking at cross purposes and that he had acted with integrity at every point of the advice that he gave. Mr Bennett asked the Respondent about the joint living proofs that he had referred to. Beyond the editing point, the Respondent told the Tribunal that he and Client A were speaking about presumptions and possibilities. He had explained the procedures that were to be followed but this was all in the context of a genuine marriage. The Respondent told the Tribunal that it that his advice about marrying an EU national was generic advice. Mr Bennett asked him what is meant by the phrase “one can cover it up”. The Respondent referred to the editing point. The Respondent denied advising Client A to “write a love story and to cover things up”.

20.12 Mr Bennett put to the Respondent that when the transcripts suited him he accepted that it was accurate but when it did not he raised the editing point. The Respondent denied this characterisation. The Respondent stated that he had been entrapped in the course of advocating further genuine marriage. The entrapment had not been successful. The Respondent strongly denied acting dishonestly or lacking integrity and he denied the entirety of the Allegations against him.

20.13 In re-examination the Respondent told the Tribunal that by “very solid evidence” he meant on “unrebuttable” evidence such as bank statements and GP letters. He told the Tribunal that the word ‘tangkah’ could not mean sham or false but it was a reference to a relationship that was “love at first sight”. He told the Tribunal that by ‘risky’ he meant it could happen or not happen.

### **Findings of Fact and Law**

21. The Applicant was required to prove the Allegations beyond reasonable doubt and the Tribunal reminded Mr Riza of the standard of proof during his closing submissions. 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.
22. The Tribunal considered carefully all the documents, witness statements and oral evidence presented. In addition it had regard to the oral and written submissions of both parties, which are briefly summarised below.

### General Approach

#### Integrity

23. When the Tribunal was required to consider whether the Respondent had lacked integrity it applied the test for integrity set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366. At [100] Jackson LJ had stated:-

“Integrity connotes adherence to the ethical standards of one’s own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse”.

24. Wingate and Evans and Malins had continued a line of authorities that included SRA v Chan [2015] EWHC 2659, Scott v SRA [2016] EWHC 1256 (Admin), Newell-Austin v SRA [2017] EWHC 411 (Admin) and Williams v SRA [2017] EWHC 1478 (Admin).

#### Dishonesty

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

“the test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: ..... 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.”

26. Where the Tribunal was required to consider dishonesty, it applied the test in Ivey and adopted the following approach:
- Firstly it established the actual state of the Respondent’s knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held.
  - Secondly, once that was established, the Tribunal then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.
27. **Allegation 1.1 - He failed to advise Client A that applying for a visa as a spouse or partner, on the basis of a relationship which was not genuine, was unlawful, and by reason of such failure breached any or all of Principles 2, 4 and 6 of the SRA Principles 2011 (“the Principles”).**

#### Applicant’s Submissions

- 27.1 Mr Bennett submitted that the Respondent had failed to advise a Client A that applying for a Visa as a spouse or partner on the basis of a relationship which was not genuine was unlawful. He submitted that by failing to give Client A full and frank advice the Respondent had demonstrated a lack of integrity. He had failed to act in the best interests of his Client and he had failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services. Mr Bennett referred the Tribunal to the unedited footage and the transcript and the Tribunal also took note of the points advanced in cross-examination.

#### Respondent’s Submissions

- 27.2 Mr Riza’s submissions were applicable to all the Allegations. They are set out here and are not repeated in respect of each Allegation. However the Tribunal had Mr Riza’s points in mind when considering each separate Allegation.
- 27.3 Mr Riza had made detailed submissions in the course of the Abuse of Process submissions. The Tribunal had all of them in mind when considering whether the Allegations were proved. In addition it took into account the points made by Mr Riza in his cross-examination of Ms Potts, both in relation to the Abuse of Process argument and in relation to the substantive Allegations.
- 27.4 Mr Riza submitted that this was a classic case of two people talking at cross purposes. It was extremely important to analyse and evaluate what happened in the context of Client A going for one purpose, which was to entrap the Respondent, or at any rate to obtain evidence that could be used in a programme to show him up as an adviser in sham marriages.



- 27.5 Client A had said he was a student who wanted to stay in the West, having completed his studies. He needed a way to stay and he decided to go to a solicitor to ascertain his options. Client A was not on a retainer at any stage and was, purportedly, an immigrant who wanted to know his options for remaining in Ireland, the UK or elsewhere. The whole flavour of the case against the Respondent did not take that into account.
- 27.6 The person receiving the advice had been an undercover agent. Mr Riza submitted that this was “very fertile ground” for cross-purposes to develop, as it had, between the two of them.
- 27.7 Mr Riza submitted that it was “blindingly obvious” that Client A had been steering the Respondent. The first interview had not been very productive. It was significant that when Client A first went there, the Respondent was not disposed to advise on the marriage route. He was keen that Client A take the ‘Ireland option’ and had been annoyed that he had not done so. Insofar as Client A had been minded to explore the marriage route, the Respondent had advised it must be done properly.
- 27.8 Mr Riza reminded the Tribunal that the Respondent had described an application based on a non-genuine relationship as “very doubtful”, “very shaky” and “shameful”. This showed that the Respondent was attempting to dissuade Client A from going down the route. By this point Client A had cornered the Respondent into having to advise about this, but the Respondent had not yielded. Mr Riza submitted that this was an example of talking at cross-purposes as Client A wanted evidence of a willingness to assist in relation to a sham marriage and the Respondent was talking about arranged marriages.
- 27.9 Mr Riza submitted that it was very significant that the Respondent referred to a potential wife to go “into this arrangement”. When Client A had said that he could not live with her the Respondent had questioned this. The Respondent would not have reacted this way or been asking for evidence if he was advising in respect of a sham marriage. In sham marriage there would be no life together.
- 27.10 Mr Riza told the Tribunal that it was important to appreciate that SRA had to ensure solicitors behaved properly. It was not an organisation to whom the functions of immigration service were sub contracted. This was not akin to money laundering regulations.
- 27.11 Mr Riza submitted that there had been no retainer with Client A and there was no evidence he had acted as alleged. There was no evidence the Respondent knew that Client A was contemplating a sham marriage or that he intended to stay here on the basis that was bogus. Mr Riza invited the Tribunal to find the matters not proved.

### The Tribunal’s Findings

- 27.12 There were some common themes that ran through the Respondent’s case in respect of all the Allegations. The Tribunal considered those points at the outset of its deliberations as its decision on those matters would have a bearing on whether the Tribunal could make any findings in relating to the Allegations and, if it could, the context in which those findings could be made.

27.13 Late service of the audio recording of the first interview

27.13.1 The Tribunal accepted that this had not been disclosed initially but it was put right and so he was not prejudiced as a result of this. Further, the Allegations related to the second interview, which had been fully disclosed from the outset. The Tribunal rejected the submission by the Respondent that this rendered the proceedings unfair.

27.14 Editing of the recordings and the transcripts/accuracy of the transcript

27.14.1 The Respondent had repeatedly asserted that the audio and/or the video evidence may have been edited. He had also asserted that the translation and transcription had been done inaccurately and/or been edited. The Tribunal found no evidence to support the Respondent's assertions on this point. The Tribunal had heard evidence from Ms Potts about the circumstances of the recording. She had confirmed that the material that Hardcash had handed over was the unedited rushes of both interviews. Ms Potts had not been cross-examined on that point with any great vigour, but to the extent that she had been asked to confirm that the unedited footage had been handed over, she had done so. The Tribunal had found her to be a convincing and credible witness of truth. She had considerable expertise and experience in her field and it accepted her evidence.

27.14.2 Mr Bennett had provided the Tribunal with a certificate showing that the transcripts had been prepared by official Court reporters who were independent of the parties. There was no evidence to suggest that the transcription had been done improperly.

27.14.3 The Tribunal noted that it had been open to the Respondent to adduce expert evidence if he wished to challenge the authenticity or accuracy of the footage and/or the transcript. He had been in receipt of the footage and transcript of the second interview since the commencement of proceedings and he had not presented any evidence of the footage being doctored or the translations being wrong or of the transcription being inaccurate. He had also been in possession of the audio recording of the first interview for some weeks prior to the hearing.

27.14.4 The occasional word may have been open to interpretation but this was a point of detail and did not reflect a wholesale inaccuracy in the transcript.

27.14.5 The Tribunal was satisfied beyond reasonable doubt that what it had seen and heard was an unedited version of the two interviews and that there was therefore nothing in the argument advanced by the Respondent concerning the authenticity or accuracy of the audio or video footage or the transcripts.

27.14.6 The Tribunal therefore proceeded on the basis that it could rely on this evidence as a contemporaneous record of the events in question.

## 27.15 Entrapment/role of Client A

27.15.1 This had been the basis of the Abuse of Process argument, which had been unsuccessful. However the Tribunal considered the point again in the context of making findings in respect of the Allegations themselves, as the test for stopping a case due to Abuse of Process was different to that for establishing whether, beyond reasonable doubt, the Respondent was guilty of professional misconduct.

27.15.2 The Tribunal had heard from Ms Potts directly as to the instructions that she had given to Client A and it had the benefit of the rushes of the two interviews. The Tribunal found that the justification for a second interview could be found in the following exchanges in the first interview:

A: I know some people who are married and they are staying here.

N: Married? Here?

A: Yes

N: Yes, sometimes it is natural but sometimes people hook up. That is risky. We have got the visa for 5 years but those are genuine girls, but according to their circumstances, we provide them with legal aid.

27.15.3 There was clearly a distinction being drawn between a “natural” situation and one that was “risky”. The word “natural” was relevant to the context of the words “hook up”. The Tribunal was confident that the process gone through by the broadcasters and their lawyers had been robust and they had reasonable grounds for authorising a second interview. There were no grounds to exclude the second interview.

27.15.4 In relation to the second interview, the Tribunal again rejected the suggestion of entrapment for the same reasons as it had in relation to the abuse of process argument. Client A had not led the Respondent into saying what he had. There had been an element of Client A narrowing down the options but he had not taken it so far such that relying on the evidence would compromise the integrity of the proceedings. The Police did not investigate and neither had Ofcom. Client A’s role had been scripted in compliance with the guidelines and the authority given.

27.15.5 The Tribunal found that the Respondent had not been entrapped and therefore was satisfied beyond reasonable doubt that it could rely on this evidence when considering the Allegations.

## Allegation 1.1 – Findings

27.16 The Tribunal reviewed the transcript and found no instance in which the Respondent had advised that applying for a visa as a spouse or partner on the basis of a relationship which was not genuine was unlawful.

- 27.17 The Respondent's case was, without prejudice to the editing and entrapment points, that he and Client A had been talking at cross-purposes. He had given evidence and submitted that he had understood Client A to be referring to a legitimate arranged marriage when in fact Client A believed he was asking about a sham marriage.
- 27.18 The Tribunal was entirely clear as to the difference between a legitimate and lawful arranged marriage and a sham marriage. A legitimate arranged marriage was entered into on the understanding and intention of both parties to the marriage that it would be a lasting marriage based on a genuine relationship. The Tribunal recognised that such marriages were entirely proper.
- 27.19 A sham marriage, in this context, was one in which the parties to the marriage had no intention of entering into a genuine marital relationship and had agreed to marry solely in order to facilitate an application to the Home Office for status which would enable one or both of them to remain in the United Kingdom.
- 27.20 The Respondent had argued that he had been advising on the basis of an arranged marriage and his explanation about the words "hook up" and "tankah" and about wedding two families together was noted. However that evidence was not credible or consistent with the evidence of the transcript. The Tribunal relied on a number of passages in support of this conclusion.
- 27.21 At the start of the interview the Respondent had drawn a distinction between two types of marriage scenario:

N: Either you go properly towards a marriage  
A: Mmm.  
N: That is, if you have an offer and someone is available  
A: Mmm.  
N: Like you have some relatives on whom you can trust or someone similar. Then you can go for that.  
A: Mmm.  
N: Otherwise if you will give money for it, then that is very shaky  
A: Mmm.  
N: It is doubtful.  
A: I see  
N: They will take the money, 2, 3,000, 5,000, 10,000, and then they will vanish.  
A: Mm-hmm.  
N: And at the eleventh hour from the marriage centre, civil centre, if you are caught, that is also very shameful.  
A: Mmm. But, I mean, there is somewhat risk in it but it is that something that, I mean, if I decide to go ahead with it, [Urdu] what will happen? Is it possible or impossible?  
N: It is possible but depends on your own ties.

- 27.22 At a later stage in the second interview the following exchange was relevant as to whether it was a genuine or non-genuine relationship:-

A: But how? I mean, actually I cannot live with her.  
N: Why?  
A: So you are saying [drops the sentence]. Because it is not a genuine relationship in any case.  
N: Then don't tell me. I don't know that.  
A: Mm-hmm.  
N: As far as I am concerned, you will bring evidence and give it to me –  
A: Right, right, right.  
N: Whether it is genuine or not, I don't know that. Whoever comes to me is a genuine man giving me authority to certify the papers to proceed the application.

27.23 At another point in the second interview this exchange took place:

N: Obviously. We are not concerned, we just have been provided, this is the evidence; these are the people; they are just giving their own evidence. So, we, there is no other responsibility –  
A: Ok  
N: - because we are not taking any undue money, like, 10,000, 15,000, 20,000 as there are people doing it. We are not doing it like that; we are just charging whatever is just the services –  
A: Yeah, regardless –  
N: - legal services  
A: Regardless of whether the relationship is genuine or not.  
N: You see, we will work only when you will give us your undertaking. We believe in your declaration.

27.24 The Tribunal found that it was abundantly clear that Client A was referring to a relationship that would not be genuine as he had explicitly said so. The starkest example of this was when he had told the Respondent “it is not a genuine relationship in any case”. This left no room for misunderstanding or talking at cross-purposes.

27.25 The Tribunal rejected the Respondent's evidence as it was contradicted by the contemporaneous evidence.

27.26 The Tribunal was satisfied beyond reasonable doubt that the Respondent was fully aware of what Client A was asking him about. The Respondent had advised him that such an arrangement may be “very shaky”, “very shameful” and risky but at no time did he advise him that to make an application on this basis would be unlawful.

27.27 If his evidence was credible he would have gone on specifically to talk about arranged marriages between two families and he had not done so.

27.28 The Tribunal found the factual basis of Allegation 1.1 proved beyond reasonable doubt.

27.29 Principle 2

27.29.1 The Tribunal found that by failing to advise Client A that such an application would be unlawful if based on a non-genuine relationship the Respondent

had fallen below the standards that would be expected of a solicitor. The Tribunal was satisfied beyond reasonable doubt that failing to give such a fundamental piece of advice lacked integrity. The Tribunal found the breach of Principle 2 proved beyond reasonable doubt.

27.30 Principle 4

27.30.1 The Tribunal noted that Client A was not, in fact, an actual Client. However that was not known to the Respondent at the time. He had accepted advising Client A and taken his name, contact details and money in his capacity as a solicitor. The Respondent had regarded him as a Client and had treated him as such. The absence of a retainer to lodge the actual application was not a relevant factor. He had been retained, at that stage, to provide advice and he had done so.

27.30.2 As part of that advice, the Tribunal would have expected a solicitor to tell a Client if a course of action they were contemplating was illegal and could therefore have serious consequences. This was evidently in that Client's best interest and to fail to advise of this was therefore not consistent with acting in that Client's best interests.

27.30.3 The Tribunal found the breach of Principle 4 proved beyond reasonable doubt.

27.31 Principle 6

27.31.1 The Tribunal found that members of the public would expect solicitors to provide advice on a matter as important as the potential illegality of a course of action being considered by a Client. The failure to do so would be a matter of significant concern and would undermine the trust the public placed in the Respondent and the provision of legal services. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

27.31.2 Allegation 1.1 was proved in full beyond reasonable doubt.

28. **Allegation 1.2 - He advised Client A that, in the event that Client A wished to apply for a visa as a spouse or partner on the basis of a relationship that was not genuine, Client A should not disclose this fact to him, and by reason of such failure breached any or all of Principles 1, 2, 3 and 6 of the Principles.**

28.1 Mr Bennett's submissions in respect of this Allegation also related Allegation 1.3. They are set out here so as to avoid repetition within the judgement.

28.2 Mr Bennett submitted that the Respondent had advised Client A that he should not disclose to him the fact that Client A wished to apply for a Visa as a spouse or partner on the basis of a relationship that was not genuine and further that the Respondent would be willing to advise and/or assist the Client despite this. Mr Bennett had taken the Respondent to a number of passages within the transcript during the course of cross-examination. At no stage had the Respondent told Client A that he could not act for him in these circumstances. Mr Bennett submitted that by expressing a willingness

to ignore evidence that the relationship would not be genuine or was not likely to be genuine and by agreeing to advise and assist in the circumstances of the application, the Respondent had failed to uphold the rule of law and the proper administration of justice. A solicitor with integrity would not advise a client that he should not disclose such information to him or be willing to advise and assist a client in such circumstances. Mr Bennett submitted that the Respondent had compromised his independence and had acted in a way that failed to maintain the trust the public placed in him and in the provision of legal services.

- 28.3 Mr Bennett further submitted that the Respondent's conduct had been dishonest. The submissions on dishonesty were also applicable to Allegation 1.4. He submitted that the Respondent had been holding himself out as practising in immigration law and had met with Client A to provide advice in that area of law. The Respondent knew that Client A was proposing to enter into a marriage that was not genuine for the purposes of making an application to the Home Office. The Respondent had told Client A that he should not tell him (the Respondents) if the marriage was not genuine and had stated that he would be prepared to act and/or advise irrespective of whether the marriage was genuine. The Respondent had offered advice to Client A as to ways in which he could enhance his prospects of success and his accepted payment for the advice that it provided. Mr Bennett submitted that the Respondent's conduct would be considered dishonest by the standards of ordinary decent people.

#### Respondent's Submissions

- 28.4 These are set out above under Allegation 1.1.

#### The Tribunal's Findings

- 28.5 The Tribunal considered the Respondent's explanation that much of the advice he had given to Client A was generic. The Tribunal found the following sections of the exchanges in the second interview to be relevant to the question of whether the Respondent had advised Client A not to tell him if he was making an application based on a non-genuine relationship:-

A: So you are saying [drops the sentence]. Because it is not a genuine relationship in any case.

N: Then don't tell me. I don't know that.

A: Mm-hmm.

N: As far as I am concerned, you will bring evidence and give it to me –

A: Right, right, right.

N: Whether it is genuine or not, I don't know that. Whoever comes to me is a genuine man giving me authority to certify the papers to proceed the application.

At a later stage in that interview:

A: Mmm. If it is not genuine at the time of the beginning, and it is not genuine at the time the application was filed, then what?

N: I don't know that.

In relation to the provision of evidence, the following exchange was relevant;

- N: Where different banks are, you provide them. This is our rent agreement, here we have moved –  
A: Mm-hmm.  
N: - transfer our bank statements here –  
A: Mmm  
N: - for the post to deliver.  
A: Whether in reality we are living there or not  
N: I don't know this. You are living there – it's not for me.

28.6 The Tribunal was satisfied beyond reasonable doubt that on several occasions the Respondent advised Client A that he did not wish to know that the relationship may not be genuine and that he should therefore not disclose it to him. The Tribunal had already rejected the suggestion that they had been talking at cross-purpose when considering Allegation 1.1.

28.7 The Tribunal found the factual basis of Allegation 1.2 proved beyond reasonable doubt.

28.8 Principle 1

28.8.1 The Respondent was clearly contemplating receiving instructions, or deliberately avoiding receipt of instructions, that he knew not to be true. As far as the Respondent was concerned, the intended purpose was one which would have misled the Home Office and/or an Immigration Tribunal. The Tribunal found beyond reasonable doubt that the Respondent, in advising Client A to withhold the true facts from him, had failed to uphold the rule of law or the proper administration of justice and accordingly the breach of Principle 1 was proved.

28.9 Principle 2

28.9.1 It clearly lacked integrity for a solicitor to behave in the way set out above. The Tribunal found the breach of Principle 2 proved beyond reasonable doubt.

28.10 Principle 3

28.10.1 The Respondent had allowed his independence to be compromised as he had put the perceived needs of Client A above his actual duties to his Client and the Home Office and/or Immigration Tribunal. The Tribunal found the breach of Principle 3 proved beyond reasonable doubt.

28.11 Principle 6

28.11.1 It followed as a matter of logic from the Tribunal's findings that the Respondent had failed to act in way which maintained the trust the public placed in him and in the profession. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.



## 28.12 Dishonesty

28.12.1 The Tribunal considered the Respondent's state of knowledge at the time he was giving the advice to Client A.

28.12.2 The information being given to the Respondent was known as it had been recorded and transcribed. The Tribunal had found in relation to Allegation 1.1 that the Respondent knew the difference between a sham marriage and a genuine arranged marriage and that he was not talking at cross-purposes to Client A. The Respondent knew that Client A was contemplating a relationship that would not be genuine and that he was considering making an application to the Home Office based on that non-genuine relationship.

28.12.3 The Respondent knew that this was wrong as he had advised Client A not to tell him this. There were repeated examples, cited above, where the Respondent had advised Client A not to tell him something and that the Respondent would "not know" if the relationship was not genuine. This was not generic advice but specific advice being given in the knowledge that Client A was talking about a sham marriage.

28.12.4 The Tribunal found that the Respondent had deliberately been closing his eyes to the obvious so as to avoid responsibility for it and to be able to deny it if the sham was exposed.

28.12.5 The Tribunal found beyond reasonable doubt that this would be dishonest by the standards of ordinary decent people.

28.13 The Tribunal found Allegation 1.2 proved in full beyond reasonable doubt including the Allegation of dishonesty.

29. **Allegation 1.3 - He indicated that he was willing to advise and/or assist Client A on the process of applying for a visa as a spouse or partner after Client A made clear that he intended or was likely to make the application based on a relationship that was not genuine, and by reason of such failure breached any or all of Principles 1, 2, 3 and 6 of the Principles.**

### Applicant's Submissions

29.1 These are set out above under Allegation 1.2.

### Respondent's Submissions

29.2 These are set out above under Allegation 1.1.

### The Tribunal's Findings

29.3 The Tribunal had found, when considering Allegations 1.1 and 1.2, that Client A had made clear that he was intending or likely to make an application based on a relationship that was not genuine. The Respondent's willingness to advise and assist

in that application was clear from the transcript. He discussed the procedure that would be followed in the making of such an application and he advised about fees. At no time did the Respondent tell Client A that he could not advise or assist, indeed he was clearly offering his services. The Tribunal found the factual basis of Allegation 1.3 proved beyond reasonable doubt.

29.4 Principles 1, 2, 3 and 6

29.4.1 The Tribunal found the breaches of these Principles proved beyond reasonable doubt for the same reasons set out in relation to Allegation 1.2. The misconduct went even further than that set out in Allegation 1.2 in that he was offering active assistance to the Respondent.

29.5 Dishonesty

29.5.1 The Tribunal's findings as to the Respondent's state of knowledge of Client A's intentions was set out in relation to Allegation 1.2 above and was also relevant to this Allegation.

29.5.2 In addition the Respondent was aware that he was offering to advise and/or assist Client A as that was the whole purpose of the second interview. The Respondent had accepted in his evidence that he was seeking to grow his business and this involved taking on Clients.

29.5.3 As the Tribunal had found, the Respondent knew the differences between the types of marriage as he had distinguished between them in the course of his advice. There had been a number of points at which he could have been clear as to the distinction. The Tribunal found that the Respondent, when assisting and advising would have been in no doubt that the only option being seriously considered by Client A was a non-genuine marriage.

29.5.4 The Tribunal found beyond reasonable doubt that advising and assisting in that knowledge would be considered dishonest by the standards of ordinary decent people.

29.6 The Tribunal found Allegation 1.3 proved in full beyond reasonable doubt including the Allegation of dishonesty.

30. **Allegation 1.4 - He advised Client A on steps that could be taken by Client A to increase the prospects of an application for a visa as a spouse or partner being successful when he knew or ought to have known that the relationship on which the purported application would rely was not genuine and by reason of such failure breached any or all of Principles 1, 2 and 6 of the Principles.**

Applicant's Submissions

30.1 Mr Bennett submitted that the Respondent had proactively advised Client A on the steps that could be taken to increase prospects of the application being successful. This was in circumstances when the Respondent knew or ought to have known that the relationship that form the basis of this application may not be genuine. Mr Bennett

referred to the advice given to Client A about preparing evidence of joint living arrangements and advice as to the nationality and immigration status of his proposed spouse. Again, Mr Bennett had taken the Respondent to a number of passages in the transcripts in the course of cross-examination. Mr Bennett submitted that the Respondent had failed to uphold the rule of law proper administration of justice, failed to act with integrity and has failed to act in a way which maintained the trust placed in him and in the provision of legal services by the public.

- 30.2 Mr Bennett further submitted that the Respondent had been dishonest for the reasons set out in the dishonesty submissions under the heading for Allegations 1.2 and 1.3 above.

### Respondent's Submissions

- 30.3 These are set out above under Allegation 1.1.

### The Tribunal's Findings

- 30.4 The Tribunal identified several instances in the second interview where the Respondent had specifically advised Client A on steps that the Client could take to increase his prospects of success in his application. The Respondent advised Client A as to the documentary evidence he should obtain in the following passages:-

A: If we both come to you, how can you help in this?  
N: In that case, we will advise you to go to the Council and register it and then, further, we will lodge your application stating: These are the proofs of our joint living. You need to immediately start making joint living proofs.

This was followed later in the second interview by:

N: You will provide evidence that these are our joint living proofs.  
A: So you just show your joint living proofs?  
N: What else do you need? Her ID, your ID for the purpose of getting your marriage registered. Once that is registered, you can go for a spouse visa.  
A: I see. So, other than proof of address you don't need anything else. So, its ID and proof of address?  
N: Evidence, very solid evidence, like surgery letters in the name of both of you at the same address. Your bank statements in the same name, in the same bank, even if it is not in the same bank account your name should be there from the, at the same address though from the different banks, but your bank statements should be coming at the same address.  
A: Mm-hmm.  
N: And then the council tax –  
A: I see  
N: - or utility bill, gas bill, Asda card, Tesco card, Sainsburys –  
A: So –  
N: You know

The Respondent also advised on how Client A should deal with any questions about the relationship, an example being as follows:

- N: In the interview [Urdu], they ask how you met each other, where you met, how, where, when, what happened?
- A: When you will submit the file, what would you have to write in it? Will you pass on all that evidence you mentioned?
- N: Yes. There will be evidence; your statements should be ready; we will prepare your declarations.
- A: What will be there in the declaration?
- N: Your statements. Declaration is such a thing as you cannot later deny because that is a legal document. But we will only give a statement because sometimes something gets over emphasised or under emphasised, and one can cover it up.
- A: So what will you write in that statement?
- N: It will be like how your relationship developed –
- A: Ok.
- N: - and your statuses –
- A: Mmm.
- N: - and how it turned up into the relationship, genuine relationship, and how you became indispensable for each other –

The Respondent also advised Client A as to the nationality of the proposed spouse may affect the application:

- A: And then should the girl be a British National or European? [Urdu]. Which of the two is easier?
- N: It is good for back home but if she is from the European Union [Urdu] it would be easier.
- A: Okay. So is there any age etc?
- N: She should be exercising her [European Union] Treaty Rights. [Urdu] She must be living here and working here.

30.4 The Respondent also advised that the prospects of success would diminish if the proposed spouse did not have a good level of English language skills:

- A: Ok. A question comes to mind, if I go and file an application and my partner is suppose Eastern European, European girl, whose English is let's say a bit weak. Would they not ask how, I mean, how you guys are marrying each other? Why are you doing it?
- N: Yes they will ask. This is a very demerit in the case.

30.5 The Tribunal found that this advice was tantamount to a coaching session. The Respondent had referred to Client A producing “unrebuttable” evidence as they were official documents. In doing so he was giving Client A a list of documents and other advice in the context of what was clearly a sham marriage. He further advised that it was Client A who had to sign the declaration.

30.6 The Tribunal found the factual basis of Allegation 1.4 proved beyond reasonable doubt.

30.7 Principles 1, 2 and 6

30.7.1 The Tribunal found these principles breached beyond reasonable doubt for the reasons given in relation to Allegations 1.2 and 1.3. This conduct went beyond what the Respondent would himself do and included advice as to what the Client should do to achieve the same goal, namely a successful application based on a non-genuine marriage.

30.8 Dishonesty

30.8.1 The Tribunal's findings about the Respondent's state of knowledge as to the genuineness of the marriage are set out above. The Respondent knew that he was providing the Client with a list of things to do and say. He had told him that he did not want to know if the basis was untrue, simply stating "we believe in your declaration". The evidence which he was advising the Client to get would, in itself, be untrue. The Respondent knew this as he knew that the relationship proposed was not a genuine one.

30.8.2 The Respondent had been unable to explain himself because there was no other explanation. When pushed his only defence had been that Hardcash had tampered with the evidence or that the translators were not independent of the SRA.

30.8.3 The Tribunal found beyond reasonable doubt that the Respondent's conduct would be considered dishonest by the standards of ordinary decent people.

30.9 The Tribunal found Allegation 1.4 proved in full beyond reasonable doubt including the Allegation of dishonesty.

**Previous Disciplinary Matters**

31. There was no record of any previous disciplinary findings by the Tribunal.

**Mitigation**

32. Mr Riza made submissions in mitigation, with reference to the Guidance Note on Sanctions (December 2018). Mr Riza complained that he was constrained in his mitigation by the fact that the Tribunal's reasons for its findings were not known until the issuing of this written Judgment. His mitigation was therefore made against that backdrop.

33. In relation to culpability Mr Riza made the following submissions:-

- The misconduct was provoked by an undercover agent
- The approach in cases where it would not have happened but for the intervention of an undercover agent was different to where the initiative was that of the Respondent

- The question of a breach of position of trust did not arise as there was no trust between him and Client A.
- In relation to whether the Respondent had direct control or responsibility for the circumstances of the misconduct this had to be considered within that narrow compass of responsibility on the part of Client A for steering the Respondent to the commission of the misconduct and his inability to withstand the temptation. Mr Riza submitted that it was a negative nature of responsibility rather than an active one.
- In terms of the Respondent's level of experience, he had not been in practise for long in the UK. He was working in the narrow field of immigration law at the material time.
- The Respondent had not misled the regulator as he had got in touch with the SRA himself.

34. In relation to harm, Mr Riza made the following submissions:

- Mr Riza accepted that if a solicitor advised to someone about how to apply on basis of a sham marriage that this was obviously serious.
- On the facts of this case the Respondent had not actually made representations – it was advice and there was no retainer but Mr Riza did not seek to diminish the importance of the offending behaviour.
- No specific person had been harmed by the misconduct.

35. Mr Riza accepted that the following aggravating factors applied:

- There had been a finding of dishonesty;
- On the Tribunal's findings, the Respondent should have known that there was no way he could advise on the basis he had.

36. Mr Riza submitted that the misconduct was mitigated by the following:

- There had been deception by a third party, namely Client A. This would not have occurred otherwise, as was the nature of undercover operations.
- The Respondent had voluntarily contacted the SRA.
- This was a single episode in previously unblemished career.
- In terms of insight, despite the denials of wrongdoing, Mr Riza told the Tribunal that the Respondent did "feel enormous remorse for the wrongdoing that has arisen". At the same time he denied it had been wrongdoing.

37. Mr Riza told the Tribunal that the Tribunal had the option of a Restriction Order open to it.
38. This would protect public and reputation of the profession from future harm.
39. Mr Riza submitted that a suspension would not be an appropriate sanction and this was a one-off incident. He further submitted that a strike-off would be extreme in all the circumstances and he urged the Tribunal not to go down that route, save only if it concluded that this was a type of conduct that may happen again and it was absolutely necessary to protect the reputation of the profession. Mr Riza submitted that the Respondent did not lack insight and understood the nature of the wrongdoing alleged and the seriousness of it.
40. The Chairman invited Mr Riza to make any submissions he wished to in relation to exceptional circumstances, given the finding of dishonesty.
41. Aside from repeating his complaint about a lack of reasons, Mr Riza identified the following points which amounted to exceptional reasons:-
  - no criminal offence had been committed;
  - it was provoked by undercover agent who he had been unable to cross-examine;
  - the context was a very narrow compass;
  - the level of financial gain was only £70;
  - the misconduct found by the Tribunal had all been done on Client A's initiative;
  - there was no evidence that he had done anything similar in any other circumstances
42. Mr Riza submitted, relying on all his submissions in mitigation, that exceptional circumstances did arise and the Respondent should therefore not be struck-off.
43. The Respondent briefly gave evidence as part of his mitigation. He told the Tribunal that he had three children and working as a solicitor had been his sole source of income for 25 years. He had previously worked as a lawyer in Pakistan. There had been no complaints against him in the ten years he had been working in the United Kingdom.
44. The Respondent told the Tribunal that his wife usually worked part-time but was not currently working and so he was at present the sole earner.
45. The Respondent invited the Tribunal not to impose a strike-off, citing his limited finances and lack of any assets.

## Sanction

46. The Tribunal had regard to the Guidance Note on Sanctions (December 2018). The Tribunal assessed the seriousness of the misconduct by considering the Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.
47. The Tribunal noted the complaint from Mr Riza that he did not have the Tribunal's reasons before mitigating. This was the procedure followed in all cases before the Tribunal. The point had been taken in Ramasamy v Solicitors Regulation Authority [2018] EWHC 117 (Admin)
48. At [59] this was addressed by the Court:-

“The first [submission] was that it was procedurally unfair that the Tribunal had provided its findings orally without explanation, so that mitigation had to be advanced in a vacuum without understanding the reasons for the Tribunal's conclusions, including in particular its finding of dishonesty in relation to Allegation 4. However, this was the Tribunal's usual practice and no application was made by Mr Stern (who appeared below) for any different procedure to be followed. It is in any event everyday practice in the criminal courts for mitigation to be advanced following an unreasoned jury verdict of guilty. There is nothing in this point.”
49. Mr Riza had put forward comprehensive mitigation and the Tribunal was well able to proceed to consider sanction in a fair manner.
50. In assessing culpability the Tribunal identified the following factors:
  - This had not been a case of entrapment but it had been prefaced by Client A coming in to the Respondent's office and seeking this advice. The Respondent did not know that Client A was not a real Client and he clearly considered him to be one at the time he was giving the advice.
  - The misconduct was spontaneous in that he did not know that Client A would attend the office and ask the questions he did.
  - The public trusted solicitors to give the proper advice in accordance with law. To that extent there had been a breach of trust which impacted the public. The Respondent also had a duty to the Home Office not to advise on illegitimate applications. The Tribunal also noted that clients in that area of law were often desperate and vulnerable.
  - The Respondent had direct control over the circumstances as he alone was responsible for the advice he chose to give or not give.
  - The Respondent was experienced.



51. In assessing harm, the Tribunal accepted that clearly no harm was caused to Client A but he could not have known that at the time. The damage to the reputation of the profession was huge. This matter had been broadcast on national television, which would have a significant impact on the public perception of the profession.
52. The Tribunal identified the following aggravating factors:-
- Dishonesty. The matters were aggravated by the Respondent's dishonesty. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:  
  
"34. there is harm to the public every time 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"."
  - The Respondent knew or ought reasonably to have known that his conduct was in material breach of his obligations.
53. The Tribunal assessed the following potential mitigating factors:
- The Tribunal considered the submissions by Mr Riza about the involvement of Client A, but took into account that if he had been a genuine Client he would have received the same advice. The Tribunal rejected the submission that this was a mitigating factors.
  - The Respondent had notified the SRA.
  - The Tribunal accepted that this was a single episode in a previously unblemished career.
  - There had not been any admissions but the Respondent had fully engaged with the proceedings.
  - The Tribunal detected no insight, having listened carefully to his evidence.
54. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the Respondent. The misconduct was at the highest level and the only appropriate sanction was a strike-off. The protection of the public and of the reputation of the profession demanded nothing less.
55. The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. Mr Riza had submitted it was exceptional by virtue of the involvement of an undercover reporter. However the Tribunal had rejected the submissions in relation to abuse of process based on entrapment or anything else. The reporter's presence was an interesting aspect of the background but the prime mover had been the Respondent and that excluded the possibility of exceptional circumstances. None of the other factors identified by Mr Riza amounted to exceptional circumstances.

56. The Tribunal had regard to the Respondent's personal circumstances as set out in his evidence. The Tribunal found there to be nothing that would justify an indefinite suspension. The only appropriate and proportionate sanction was that the Respondent be Struck Off the Roll.

### **Costs**

57. Mr Bennett applied for an order that the Respondent pay the Applicant's costs in the sum of £24,946.50. This figure was set out in a schedule based on a three day hearing. He had not been instructed to add to it to cater for the fourth day. The legal fees were based on a fixed fee that worked out at around £37 per hour. Mr Bennett submitted this was a very low rate. The number of hours taken on the matter reflected the way in which the Respondent had contested the proceedings.
58. Mr Riza submitted that he could not question the number of hours but noted that it was a straightforward case with the evidence from the undercover agent. However he submitted that it would be oppressive to order the Respondent to pay costs if he was to be struck off as he would have no means of doing so.

### **The Tribunal's Decision**

59. The Tribunal noted the parties' submissions on costs and the Respondent's evidence as to his family circumstances and his means. The Respondent had not filed a statement of means as required by the Standard Directions and therefore the Applicant had not had the opportunity to investigate matters raised if it felt appropriate.
60. The Tribunal was aware that the SRA took a reasonable and proportionate approach to enforcement and would expect it to do so in this case. However in the absence of a Statement of Means there was no basis to defer payment of costs as part of the Tribunal's order.
61. The costs themselves were very reasonable given the work involved and given the low hourly value of the fixed fee against the hours worked, which included the investigation and the proceedings. The Tribunal was satisfied that it was appropriate to order payment in full by the Respondent.

### **Statement of Full Order**

62. The Tribunal Ordered that the Respondent, SYED MUZAHER NAQVI, 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 £24,946.50.

Dated this 7<sup>th</sup> day of June 2019  
On behalf of the Tribunal

J. C. Chesterton  
Chairman