The Tribunal's decision dated 28 January 2021 is subject to appeal to the High Court (Administrative Court) by the Respondent. The Order remains in force pending the High Court's decision on the appeal.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11893-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

RAMACHANDREN NARAYANASAMY Respondent

Before:

Miss H Dobson (in the chair)
Ms T Cullen
Mrs N Chavda

Dates of Hearing:
7-9 October 2019, 4-6 November 2020, and 2 December 2020

Appearances

James McClelland, barrister of Brick Court Chambers, 7-8 Essex Street, London WC2R 3LD for the Applicant.

Michael McLaren QC, barrister of Fountain Court Chambers, Fountain Court, London EC4Y 9DH for the Respondent.

JUDGMENT

Allegations

1. The Allegations against the Respondent were that:

1.1 When giving evidence before Mr Stephen Morris QC (sitting as a Deputy High Court Judge) ("the Judge"), the Respondent made untrue statements either knowingly or recklessly, made statements that were irresponsibly unfounded, and/or gave evidence which was evasive, obfuscating, and/or lacking in candour in breach of Principles 1, 2 and 6 of the SRA Principles 2011.

This over-arching Allegation was divided into six separate Allegations numbered (i)-(vi) below. The Tribunal was invited to treat those Allegations as free-standing and make separate findings in relation to each.

1.1(i) When giving evidence concerning the documents submitted to the UK authorities for the purposes of obtaining [Mr L's] work permit and entry clearance, the Respondent (a) knowingly or, alternatively, recklessly gave untrue evidence in his witness statement and oral evidence, and (b) gave evidence during the hearing which was evasive, obfuscating, and/or lacking in candour, in breach of Principles 1, 2 and 6 of the SRA Principles 2011.

1.1(ii) In giving evidence concerning a letter written by the Firm's accountant to Work Permit UK, the Respondent gave evidence that was (a) knowingly or (alternatively) recklessly untrue and/or (b) evasive, obfuscating, and lacking in candour, in breach of Principles 1, 2 and 6 of the SRA Principles 2011.

1.1(iii) In giving evidence concerning an email dated 6 November 2007, the Respondent denied its plain meaning and his evidence was evasive, obfuscating, and lacking in candour, in breach of Principles 1, 2 and 6 of the SRA Principles 2011.

1.1(iv) In giving evidence concerning the accuracy of a transcript of a meeting on 22 January 2010, the Respondent gave evidence that was irresponsibly unfounded, evasive, obfuscating, and lacking in candour in breach of Principles 1, 2 and 6 of the SRA Principles 2011.

1.1(v) The Respondent gave untrue evidence to the effect that [Mr L] 10% right was dependent upon his generating £300,000 income from his own clients in breach of Principles 1, 2 and 6 of the SRA Principles 2011.

1.1(vi) When giving evidence concerning the earnings of the firm, the Respondent gave evidence which was evasive, obfuscating and/or lacking in candour in breach of Principles 1, 2 and 6 of the SRA Principles 2011.

1.2 He made statements to the SRA and the Malaysian Bar Council which were untrue and were found by the Judge to be so. The making of these untrue statements was deliberate. As a result, he breached Principles 2 and 6 of the SRA Principles 2011.

2. In addition, Allegation 1.1 (insofar as it concerned the deliberate making of untrue statements – that was to say Allegations 1.1(i), (ii) and (v)) - and Allegation 1.2 were advanced on the basis that the Respondent's conduct was dishonest. Dishonesty was

alleged as an aggravating feature of the Respondent's misconduct but was not an essential ingredient in proving the Allegations.

3. The case proceeded under the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR 2007"). The matter was adjourned part-heard on 9 October 2019 and resumed in November 2020, having been originally listed to resume in April 2020. The hearing resumed as a remote hearing, with the agreement of both parties, due to the Covid-19 pandemic.

Factual Background

4. The Respondent was born in September 1963 and was admitted to the Roll as a solicitor on 15 March 2004, having passed the Qualified Lawyer Transfer Test on 11 February 2004. The Respondent was a partner and principal at Dotcom Solicitors, 354 High Road, Tottenham, London, N17 9HT ("the Firm"), from 24 May 2007 to 11 May 2010. Prior to this he had practised as a sole practitioner, also under the name Dotcom Solicitors and returned to doing so from 12 May 2010 to 31 March 2013. The Respondent had, since 1 April 2013, been a director of Dotcom Solicitors Limited.

5. Mr L was a former co-Respondent in these proceedings. He had been admitted to the Roll as a solicitor on 15 January 2007, having passed the Qualified Lawyer Transfer Test on 23 August 2006. The Second Respondent was a partner and principal at the Firm from 24 May 2007 to the termination of his employment on 22 January 2010. Mr L had pursued a claim against the Respondent for sums due to him under his contract of employment following his termination ("the civil claim"). Judgment was handed down on 29 October 2015 ("the civil judgment"). The chronology of the events leading to the claim was as follows:

<u>Summer 2006</u>
Mr L was a salaried partner with Sivananthan in Malaysia.

<u>July 2006</u>
Mr L was involved in an investigation by the Malaysian Anti-Corruption Commission ("MACC"). Mr L left the employment of Sivananthan on 10 July 2006.

<u>August 2006</u>
Mr L met the Respondent in London and they discussed the possibility of Mr L joining the Firm. Mr L's case had been that this was not the first time that this had been discussed. There was also dispute about whether or not Mr L had made the Respondent aware of the extent of the MACC investigation at this time.

<u>3-17 November 2006</u>
Correspondence between the Respondent and Mr L about the details of Mr L coming to the United Kingdom.

<u>January 2007</u>
Terms were finalised between the Respondent and Mr L. The terms were the subject of dispute in the civil claim.

February 2007
The Respondent applied for a work permit for the Mr L, which was rejected.

March 2007
The Respondent made a second application with more detail as to the remuneration Mr L was to receive.

17 April 2007
Work permit granted and issued. Mr L subsequently applied to the British High Commission in Malaysia for entry clearance into the UK. He stated that he was employed by the Firm and attached a draft contract of employment in support of that application.

24 May 2007
Mr L joined the Firm.

14 October 2008
Nathan & Co, the reporting accountants to the Firm, wrote to the UK Border Agency. The details of that letter are set out below in relation to Allegation 1.1(ii)

September 2009
Mr L travelled to Malaysia to assist the MACC with its investigation.

22 January 2010
The Respondent and Mr L met to discuss the Firm's accounts. The recording and transcript of this meeting is the subject of Allegation 1.1(iv). Mr L left the Firm on this date.

August 2011
Mr L was cleared by the MACC.

Allegation 1.1(i)

6. The work permit application that the Respondent submitted on 2 February 2007 contained the following question at 56B:

> "Will the person hold shares and/or have a beneficial interest in the UK company or connected business".

7. The Respondent had answered:

> "If the candidate is granted a work permit, he will be receiving 10% of the equity share in the firm."

8. When that application was rejected, the Firm wrote to Work Permits (UK) seeking a review on 2 March 2007. In that letter, the Firm wrote "you shall notice that the salary offered in this case is £24,000 together with 10% of the equity share in the firm".

9. The letter estimated that Mr L would earn more than £50,000 per annum in the first year. It was common ground before the Judge that this figure of £50,000 was calculated on the basis of 10% of the Firm's gross income.

10. Following a telephone conversation between the Respondent and Work Permits (UK) on 29 March 2007, the Firm wrote to clarify how the equity share would be paid to Mr L. That letter stated:

> "The annual salary will be paid on a monthly basis divided equally for 12 months. This will show on his monthly payslip. On the same monthly payslip, the 10% equity shares will appear. This will be equivalent to the 10% of gross income for the month before adding Value Added Tax."

11. For the purposes of obtaining entry clearance, the Respondent provided Mr L with a draft employment contract on 4 May 2007. In the covering letter, the Respondent described the draft contract as being "based on our verbal terms of agreement". The draft contract stated that Mr L would be entitled to "Profit Sharing" of "10% per annum" and that: "On accepting the employment you will be entitled to participate in the Firm's profit sharing scheme on the terms from time to time in force. The Firm will be allocated 10% profit sharing of the annual turnover".

12. In his witness statement made in preparation for the civil claim, the Respondent stated the following at paragraph 19:

> "I told the Claimant the advice I had received from Counsel. The Claimant appeared to understand and appeared to accept that, if we were to obtain a work permit, his remuneration needed to appear higher than £24,000 per annum. He also appeared to understand that I had difficulty in being able to pay him the basic salary of £24,000 but that I would pay that amount. He further appeared to understand and accept that asserting he would be paid additionally 10% of the net turnover of the business was a means whereby his remuneration would appear to be at an acceptable level such as to prevent the refusal of a work permit on the ground that the salary offered was inadequate. He appeared to understand and accept that, in reality, he would only be entitled to his wages and not the 10% gross turnover of the firm or any share in the firm until he had hit his billing target."

13. At paragraph 27 the Respondent had stated:

> "When I forwarded the draft contract of employment, I understood the agreement between the Claimant and me to be that the Claimant was coming to the UK in order to be a salaried partner working in my firm. Both of us knew that, if the Claimant's earnings were pitched at £24,000 he would not be given a work permit. Both of us knew that I could not afford to pay more than £24,000. Both of us knew that the assertion that the Claimant would receive 10% of the gross turnover of the business was a fiction and that he would not receive the same or any part of it. Both of us had an understanding that, were he to generate £300,000 annual billings on his own clients, the Claimant would, upon payment to me of the capital sum of £30,000, become an equity partner with a 10% interest in the business."

Allegation 1.1(ii)

14. The Applicant relied on the following passage of the civil judgment in relation to this Allegation:

> "188. Under cover of a letter to the UKBA dated 15 October 2008 signed by [the Respondent], the Firm applied for an extension of the [Mr L] work permit. The application form, Form WP1X, was signed and dated 14 October 2008 by [the Respondent]. Again, [Mr L] job title was stated to be "solicitor/partner". […]
>
> 189. In addition to Form WP 1X, the covering letter also enclosed a number of other documents, including a letter from the Firm's accountants – Nathan & Co dated 14th October 2008, which the covering letter introduced as "explaining the payment and tax issues in respect of the applicants". In that letter, addressed to the UKBA, Nathan & Co advise the UKBA of a change in the arrangements for payment of the 10% profit from monthly to annually. The letter stated:
>
> > "We understand that Dotcom Solicitors sought the services of [Mr L] from 24 May 2007, as a 10% equity partner. We have been advised that originally the firm was of the opinion to pay wages and share of profits, if applicable, on a monthly basis. However calculation of net profit will be impossible to predict at the beginning and it can only be completed at the end of each accounting year being 31 March and therefore, since the beginning was paid £2000 as monthly allowance."
>
> 190. In cross-examination, [the Respondent] sought to distance himself from the content of his letter and of the enclosed letter from Nathan & Co. As regards the former, he accepted, eventually, that he had seen the letter at the time. He was a solicitor not an accountant and he relied upon the accountant's advice. He said: "I didn't give such instruction to the accountant – it must have been [Mr L] gave the instruction" and "You can't interpret it that I approve the letter in the sense that the accountant said it was fine to send it and I said okay". As to the enclosed letter from Nathan and Co he said he could not comment: "the accountant and the claimant had become good friends and this letter is not signed by me". It was not based on what he had told the accountants; it was not his advice."
>
> 191. On 31 October 2008 the UKBA granted to the Firm an immigration employment document enabling the Firm to continue to employ [Mr L] for a further 5 years, for the purpose of supporting [Mr L] application for leave to remain."

15. The Applicant also relied on the following exchanges in cross-examination during the civil trial:

> "Q: But you saw the letter at the time? You saw the letter at the time?
>
> A: Yes, of course, yes, yes.

Q: Having seen that letter and knowing what has been put at paragraph 3 if that was not true why did you go and submit it to the Border Agency?

A: As I said, I'm solicitor I am not an accountant. The accountant is appointed since 2004 believing he is working faithfully with me whatever he says, the accountants advice we accept it. I cannot challenge his accounting knowledge.

[…]

Q: So, in essence, looking at that, you approve that letter of 14 October 2008 otherwise you should not have sent it.

A: You can interpret that I approve, yes, in the sense accountant advised me, yes it is fine to send this letter. I said, okay.

Q: The reason why it was sent, Mr Narayanasamy, is because that was what the situation was perceived to be at that point in time as well. That is correct to say.

A: No. What the accountant said is not the Immigration Rules. What the immigration says is the Immigration Rules."

Allegation 1.1(iii)

16. At paragraphs 125-131 of the civil judgment, the Judge had addressed the Respondent's evidence concerning an email sent to Mr L on 6 November 2006. That email addressed, amongst other things, Mr L's earlier proposal that two of his friends might join the Firm The email went on to state:

> "As I pointed out to you, those who wish to joint [sic] as a partner need to contribute £30,000 [for 10% of profit sharing]. The monthly allowances I agreed to you is to keep you going for short period. No doubt that will be taken into consideration on your profit. I understand that it is a small sum but that can be increased eventually based on profit we make".

17. The Applicant's case was that the words "you" referred to Mr L. The Respondent did not accept this. The Applicant relied on the Judge's rejection of the Respondent's evidence on this email and his findings that "at times [the Respondent] denied the plain meaning of the November 2006 emails".

Allegation 1.1(iv)

18. Mr L had recorded the meeting with the Respondent on 22 January 2010. A CD containing the audio recording, together with a transcript of it, was served on the Firm on 2 November 2012. In his evidence in the civil claim the Respondent asserted that the transcript was "tailor-made to suit [Mr L's] case", relied on the fact that there was no statement of truth from the person who transcribed. He also noted that it started "abruptly."

19. The Applicant relied on the Respondent's denials of the accuracy of the transcript in support of this Allegation.

Allegation 1.1(v)

20. In his witness statement and oral evidence in the civil claim, the Respondent maintained that it had been agreed that Mr L's 10% right was dependent upon him meeting a target of generating £300,000 income from his own clients. This was rejected by the Judge and the Applicant relied on that finding in support of its case.

Allegation 1.1(vi)

21. The Applicant's case was that the Respondent's evidence concerning the alleged earnings of the Firm was evasive, obfuscating and lacking in candour.

Allegation 1.2

22. On 10 October 2011 the Respondent wrote to the Malaysian Bar Council about Mr L. The First Respondent stated that Mr L was employed by the Firm from June 2007 and that his "employment was terminated in March 2010, when it came to light that [Mr L] was under investigation by [the MACC] for alleged bribery".

23. On 18 September 2012 the Respondent wrote to The Law Society of England and Wales. He provided details of Mr L's employment with the Firm and stated he suspended him in January 2010, when he had learnt that he was under criminal investigation for bribery.

24. In the civil judgment, the Judge found the following:

> "I note that in correspondence with the Malaysian Bar Council and with the Solicitors Regulation Authority in October 2011 and in September 2012 he [the Respondent] claimed not to have known about the MACC investigation until January 2010. These statements were untrue. It is plain that he must have known about it by September 2009 at the very latest".

25. The Respondent's witness statement in the civil claim, at paragraph 32 stated that: "It was only later in September 2009 than [sic] I learned that [Mr L] had been arrested, remanded in custody and released on bail. The arrest was published in the local newspapers and was on the Malaysian Bar Council website".

Live Witnesses

The Respondent

26. The Respondent gave evidence over a number of days. The key points of his evidence are briefly summarised below.

27. The Respondent told the Tribunal that his amended Answer, notes that he had drafted to provide more explanation in respect of the answers and his witness statement were all true to the best of his knowledge and belief. The Respondent told the Tribunal that

he had carefully read and checked his witness statement and he had nothing to change or correct other than to add that he had suffered from a hearing problem since 2013. The Respondent told the Tribunal that this was relevant to the evidence he had given in the civil claim as the courtroom had been very large and he had not been able to hear clearly.

28. In cross-examination by Mr McClelland the Respondent went through his educational and professional background. He confirmed that since the early 2000s his focus had been mainly in litigation. Mr McClelland put to the Respondent that if the hearing impairment had been truly significant he would have raised this in his Answer. The Respondent stated that he had got a hearing aid in September 2019 and had not considered it necessary. He told the Tribunal that his hearing had deteriorated quite substantially after 2016 but that prior to that he had not followed up. The Respondent maintained that he had been unable to hear questions put to him in the civil claim.

29. Mr McClelland took the Respondent to exchanges in his evidence in the civil claim concerning payment of the sum of £2,000 per month to Mr L. Mr McClelland put to the Respondent that had he conceded that £2,000 was a small sum then he would have had to concede that the salary to be paid was small. The Respondent told the Tribunal that he had no such intention when answering the question. Mr McClelland asked him if he was saying that he did not understand the question related to the arrangements between Mr L and himself. The Respondent told the Tribunal that this was correct. He denied being evasive in his answer. Mr McClelland put to him that he had known that £2,000 a month was not competitive pay but had not wanted to concede this point in cross-examination in the civil claim. The Respondent replied that £24,000 was not competitive. The Respondent then appeared to change his answer when it was put to him that he knew that it was not competitive, by saying that he was not sure that this is what he said (or meant). The Respondent denied being evasive in either the civil claim or before the Tribunal. The Respondent confirmed that he was aware that a salary of £24,000 would be insufficient for a work permit application. The Respondent further confirmed that the advice he had received was that he should give Mr L a 10% interest in order to assist the application for the work permit. Mr McClelland put to the Respondent that the truth of the matter was that the Respondent's witness statement in the civil claim had been accurate as it reflected Mr L receiving a 10% share without any requirement to bring in £300,000. The Respondent denied this and told the Tribunal that if that was the reality of the arrangement there would have been be no point in employing Mr L.

30. Mr McClelland put to the Respondent that it was obvious that there could not have been a condition of £300,000 for Mr L to have received the 10% share because he was entitled under contract to have received 10% of the gross income of the Firm. The Respondent stated that that was the case if Mr L was a salaried partner but that as an equity partner he became self-employed. If Mr L had not been self-employed than he would have remained a salaried partner and the performance bonus would have been different. Mr McClelland put to the Respondent that at no point had he referred to a £300,000 condition when applying to the Home Office for the work permit. The Respondent replied that he did not need to as the Home Office had not asked him. The Home Office had asked the Respondent how Mr L would be paid and he had referred to the arrangements for a salaried partner.

31. Throughout his evidence the Respondent repeatedly referred to the distinction between an employee and a partner. He did not always engage with the detail of Mr McClelland's questions on this topic and this continued for long periods of his cross-examination.

32. Mr McClelland took the Respondent to the contract of employment and put to him that there was no reference to a £300,000 requirement there either. The Respondent told the Tribunal that this was a draft contract that he had sent to Mr L as an employee and that the equity partner contract never took place. Mr McClelland put to the Respondent that his letters to the Home Office referred to a salary of £24,000 and a 10% share based on gross revenue. After the work permit had been granted there was a contract which backed this up. There was no reference to a £300,000 condition. Mr McClelland asked the Respondent why Mr L would have wanted to be an equity partner and only to receive10% if he generated £300,000. The Respondent told the Tribunal that the reason would be because Mr L would not have to pay £30,000 capital. Mr McClelland questioned this by pointing out that Mr L would not have had to pay £30,000 as an employee. The Respondent then stated that being an equity partner was of more benefit to Mr L as the 10% was 10% of his own fee generation and if he was an equity partner he would have received 10% of the fees generated by the team that he was managing. Mr McClelland put to the Respondent that this was further fabrication and was inconsistent with his evidence before the Tribunal. The Respondent did not accept that he had been fabricating evidence or that there was inconsistency.

33. In relation to the evidence before the court in the civil claim, the Respondent told the Tribunal that he had not read his witness statement before that hearing and had not paid attention to the other documents. The trial bundle had been prepared by the claimant and there had then been a fire at the Respondent's office. The Respondent agreed that he had told the court that his witness statement had been made from his own knowledge and that the statement of truth was accurate. The Respondent, after some further questions and answers, agreed that he had been telling the court that he had read the witness statement and that it was true. Mr McClelland asked the Respondent to confirm that signing a witness statement containing untruths would be dishonest. The Respondent told the Tribunal that he was not sure about that and that it might amount to negligence. The question was put to him again and the Respondent told the Tribunal that he did not have a comment on this. Mr McClelland put to the Respondent that if a solicitor signed a statement of truth knowing that the statement contained untrue statements that this would be dishonest. The Respondent did agree with this but stated that this was not what had occurred in this case. Mr McClelland put to the Respondent that if a solicitor signed a statement of truth without reading it that that would be dishonest. The Respondent denied this but stated that it may be negligence. Mr McClelland pointed out that the Respondent had told the court that he had read it and signed it as being true and that on this basis it been dishonest to sign the statement of truth without reading the witness statement. The Respondent denied that this was dishonesty as that implied an intention to commit a crime and was therefore the wrong word to use. Mr McClelland put to the Respondent that if the statement was untrue then he had been misleading the court and the other side in litigation. The Respondent stated that this was possibly the case but not intentionally so. Mr McClelland asked the Respondent how there could be no intention to mislead if he had made a representation which he knew to be untrue. The Respondent did not directly address this question but

instead started telling the Tribunal that the contents of the witness statement had not reflected his instructions to counsel.

34. Mr McClelland asked the Respondent if he accepted that, if what he had said in his witness statement in the civil claim was true, this would have been an admission of deceit on the Home Office. The Respondent told the Tribunal that he could not comment on that. He stated that if the arrangement was a fiction or fraudulent then it would be wrong to have made such an application. Mr McClelland reminded the Respondent that his witness statement described it as a fiction and that therefore it was improper. The Respondent stated that he could not comment on that as he did not quite understand the question and he suggested that Mr McClelland was asking a legal question about immigration law. The Respondent subsequently did accept that it would be improper to have made such an application. There was then a significant portion of cross-examination which went to the process by which the Respondent had instructed counsel concerning the preparation of the witness statement. The gist of the Respondent's evidence was that counsel had made amendments to the witness statement but failed to draw them to his attention because there were not highlighted in red as he had requested. The Respondent had not checked the witness statement after it had come back from counsel. Mr McClelland put to the Respondent that the Applicant's case was that he had read the witness statement and knew it contain false evidence. The Respondent denied this.

35. Mr McClelland asked the Respondent whether he was suggesting that his barrister in the civil claim had set out to sabotage his case. The Respondent said that he did not have a comment on that but then said that it looked like he had but he did not know why. Mr McClelland asked the Respondent why, if that was the case, the Respondent had not adduced any evidence of communications between himself and counsel asking him why he had put him in this position. The Respondent stated that he had not been advised to do so. Mr McClelland put to the Respondent that he knew that the witness statement contained false statements and that his actions were dishonest. The Respondent denied this. The Respondent was asked whether he accepted that by confirming the accuracy of the statement under oath without having read it he had been dishonest and reckless. The Respondent denied this. He stated it was purely an oversight.

36. In relation to the letter from the accountant. The Respondent confirmed that Mr L had no prior relationship with the accountant. The Respondent further confirmed that he was a signatory to the annual reports which the accountant produced. The Respondent accepted that the letter dated 4 October 2008 had been submitted to the Home Office as part of the renewal application. The Respondent was asked whether he had read the accountant's letter. The Respondent stated that he may have done but he could not recall. The Respondent stated that he should have seen it, may have seen it, was not very sure and finally that he could not recall. That then followed extensive cross-examination as to whether or not Mr L was an equity partner or was seeking to become one. Mr McClelland asked the Respondent if Mr L had ever been an equity partner to which he replied that when Mr L became self-employed he was presumed to be an equity partner but having failed to achieve the £300,000 condition he then became an employee. Mr McClelland put to the Respondent that the reality of the situation was that he could not have conceded that the accountant's letter was accurate as this would have been fatal to his defence to the civil claim. The Respondent denied this and stated

that the defence had been prepared on the basis that Mr L's claim was that he was an equity partner and it was not part of his defence that Mr L had been a salaried partner.

37. Mr McClelland put to the Respondent that £300,000 in fee income was never going to be generated in the space of one year and that the Respondent had put up various obfuscations to resist the fact that he did not generate that sum. The Respondent raised the example of the 'V 'case which he said generated significant fees. Mr McClelland pointed out that the Respondent had been admitted to the Roll in March 2004, with the Firm commencing in May 2004 and the Court of Appeal judgment in the case being heard in July 2004. He therefore put to him that it could not be the case that the Firm had generated £360,000 of costs in only two months. The Respondent was unable to give a clear answer to this point. He denied inventing the £300,000 condition and denied giving false evidence.

38. In relation to the transcript of the meeting on 22 January 2010 the Respondent was asked if he was asserting that words had been manipulated to add things that were not said. The Respondent said he was not saying this but was pointing out that it had been secretly recorded and the original source had never been disclosed. Mr McClelland put to the Respondent that he had seen the transcript of the meeting before he was cross-examined in the civil claim. The Respondent stated that he had not seen the document and he had not focused on it. The first time he had seen it was when he had entered the witness box. The Respondent confirmed that his case was that it had not been transcribed in good faith. Mr McClelland asked the Respondent how he could resist the accuracy of the transcription or impugn the integrity of the transcriber without having consulted the audiotape on which it was based. The Respondent stated that he thought he had already seen the transcript but was not sure. He noted that it did not contain a statement of truth and he did not know who the transcriber was. He was unable to explain how he had reached that view.

39. In relation to the correspondence with the Law Society and the Malaysian Bar Council Mr McClelland put to the Respondent that the difference between September 2009 and January 2010 as the date on which he established that Mr L was the target of the investigation was not a typographical error but rather reflective of the Respondent learning about the investigation and sacking Mr L, as opposed to learning about it and continuing with him for several months before sacking him for a different reason. The Respondent denied this. Mr McClelland put to him that if he had found out in 2009 and continued working with Mr L for several months that would demonstrate that the termination was because of the dispute about money and not because of the investigation. The Respondent stated that his counsel in the civil claim should have stated January 2010 rather than September 2009. Mr McClelland put to the Respondent that he was aware of the situation in September 2009. The Respondent denied this and stated that he would not have renewed Mr L practising certificate in October 2009 if he had been.

40. Mr McLaren re-examined the Respondent at some length. This mainly had the effect of reiterating answers already given in cross-examination but did not add any further clarity to those answers.

Findings of Fact and Law

41. The Applicant was required to prove the Allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

42. 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.

43. **Allegation 1.1(i)**

Applicant's Submissions

43.1 Mr McClelland told the Tribunal that in relation to all the Allegations the Applicant relied on the Judge's findings of fact, the transcript of the Respondent's evidence in the civil claim and contemporaneous documents.

43.2 Mr McClelland explained that the Applicant relied upon the Judge's findings of fact as admissible evidence of the facts established, pursuant to Rule 15(3) of the SDPR 2007. He accepted that statements of opinion by the Judge, as distinct from findings, were not admissible.

43.3 In relation to Allegation 1.1(i) specifically, Mr McClelland described the Respondent's witness statement as a "shocking document" in that the Respondent had been claiming to have engaged in a brazen fraud on the immigration authorities. Mr McClelland told the Tribunal that the Applicant's position was that the witness statement was untrue in that the Respondent's attempts to say that the submissions made to the work permits agency were a sham was an attempt to avoid the contractual obligations to Mr L. Mr McClelland submitted that it was dishonest to file a false witness statement out of a desire to obstruct a claim.

43.4 Mr McClelland reminded the Tribunal that the Respondent had confirmed that this statement was true during examination-in-chief in the civil claim. Mr McClelland told the Tribunal that the Applicant did not accept the suggestion that his barrister was to blame for the words being in the witness statement. He took the Tribunal to the exchanges of emails between the Respondent and Counsel.

43.5 Mr McClelland submitted that any amplification in the final draft of the statement arose out of counsel's understanding of the Respondent's case and any mistake could have been corrected by the Respondent when he adopted his statement in evidence. Mr McClelland submitted that even on the Respondent's own case, which was that he did not check the statement before signing it, this was dishonestly reckless.

43.6 Mr McClelland submitted that the Respondent had also argued that the statements made for the purposes of the work permit were simply proposals made to the work permits agency, but not to Mr L. Mr McClelland submitted that the Respondent's explanations were untrue, evasive, obfuscating, and/or lacking in candour. The Respondent had been attempting to resile from his witness statement without conceding the issue of Mr L's

rights to payment. Mr McClelland submitted that the Respondent had made the untrue statements knowingly and dishonestly as the relevant matters were within his own knowledge. In the alternative Mr McClelland submitted that he had been reckless as to their truth.

43.7 In relation to the statements in the draft contract of employment, the Respondent had conceded in the civil claim that the terms accurately reflected the agreement with Mr L.

43.8 Mr McClelland submitted that the Respondent had failed to act with integrity in breach of Principle 2 of the SRA Principles 2011 and had failed to maintain the trust that the public placed in both him and the provision of legal services, in breach of Principle 6 of the SRA Principles 2011.

43.9 Mr McClelland rejected the submission of Mr McLaren concerning Principle 1. This Principle required a solicitor to "uphold the rule of law and the proper administration of justice". This was a fundamental requirement. Mr McClelland submitted that the logic of the Respondent's case was that, when giving evidence, "a solicitor could engage in a pre-mediated attempt to pervert the course of justice and still escape a finding that he had failed to uphold the proper administration of it." Mr McClelland submitted that the Respondent's position on this issue was misconceived and that the Respondent had breached Principle 1.

Respondent's Submissions

43.10 Mr McLaren made some general submissions relevant to all Allegations. They are set out here for the avoidance of repetition but the Tribunal had regard to them when considering each of the Allegations.

43.11 Mr McLaren submitted that it was abundantly clear that the Respondent suffered from deficiencies and shortcomings in relation to his ability to process information and give evidence. His ability to deal with questions was significantly less than one would expect from a reasonably competent solicitor. Mr McLaren acknowledged that the Tribunal may conclude that the Respondent did not listen properly at times, failed to comprehend relatively easy questions, failed to analyse questions and answers at times and failed to marshal his thoughts. Mr McLaren submitted that the Respondent was not always articulate and that he sometimes said what he did not mean.

43.12 In his skeleton argument, Mr McLaren also referred to the Respondent's command of English as not being perfect.

43.13 Mr McLaren submitted that the Respondent had not engaged with the civil claim. The preparation had been done "on the hoof" which "inevitably led to a car crash". Although the Respondent had taken the Tribunal proceedings very seriously, the cognitive difficulties had got worse, resulting in his shortcomings being apparent in his evidence to the Tribunal.

43.14 Mr McLaren submitted that all the Allegations against the Respondent required the Applicant to prove a state of mind on the part of the Respondent. Someone could only be evasive if they were able to comprehend, analyse and process the question and then

deliberately choose not to answer it. The same went for being obfuscatory and lacking in candour.

43.15 Mr McLaren made clear that he was not submitting that the Respondent suffered from a clinically diagnosed condition and he had not adduced any medical report. However he submitted that it was "plain to see" that the Respondent was having real mental difficulty in recalling things in stressful situations such as giving evidence. Mr McLaren invited the Tribunal to look at the Respondent's evidence "not through the prism of a competent solicitor with reasonable capacity to understand and analyse the questions" but rather with regard to this particular Respondent. The Respondent had not been dishonest and had done his best to assist the Court in the civil claim and this Tribunal.

43.16 Mr McLaren submitted that there was a legal issue as to whether Principle 1 was engaged where a solicitor was giving evidence in a personal capacity. This argument was set out in detail in the skeleton argument. In essence Mr McLaren submitted that only those who were in a position to "uphold" the rule of law and the administration of justice could come within the ambit of Principle 1. He submitted that someone giving evidence merely as a witness did not fall within this ambit and that the Respondent had been giving evidence in the civil claim as a witness in a person a capacity. Mr McLaren submitted that none of the exceptions set out in paragraph 5.1 of the guidance to Principle 1 applied in this case. The Respondent had not been undertaking an activity "as a lawyer"; undertaking an activity in some other business "capacity"; or undertaking an activity in some other private "capacity".

43.17 In relation specifically to Allegation 1.1(i), Mr McLaren referred the Tribunal to the Respondent's Amended Answer and to his own Skeleton Argument.

43.18 Mr McLaren submitted that the Applicant had over-prosecuted the matter. The reality was that the Respondent had not read his witness statements. While this could amount to negligence, the Respondent had convincingly explained the reason for this. There was no question of the Respondent having deliberately making false statements.

43.19 Mr McLaren reminded the Tribunal that the first five witness statements were not relevant to these Allegations and it was the sixth one that was the subject of criticism. The Respondent had drafted his own witness statement initially, before sending it to Counsel to review. The Respondent had not used the word "fiction" in his own draft. He had also not said anything about the target issue. For whatever reason, those contentious passages were introduced by Counsel. The Respondent had asked Counsel to highlight in red the changes that he had made but this had not happened. The covering email from Counsel referred to the removal, but not the addition, of sections of the witness statement that amounted to argument and although it did also advise the Respondent to check the statement carefully, Mr McLaren submitted that there was no evidence that the Respondent had realised that those changes had been made.

43.20 Mr McLaren submitted that the failure to check the statement did not amount to misconduct. It was not reckless as the Respondent was not aware there was a risk that the witness statement was materially different to his draft. While the Respondent should have read his witness statement before giving evidence, the failure to do so was also

not misconduct. The confirmations he had given at the start of the trial that the statement was true to the best of his knowledge and belief were not untruthful.

43.21 In terms of the alleged untrue statements in the Respondent's oral evidence, Mr McLaren reminded the Tribunal of the Respondent's evidence in these proceedings.

43.22 In respect of the proposal issue, the Respondent had been wrong to deny that the letters to the work permits agency were proposals to Mr L. There had been no reference to the £300,000 condition in the documents but the Tribunal had heard the Respondent's evidence on the point. The initial agreement was that Mr L would work as employee. The discussion about equity partnership only took place when Mr L arrived in England and wanted to be an equity partner. The £300,000 figure was discussed and agreed orally, which is why it was not in the documents. Mr McLaren submitted that the Respondent had become fixated on the difference between an equity partner and employee and this had clouded his ability to answer relatively simple questions on the issue. However, Mr McLaren submitted that the Respondent had genuinely believed that he was giving truthful evidence.

43.23 Mr McLaren noted that dishonesty had not been alleged initially in relation to Allegation 1.1, but had been added by amendment. He submitted there was no good reason for the Applicant to have done so. Mr McLaren submitted that it was highly significant that the Judge had made no finding of dishonesty, despite being the best person to do so having heard all the live evidence. Mr McLaren submitted that the Judge would not have hesitated to make an express finding of dishonesty if he had found dishonesty, since much of the trial turned on the respective credibility of the Respondent and Mr L.

43.24 Mr McLaren submitted that the inescapable inference was that the Judge did not consider the Respondent to have been dishonest in giving his evidence in the civil claim. The Judge did not appear to have reported any misconduct to the SRA. Mr McLaren's submissions as to dishonesty were applicable to all aspects of the case where dishonesty was pleaded. Although they are not repeated below, the Tribunal had regard to them each time it was required to consider dishonesty.

<u>The Tribunal's Findings</u>

43.25 The Tribunal considered, as a preliminary point, Mr McLaren's submissions about the Respondent's ability to give coherent evidence.

43.26 The information before the Tribunal in this regard was set out in the Respondent's evidence and in submissions. In particular the Respondent had set out a number of personal difficulties he had faced and that evidence had not been challenged by the Applicant. However there was no medical evidence before the Tribunal and indeed Mr McLaren acknowledged that he was not suggesting that there was a clinically diagnosed problem with the Respondent's mental health.

43.27 There had been references to some physical health issues experienced by the Respondent but the Tribunal had not seen any medical evidence as to how these health issues would affect his evidence.

43.28 The Tribunal would usually have expected to have medical evidence in support of the type of submission made by Mr McLaren. The Tribunal had noted that the Respondent became visibly distressed on two occasions and it had also noted the way in which he had interacted with questions, including from Mr McLaren. The Respondent had been asked some reasonably straightforward questions and had come back with answers to something different. The Tribunal accepted that the Respondent had, at times, appeared to struggle when giving evidence in these proceedings and it agreed with Mr McLaren that the Respondent was not a good witness. The Tribunal's findings as to the reasons for the inadequacy of parts of his evidence are set out below. The Tribunal considered that it was more difficult to form a view as to the Respondent's abilities in 2015 when giving evidence in the civil claim, which was the basis of the majority of the Allegations.

43.29 Although the Respondent's evidence had been difficult to follow at times, there was nothing about how he was representing his position which suggested he lacked capacity. The Tribunal was able to understand the key elements of the Respondent's position, notwithstanding the inconsistencies in his evidence, and how his narrative flowed throughout. The Tribunal was satisfied that the Respondent had capacity to give evidence, to understand the questions and to present his defence. The case was underpinned by a large number of contemporaneous documents, which would have assisted the Respondent in recalling matters from some years ago.

43.30 The Tribunal did not consider the Respondent to be struggling with the English language. No doubt had that been the case arrangements would have been made for him to have the assistance of an interpreter. The Tribunal's difficulties in following parts of the Respondent's evidence arose from inconsistencies and failures to address the question and not from any language issues.

43.31 The Tribunal considered the Respondent's sixth witness statement. On the Respondent's own case, both in his evidence in the civil claim and before this Tribunal, the relevant sections of the sixth witness statement were not maintained as being correct. In the sixth witness statement at paragraph 27 the Respondent had described the arrangements in the following terms:

> "27. When I forwarded that draft contract of employment, I understood the agreement between the Claimant and me to be that the Claimant was coming to the UK in order to be a salaried partner working in my firm. Both of us knew that, if the Claimant's earnings were pitched at £24,000, he would not be given a work permit. Both of us knew that I could not afford to pay more than £24,000. Both of us knew that the assertion that the Claimant would receive 10% of the gross turnover of the business was a fiction and that he would not receive the same or any part of it. Both of us had an understanding that, were he to generate £300,000 annual billings on his own clients, the Claimant would, upon payment to me of the capital sum of £30,000, become an equity partner with a 10% interest in the business."

43.32 In his oral evidence in the civil claim the Respondent had confirmed that the contents of the work permit application had been true. It therefore followed that his description of it a "fiction" in his witness statement had been untrue.

43.33 The Tribunal carefully reviewed the draft witness statement and compared it to the final version that was put before the court. The assertions complained of in the final version did not appear in the draft version prepared by the Respondent himself. The Tribunal noted that Counsel spent time reviewing the draft witness statement, as evidenced by his fee note. The Tribunal accepted the unchallenged evidence that Counsel had not highlighted his changes in red, despite the Respondent having asked him to do so. In his email to the Respondent dated 7 December 2012 Counsel wrote:

> "I have cut down the statement quite considerably. A number of matters you raised were not evidence but argument."

43.34 The email did not, at any point, refer to additions to the statement. This, combined with the absence of highlighted changes, could have led the Respondent to conclude that there were no material changes beyond removal of some material. Counsel had, quite properly, specifically advised the Respondent to check the statement carefully and the Respondent had, it was accepted, failed to check it in any detail at all. The Tribunal was very critical of the Respondent's careless approach to such an important document. He should have checked it carefully before signing and filing it.

43.35 While the Tribunal deprecated the Respondent's approach, the Allegation was that he had made the statement knowingly or recklessly. The Tribunal was not satisfied beyond reasonable doubt that the Respondent had done so knowingly as it accepted that he had not taken the trouble to read the statement before signing it. The absence in the draft witness statement of a suggestion that the application to the work permits was a fiction was a relevant factor, combined with the process of amendment set out above.

43.36 In considering recklessness the Tribunal applied the test in R v G [2003] UKHL 50 where Lord Bingham adopted the following definition:

> "A person acts recklessly…with respect to (i) a circumstance when he is aware of a risk that it exists or will exist; (ii) a result when he is aware of a risk that it will occur and it is, in the circumstances known to him, unreasonable to take that risk."

43.37 This was adopted in the context of regulatory proceedings in Brett v SRA [2014] EWHC 2974 (Admin).

43.38 The Tribunal considered whether the Respondent perceived there was a risk that the witness statement contained untrue statements. As noted above, the Tribunal could not be satisfied beyond reasonable doubt that the Respondent give the matter any significant thought. It was likely that he had simply assumed the statement was correct and not considered it beyond that. While the Tribunal strongly disapproved of such an approach, the result was that it could not be sure that the Respondent had perceived such risk and therefore did not find recklessness proved beyond reasonable doubt.

43.39 The Tribunal therefore found the part of Allegation 1.1(i) relating to the Respondent's witness statement not proved.

43.40 The Tribunal then moved on to consider the Allegation with reference to the Respondent's oral evidence. This had been referred to as part of Allegation 1.1(a) but also in 1.1(b) which referred to "evidence during the hearing". The Tribunal addressed the question of the Respondent's oral evidence as a whole.

43.41 The Tribunal reviewed the transcript of the Respondent's oral evidence in the civil claim, particularly as to whether the work permit application was merely a proposal. In his evidence the Respondent had told the Court that his firm had made an application for a work permit and that the contents of that application were true. The Tribunal noted the following exchange:

> "MS IYER [Counsel]: So, at that point in time there was clearly an agreement that he would get £24,000 as basic salary plus a 10 per cent of the equity share from the firm?
>
> A [Respondent]. I disagree. This is a proposal put forward to the Work Permit UK under the declaration not to the claimant."

43.42 In the passages that follow the Respondent made several references to "proposals" and there was extended cross-examination of the Respondent on the point. The Tribunal noted that the Respondent had been quite literal in some of his answers and it appeared that he may have looked at the work permit application document and have separated the proposals made in that from the proposals he was making to Mr L. The Tribunal noted that there were at least two instances where the Respondent had clearly stated that these were not proposals being made to Mr L.

43.43 The cross-examination in the civil claim had become hard to follow in places and the result of that was that it was not clear to the Tribunal that the Respondent's answers were untrue. There was the possibility that Counsel and the Respondent had been talking at cross-purposes. The Tribunal could not be satisfied that the Respondent's answers were untrue and it therefore found the part of Allegation 1.1(i) relating to the Respondent's oral evidence not proved.

44. **Allegation 1.1(ii)**

Applicant's Submissions

44.1 Mr McClelland reminded the Tribunal that the accountant's letter recorded that Mr L had been recruited "as a ten per cent equity partner" and then set out the arrangements for the calculation and payment of his interest "at the end of each accounting year". Mr McClelland submitted that these arrangements were contrary to the Respondent's case that that Mr L would not receive a 10% interest unless and until the £300,000 condition had been satisfied. The Respondent was, accordingly, unable to accept that the accountant's statements were accurate. Instead, Mr McClelland submitted, the Respondent had maintained that the letter could be explained on the basis that he had relied on the accountant's expertise as to what should be said, that the contents were not based on what he had told the accountant, and that the accountant would have obtained instructions from Mr L as to its contents. Mr McClelland referred the Tribunal to the passage of the Respondent's cross-examination set out above in the 'Factual Background'.

44.2 Mr McClelland submitted that the Respondent had approved the accountant's letter because it broadly reflected the position as he understood it to be, in that Mr L was to receive a 10% right in addition to salary. Mr McClelland submitted that the Respondent was in a position to know whether the account provided was correct and he would not have permitted representations to be made which he knew to be incorrect.

44.3 Mr McClelland told the Tribunal that the Respondent had previously maintained that this was "a single isolated exchange". Mr McClelland submitted that this was incorrect. The Respondent had been giving evidence under oath and had denied a fact within his own knowledge in order to assist his case. Mr McClelland submitted that this was dishonest. The exchange had not been isolated but was part of a longer exchange about the letter.

44.4 Mr McClelland submitted that to the extent that the Respondent had claimed to be confused, that confusion was of his own making. He submitted that the Respondent's denial was knowingly or recklessly untrue and, in the circumstances, dishonest. He further submitted that the Respondent's evidence had been evasive, obfuscating, and lacking in candour, thereby breaching Principles 1, 2, and 6.

Respondent's Submissions

44.5 Mr McLaren submitted that this Allegation involved one narrow answer to a question in the in cross-examination that was not as clear as it could have been. Mr McLaren submitted that one "immediate knee jerk reaction to a question" could not make the Tribunal sure that the Respondent had been acting dishonestly.

44.6 Mr McLaren submitted that the cross-examination of the Respondent in the civil claim had generally been very unclear and the subject of criticism on a number of occasions by the Judge. On this topic, Mr McLaren submitted that the question was poorly phrased and that the Respondent had become confused and either misunderstood the question or mistakenly answered a different question. Mr McLaren submitted that to make such a serious Allegation on the basis of an un-clear question which had been misunderstood was not an appropriate course for the Applicant to have taken. He invited the Tribunal to dismiss the Allegation.

The Tribunal's Findings

44.7 The Tribunal reviewed the accountant's letter, the following extract being relevant to this Allegation:

> "We understand that Dotcom Solicitors sought the services of [Mr L] from 24 May 2007, as a 10% equity partner.
>
> We have been advised that originally the firm was of the opinion to pay wages and share of profits, if applicable, on a monthly basis. However calculation of net profit will be impossible to predict at the beginning and it can only be completed at the end of each accounting year being 31 March and therefore, since the beginning was paid £2000 as monthly allowance."

44.8 The Tribunal also reviewed the transcript of the Respondent's evidence on this point in the civil claim and the Judgment. It also reviewed the transcript of his evidence before the Tribunal on the same point.

44.9 The Respondent had accepted that he approved the submission of this letter to the Home Office. The critical part of the letter was to do with the partnership rather than matters of accountancy and therefore the Respondent's suggestion that his lack of accountancy knowledge was a factor was not one that satisfactorily addressed the Allegation. The Respondent did not require specialist knowledge to understand what the accountant's letter said. The Respondent had given a large amount of evidence, both written and oral, in the proceedings before this Tribunal about the distinction between an employee and a partner but had not engaged with the questions put to him by Mr McClelland. This letter was clear, contemporaneous evidence of the Firm's position regarding Mr L status and the arrangements for any profit share. The letter had not assisted the Respondent's case in the civil claim and was corroborative evidence of Mr L's case.

44.10 The Tribunal was satisfied beyond reasonable doubt that the Respondent had been attempting to retreat from that piece of damaging evidence. The next question to address was whether that attempt to retreat from the evidence was truthful.

44.11 The Respondent had not provided a clear explanation in either set of proceedings as to why he had sent the accountant's letter to Home Office if it was not true. The Respondent clearly knew the difference between a 10% equity share and payment of money. The accountant's letter was written in plain language and the Respondent had accepted he saw it and sent it to the Home Office.

44.12 The Tribunal was satisfied beyond reasonable doubt that the Respondent's attempts to distance himself from the letter and deny the accuracy of its contents was untrue.

44.13 The Tribunal found that that the accountant's letter did represent what he understood to be the reality of the situation.

44.14 The Tribunal moved on to consider whether the Respondent's untrue evidence had been given knowingly. The Tribunal noted that the Respondent had had several opportunities to address the accountant's letter in his evidence in the civil claim. The Tribunal did not accept that this was inadvertent. The Respondent was fully aware that the letter was unhelpful to him in respect to the arguments about the 10% share. The Tribunal, having carefully read the transcript of the Respondent's evidence in the civil claim, was satisfied beyond reasonable doubt that the Respondent had engaged in a deliberate attempt to evade the adverse effect of that letter on his case. This was a positive thought process, as distinct from the omission that had been the case in Allegation 1.1(i).

44.15 The Tribunal found the factual basis of Allegation 1.1(ii)(a) proved beyond reasonable doubt on the basis that the Respondent had knowingly given untrue evidence. It did not, therefore, need to consider whether he had done so recklessly.

44.16 *Principle 1*

44.16.1 The Tribunal addressed Mr McLaren's preliminary submission about the applicability of Principle 1 where the Respondent had been giving evidence in

his own case. The Tribunal found that a solicitor was required to uphold the rule of law and the administration of justice at all times including when giving evidence in their own case. The professional obligation not to give untruthful evidence did not fall away simply because the Respondent was giving evidence in a case to which he was a party.

44.16.2 The Tribunal noted that in this particular case the Respondent was in fact giving evidence about his practice and the arrangements for the running of his firm. The matters were therefore not completely separate from his role as a solicitor. The Tribunal had found that the Respondent had knowingly given evidence that was untrue and as such it followed that he had failed to uphold the administration of justice. The Tribunal found the breach of Principle 1 proved beyond reasonable doubt.

44.17 *Principle 2*

44.17.1 In considering whether the Respondent had lacked integrity, the Tribunal applied the test 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".

44.17.2 Wingate highlighted the need for solicitors to be scrupulously accurate and this clearly extended to the nature of evidence given in Court. Mr McLaren had conceded that Principle 2 was engaged even when a solicitor was giving evidence in their own case and the Tribunal agreed. The Respondent should have given an accurate candid account even if it was adverse to his case and he had not done so. Instead, he had knowingly given evidence that was untrue. The Tribunal found the breach of Principle 2 proved beyond reasonable doubt.

44.18 *Principle 6*

44.18.1 It followed from the Tribunal's findings that the trust the public placed in the Respondent and provision of legal services would be undermined in circumstances where untrue evidence was given to the Court. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

Dishonesty

44.19 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."

44.20 The Tribunal applied the test in Ivey and in doing so, when considering the issue of dishonesty adopted the following approach:

- Firstly the Tribunal established the actual state of the Respondent's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held.

- Secondly, once that was established, the Tribunal then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

44.21 The Tribunal's assessment of the Respondent's state of knowledge is set out above in its factual findings. The Respondent knew that what the accountant's letter said, he knew that it accurately reflected the arrangement he had reached with Mr L and he knew that it therefore did not assist his case. The Respondent knew what he was being asked in the civil proceedings and it rejected the submission by Mr McLaren that the questions on this point were not sufficiently clear. The Respondent had therefore known that the evidence he had given in the civil claim had been untrue. The Respondent had adopted a strategy of distancing himself from the letter, despite that letter having been sent to the Home Office with his approval.

44.22 The Tribunal accepted that the Judge had not made a finding of dishonesty but that did not mean that he had accepted the Respondent's evidence as being truthful. The Judge was not carrying out an assessment of the Respondent's compliance with his professional obligations as that was not the purpose of those proceedings. The Tribunal was satisfied beyond reasonable doubt that ordinary decent people would be horrified by the Respondent's conduct and would conclude that it was dishonest. The Tribunal considered character references submitted on the Respondent's behalf. While they all spoke well of the Respondent, they were all from his own employees and were relatively short. The references commended the Respondent for his substantial experience but the Tribunal did not find that they could displace the findings it had made on the documentary evidence.

44.23 The Tribunal found the allegation of dishonesty proved beyond reasonable doubt.

45. **Allegation 1.1(iii)**

Applicant's Submissions

45.1 Mr McClelland submitted that it was abundantly obvious that the references to "you" and "your" were references to Mr L, to whom the email was addressed. The Respondent had nevertheless denied this and gave evasive and obfuscating evidence to the effect that they might refer to Mr L's friends. Mr McClelland submitted that it did not suit the Respondent's case to concede the point as this would have required him to concede that the £24,000 annual payments agreed with Mr L were "small". The Applicant relied on the Judge's rejection of the Respondent's evidence on this email and the Judge's findings that "at times [the Respondent] denied the plain meaning of the November 2006 emails".

45.2 Mr McClelland submitted that by denying the plain meaning of an email in sworn evidence and giving evidence which was evasive, obfuscating, and lacking in candour, the Respondent had breached Principles 1, 2 and 6.

Respondent's Submissions

45.3 Mr McLaren submitted that the email was not clearly drafted, and covered a number of subjects, such that the email may not have had a "plain meaning". In the circumstances of pressurised cross-examination and other factors such as lapse of time it was not surprising that the Respondent had not understood or engaged with the purported "plain meaning". Mr McLaren submitted that this did not amount to professional misconduct issue. The Judge did not find that the Respondent had "denied the plain meaning of the November 2006 emails" deliberately and so, in Mr McLaren's submission, the Judge had not excluded the possibility that the Respondent had been mistaken in his belief as to the plain meaning of the email.

45.4 Mr McLaren reminded the Tribunal that the Judge did not make a finding that the Respondent's evidence on this point was evasive, obfuscating and lacking in candour. Mr McLaren submitted that in order to prove this limb of the allegation, the Applicant would have to undertake a "close textual analysis" of all the evidence given by the Respondent in relation to the email, without the Tribunal having the benefit of hearing the live evidence given in the civil claim.

45.5 Mr McLaren told the Tribunal that the Respondent, in his evidence to the Tribunal, had repeatedly accepted that he had not answered the questions put to him in the civil claim. Mr McLaren reminded the Tribunal that the Respondent had told it that he was confused by the questions. At time of the civil claim the email was 9 years old and the Respondent had not prepared for the trial.

The Tribunal's Findings

45.6 The Tribunal noted that the Rule 5 statement referred at one stage to the email being dated 6 November 2007 when in fact it was 6 November 2006. The Tribunal was satisfied that this was merely a typographical error and it had formed no part of the Respondent's case that it was a different email.

45.7 The Tribunal read the email in full so as to understand the full context of what was said in it. The Tribunal was satisfied beyond reasonable doubt that the email was not complicated or lacking a plain meaning. The sentence that read "The monthly allowances I agreed to you is to keep you going for short period. No doubt that will be taken into consideration on your profit" clearly referred to the arrangements that the Respondent had agreed with Mr L personally. The Tribunal considered that it was too much of a stretch to suggest that this was a reference to Mr L's friends.

45.8 The Tribunal reviewed the transcript of the Respondent's evidence in the civil claim. The Respondent's position when giving oral evidence in the civil claim was inconsistent. At one point he told the Court that "Yes, that is not referring to him. That is referring to his two friends that he was proposed". At another point he told the Court will be "Yes, part of it referring to the claimant, part of it referring to the proposed partners, friends."

45.9 There was then an exchange in which the Respondent reverted to denying that the email had any reference to Mr L specifically:

> "MS IYER: Turning to the last sentence where you say, "I understand that it is a small sum but that can be increased eventually based on the profit we make", that was actually referring to you and him, was it not?
>
> A. Well, I do not think so at all. 2,000 is a small sum. It is a very competitive pay at that point of time in…"

45.10 The Tribunal was satisfied that the Respondent had denied the plain meaning of the email. Even if the Respondent had initially been confused, he was asked a number of questions about the email that gave him the opportunity to correct or clarify his evidence and he had not done so. The Tribunal was satisfied beyond reasonable doubt that, based on the nature of the exchanges in cross-examination during the civil claim, that the plain meaning of the email was adverse to the Respondent's case and that this was the reason he had denied it. The Respondent had been evasive, had obfuscated and had lacked candour in his evidence concerning this email.

45.11 The Tribunal found the factual basis of Allegation 1.1(iii) prove beyond reasonable doubt.

45.12 *Principle 1*

45.12.1 The Tribunal found that giving evidence that was evasive, obfuscatory and lacking in candour was inconsistent with the Respondent's duty to uphold the administration of justice. The Respondent had not made the appropriate concessions when faced with a document that was adverse to his case. The Tribunal found the breach of Principle 1 proved beyond reasonable doubt.

45.13 *Principle 2*

45.13.1 The Tribunal again applied the test in Wingate. It clearly lacked integrity to give evidence in the manner that the Respondent had. The Respondent's obligation was to give evidence that was scrupulously accurate and candid

even where it was adverse to his interests. The Tribunal found the breach of Principle 2 proved beyond reasonable doubt.

45.14 *Principle 6*

45.14.1 The Tribunal found the breach of Principle 6 proved beyond reasonable doubt as a matter of logic following its earlier findings in relation to this Allegation.

45.15 Allegation 1.1(iii) was therefore proved in full beyond reasonable doubt.

46. **Allegation 1.1(iv)**

Applicant's Submissions

46.1 Mr McClelland submitted that in relation to the transcript of the meeting, the Respondent had made irresponsibly unfounded, evasive, and obfuscating statements. The Respondent had asserted that the transcript was "tailor-made to suit [Mr L] case" and relied on the fact that "[there] is no statement of truth who transcribed this in the first line it starts abruptly." When it had been shown that the audio CD had been disclosed on 2 November 2012, he asserted that his concern was the transcript "No, I didn't deny we don't have the recording, we had the CD not the transcript. I haven't seen the transcript. That's what I'm saying."

46.2 It had been put to the Respondent that the transcript had also been disclosed at the same time. At this stage, he asserted that he had not conducted his case, and the first time he had seen the transcript was in the trial bundle. When it had been put to him that there was no discussion in the transcript of Mr L needing to meet an income generation threshold, the Respondent stated that "there was a pen and paper on the table as well", apparently indicating that some non-verbal written communications may have occurred but not been picked up in the recording. The Applicant relied on the Respondent's persistent denials of the accuracy of the transcript. It was further submitted that it was unfounded for the Respondent to assert that the transcript had been doctored and thereby to call into question the probity of the transcriber when he had the audio record available to him and had identified no discrepancy with the transcript. Mr McClelland submitted that this was irresponsible and that, by giving evidence which was evasive, obfuscating, and lacking in candour and/or making irresponsibly unfounded assertions relating to the transcript, the Respondent had breached Principles 1, 2 and 6.

Respondent's Submissions

46.3 Mr McLaren reminded the Tribunal of the Respondent's explanation about the accuracy of the transcript. He submitted that it was clearly abridged in that it did not start at beginning of the meeting. Mr McLaren submitted that the Respondent's concerns were genuinely, if not reasonably, held. He accepted that the Respondent's evidence in the civil claim on this point was not well-judged but submitted that it was not irresponsibly unfounded or evasive. Mr McLaren told the Tribunal that the Respondent deserved criticism, but that it was not professional misconduct.

46.4 Mr McLaren reminded the Tribunal that the Judge had not made a finding that the Respondent's evidence in relation to the transcript was "irresponsibly unfounded, evasive, obfuscating and lacking in candour", which he had done on other points. It could therefore be inferred that the Judge did not consider this to be the case in respect of this point.

The Tribunal's Findings

46.5 The Tribunal noted that the Respondent had challenged the veracity of the recording and found that he was entitled to challenge the accuracy of a covert recording, which even on the Applicant's case, had been abridged. The fact that the basis of the challenge may have been erroneous did not deprive him of the right to make the case in the way that he had. The Tribunal took account of the fact that the Respondent's answers had been given in the course of cross-examination, during which he was stating his belief about the recording. The transcript of the recording was not a contemporaneous document in the same way that an email was, for example. The Tribunal could not be sure that the Respondent's evidence on this point was evasive, obfuscatory or lacking in candour. The Tribunal accepted that the Respondent could and should have addressed the issues before the trial, but did not find that the failure to do so meant that his evidence was a matter of professional misconduct.

46.6 The Tribunal was not satisfied to the requisite standard that this Allegation was made out and it therefore found it not proved.

47. **Allegation 1.1(v)**

Applicant's Submissions

47.1 Mr McClelland submitted that the Respondent's evidence in the civil claim to the effect that there had been a £300,000 condition had been untrue. There was no reference in any document that such a condition existed There was no mention of this condition in the correspondence between the Respondent and Mr L or in the information provided in support of the application for a work permit. It was not contained in the draft employment contract and the Respondent had made no reference to it in the recorded conversation on 22 January 2010.

47.2 At the time that the condition was allegedly agreed, there was no evidence that the Firm had generated earnings anywhere near £300,000. Mr McClelland submitted that the existence of this condition would have been inconsistent with the arrangements for a £30,000 capital contribution.

47.3 Mr McClelland submitted that the Respondent made these untrue statements knowingly, as the relevant matters were within his own knowledge. Alternatively, he had been reckless as to whether they were true. The Respondent had therefore breached Principles 1, 2 and 6.

Respondent's Submissions

47.4 Mr McLaren told the Tribunal that although the Judge did not accept the Respondent's evidence on this issue, he made no finding that the Respondent had knowingly,

dishonestly or recklessly given false evidence in this respect. Mr L's counsel had made no closing submissions to that effect. Mr McLaren submitted that the Judge had to choose which competing evidence was true, as was the case in all litigation, but it did not follow that the party whose evidence was rejected has been acting dishonestly. The hearing in the civil claim took place in June 2015 and dealt with terms negotiated between the Respondent and Mr L in the period November 2006-January 2007. Mr McLaren submitted that it was not surprising that memories would weaken and that, without any dishonesty, parties had become convinced of the accuracy of their own recollections. He submitted that the Respondent had genuinely tried to provide his best recollection and believed that he was giving accurate evidence. The allegation of dishonesty therefore lacked credibility and should be dismissed.

The Tribunal's Findings

47.5 The Tribunal noted that there was no evidence on any of the written documents that the 10% share was dependent on £300,000 income being generated. The only evidence of this came from the Respondent's assertion. The Tribunal referred to the correspondence in 2006, the application for the work permit, the draft contract of employment and the disputed transcript of the meeting. The overwhelming weight of the contemporaneous evidence was that there had been no discussion of such a condition, let alone an agreement to that effect. The Tribunal also found that the Firm had not generated anywhere near £300,000 and that there was no realistic prospect of it having done so.

47.6 In his evidence before the Tribunal the Respondent had maintained that the evidence he had given in the civil claim about the £300,000 condition was true. Mr McClelland and Mr McLaren had made several attempts to get the Respondent to clarify why he said it was true. The Respondent had offered some new explanations and none of them made sense in relation to the contemporaneous documents. The Tribunal accepted that the transcript of the meeting may have been incomplete but it nevertheless did provide clear evidence as to the main part of the conversation and it was inherently implausible that a condition as important as this would be missing from the transcript as well as from any other written document.

47.7 The Tribunal was satisfied beyond reasonable doubt that the £300,000 condition had not existed and it rejected the Respondent's evidence on that point. The Tribunal was satisfied beyond reasonable doubt that the Respondent's evidence in the civil claim had been untrue in this regard.

47.8 The Tribunal considered whether the Respondent had knowingly given untrue evidence. These were all matters within the Respondent's personal knowledge. The number of documents referred to in the civil claim were substantial and yet none of them contained a single reference to a £300,000 condition. The Tribunal found that the facts were so incontrovertible as to make it plain that the Respondent knew that the evidence he was giving was untrue. The Tribunal noted the Respondent's failure to engage with the question and answer it head-on in his evidence before it and found this was because the Respondent knew his case was untrue and had done so when giving evidence in the civil claim.

47.9 The Tribunal found the Respondent's evidence about the earnings he might have received, insofar as it applied to this Allegation, completely unconvincing. The Tribunal was satisfied beyond reasonable doubt that the Respondent had knowingly given untrue evidence in the civil claim on this point.

47.10 The Tribunal found the breaches of Principles 1, 2 and 6 proved beyond reasonable doubt on the same basis as it had done so in relation to Allegation 1.1(ii), where the Respondent had also knowingly given untrue evidence.

Dishonesty

47.11 The Respondent's state of knowledge was set out above. Put simply, the Respondent had known that there was no £300,000 condition but had knowingly given evidence that there was. The Tribunal was satisfied beyond reasonable doubt that this would be considered dishonest by standards of ordinary decent people. The Tribunal therefore found Allegation 1.1(v) proved in full beyond reasonable doubt, including the allegation of dishonesty.

48. **Allegation 1.1(vi)**

Applicant's Submissions

48.1 Mr McClelland invited the Tribunal to note the "tortured exchanges" during the Respondent's evidence in the civil claim which he submitted were "characterised by evasion, obfuscation and a lack of candour". Mr McClelland submitted that when it had been put to the Respondent that the Firm had never created £300,000 in turnover in any financial year, his answer evaded the question.

48.2 Mr McClelland submitted that when the Firm's accounts were put to the Respondent and he had been challenged as to the discrepancy between recorded turnover and the £300,000 figure, he had said that the accounts omitted fees which had been billed but not yet paid. When it had been pointed out that in fact the accounts did include "fees receivable", the Respondent had shifted his explanation, saying that the figures did not include work in progress. Mr McClelland submitted that the Respondent's evasion, obfuscation and lack of candour constituted a breach of Principles 1, 2, and 6.

Respondent's Submissions

48.3 Mr McLaren submitted that this was the weakest allegation against the Respondent in relation to his evidence in the civil claim. It was not supported by any findings or statements of opinion in those terms by the Judge. The Judge had found that the Respondent's evidence on this issue was "contradictory and shifting" and, in one respect, "not consistent" but Mr McLaren submitted that this was not the same as being "evasive obfuscating and/or lacking in candour". He submitted that the evidence of almost any confused witness, who is being successfully cross-examined, would inevitably change as the cross-examination progressively exposed errors in recollection or understanding. This was "not remotely a professional misconduct issue" on its own.

48.4 Mr McLaren accepted that in his evidence before the Tribunal the Respondent had raised further points as they occurred to him. It was also fair to say that he had gone off at tangents and not answered the questions. Mr McLaren submitted that this was part of same pattern. Mr McLaren submitted that the V case had not been before the Court in the civil claim and so the Respondent's evidence on that matter before the Tribunal was not directly relevant to evidence given in the civil claim and it could not be shown to be deliberately evasive.

The Tribunal's Findings

48.5 The Tribunal noted that there was overlap between this Allegation and Allegation 1.1(v) to the extent that the earnings of the Firm were a relevant factor in both. The Tribunal found that this was a further example of an established pattern whereby the Respondent came up with new answers when faced with difficult evidence. The Tribunal had rejected the Respondent's evidence about the earnings of the Firm for the reasons set out in relation to Allegation 1.1(v)

48.6 The Tribunal was satisfied beyond reasonable doubt that the Respondent's evidence had been evasive, obfuscatory and lacking in candour. The Tribunal had already found that giving evidence in such a way was a breach of Principles 1, 2 and 6 when considering Allegation 1.1(iii). It found the same Principles breached in respect of this Allegation for the same reasons.

48.7 Allegation 1.1(vi) was therefore proved in full beyond reasonable doubt.

49. **Allegation 1.2**

Applicant's Submissions

49.1 In support of this Allegation, Mr McClelland relied on the Judge's findings, the Respondent's witness statements and the Respondent's oral evidence in the civil claim.

49.2 Mr McClelland submitted that the Respondent's statements to the Law Society and the Malaysian Bar Council were false since he had known that Mr L was being investigated long before their commercial relationship broke down in January 2010. The Respondent's statements had also been contrary to his sworn evidence, as demonstrated by the exchange of emails in September 2009 referring to that investigation and by the Respondent's evidence in cross-examination concerning the significance of those emails.

49.3 Mr McClelland reminded the Tribunal that the Respondent's case about when he became aware of the investigation by the MACC had been found by the Judge to have been untrue.

49.4 The Respondent had submitted the two letters related to the "target issue – 'in other words the question of Mr L being a target of the investigation and that that the Judge's findings were limited to the "existence issue" – in other words the simple existence of an investigation. Mr McClelland accepted the submission about the two letters relating to the target issue but rejected the submission that the Judge was only addressing the existence issue. Mr McClelland submitted that it was clear that the Judge was dealing

with the target issue as he had recorded the Respondent's argument as being that his contract with Mr L was voidable because "[Mr L] failed to disclose that he was under investigation by the Malaysian Anti-Corruption Commission ("MACC") in respect of allegations of bribery, [and] that he was under a duty to disclose this as a material fact]...". Mr McClelland submitted that the Respondent's case had therefore raised the target issue and was reflected in the way in which the Judge had gone on to formulate the issues to be determined.

49.5 Mr McClelland submitted that the Respondent's own witness statement in the civil claim provided decisive evidence on the point. At paragraph 32 he had stated: "in September 2009 [...] I learned that [Mr L] had been arrested, remanded in custody and released on bail. The arrest was published in the local newspapers and was on the Malaysian Bar Council website." Mr McClelland submitted that this evidence "could not be clearer". He noted that the witness statement was made barely two months after the letter sent to the Law Society and before the Respondent became subject to disciplinary action. Mr McClelland noted that the Respondent now maintained that this was an error and the date should have read January 2010 but submitted that this was inconsistent with the Respondent's oral evidence in the civil claim. In that evidence the Respondent had agreed that he was aware by September 2009 that Mr L was the subject of an investigation.

49.6 Mr McClelland submitted that the Respondent must have known his letters were untrue. He submitted that both letters were consistent in stating that Mr L's employment had been terminated once the target issue came to light when in fact it had been known about for approximately four months prior to termination.

49.7 Mr McClelland submitted that the Respondent's letters were therefore knowingly untrue and, as such, dishonest and the Respondent had also breached Principles 2 and 6.

Respondent's Submissions

49.8 Mr McLaren submitted that the Respondent had found out that Mr L was the target of the MACC investigation shortly before Christmas dinner 2009. The date should therefore have been December 2009 and not January 2010. He submitted that nothing turned on that discrepancy given the Christmas break in between.

49.9 Mr McLaren referred the Tribunal to the draft of the Respondent's witness statement in the civil claim and noted that there was nothing in the draft to indicate that the Respondent had in fact known of the target issue in September 2009. This was another example of an addition to the final witness statement that had not been in the draft. Mr McLaren made the same submissions on this point as he had in relation to Allegation 1.1(i). Mr McLaren submitted that the Tribunal should not be bound by Judge's finding in those circumstances and should not rely on what had been said at paragraph 32 of his witness statement as being the truth on this issue. In relation to the oral evidence given in the civil claim, Mr McLaren referred the Tribunal to the Respondent's oral evidence in these proceedings.

The Tribunal's Findings

49.10 The Tribunal reviewed the letters to the Malaysian Bar Council and to the Law Society on 10 October 2011 and 18 September 2012 respectively. It also reviewed the Respondent's witness statement in the civil claim and the Judgment that followed that trial. The Tribunal was satisfied that the Judge had been addressing the target issue when considering the issues. This was apparent from his ruling and from the nature of the evidence that had been heard in trial and therefore the basis of that ruling.

49.11 The email of 24 September 2009 read as follows:

> "Dear Ram [the Respondent], I have been informed yesterday (Wed-23.09.2009) by MACC - Putrajaya (previously known as BPR) that due to the Hari Raya Holidays they require a week more time (until 02.10.2009) to complete their investigation and to make a decision. My lawyers here informed me that my presence here would be needed as MACC may require a further statement from me. To avoid having to return again for this purpose and to avoid prolonging this matter I have decided to indulge. Unfortunately, the earliest confirmed Gulf Air flight out is on 06. 10.2009 (Tuesday) I am now scheduled to arrive at 9:00 p.m. on 06: 10.2009. However, should MACC conclude earlier, I am on the waiting list for the earliest flight out available. Sorry for the inconvenience. Will keep you posted if I can arrive earlier."

49.12 The letter did not make clear that Mr L was under investigation and implied that there was an element of free will on the part of Mr L concerning his involvement in the investigation as he referred to deciding to "indulge" the MACC. In the Respondent's letter to Mr L solicitors of 21 April 2010 the Respondent had referred to it having "come to light recently" that Mr L was the target of the investigation.

49.13 The Tribunal reviewed the transcript of the Respondent's cross-examination in the civil claim. The Respondent's evidence did not make sense in the context of the emails and was closer to what he had said in his witness statement, namely that he found out about the target issue in September 2009. The Tribunal noted the circumstances of the drafting of that witness statement was analysed in relation to Allegation 1.1(i).

49.14 Taking all the evidence into account, the Tribunal could not be satisfied beyond reasonable doubt that what the Respondent had said to the Malaysian Bar Council or to the Law Society was untrue. The Tribunal could not exclude the possibility that the Respondent had found out in January 2010. The Allegation focused on the single aspect of the Respondent's knowledge of the target of the investigation, rather than his basis for terminating his agreement with Mr L. The Tribunal was not satisfied beyond reasonable doubt that the Respondent had made untrue statements to the Malaysian Bar Council or to the Law Society and accordingly found Allegation 1.2 not proved.

Previous Disciplinary Matters

50. There were no previous findings at the Tribunal.

Mitigation

51. Mr McLaren noted that there had been two aspects of the Respondent's evidence in the civil claim that the Tribunal had found to be dishonest. Mr McLaren submitted that there were exceptional circumstances in this case which meant that the Respondent should not be struck-off.

52. Mr McLaren submitted that the Tribunal's findings related to limited, narrow and discreet aspects of the Respondent's evidence in the civil claim. The Respondent had been a very confused witness and had been incapable in how he gave evidence to the court in the civil claim and to the Tribunal. He had been ill-prepared, unable to focus on questions and unable to process them so as to identify the relevant point. Mr McLaren submitted that the Respondent had not been motivated by any desire to mislead the court. In relation to answers given in cross-examination, he submitted that it was hard to have a pre-mediated plan to mislead. Mr McLaren noted that the Tribunal had dismissed the allegations relating to the witness statement. In relation to each instance, the misconduct had been momentary. Mr McLaren urged the Tribunal to take the Respondent's personal shortcomings into account and to find that they had contributed to his false evidence and dishonesty. He submitted that this reduced the Respondent's culpability.

53. Mr McLaren submitted that the nature of the dishonesty was relatively narrow, with extenuating circumstances, and the extent of it was relatively limited. He submitted that there was no need to protect public from the consequences of future litigation by the Respondent as he had given up litigation, as set out in his witness statement. There had been no suggestion of dishonesty involving the public or a client. Mr McLaren also referred the Tribunal to the Respondent's health issues.

54. Mr McLaren submitted that the Respondent was deeply remorseful and explained that the Respondent was too distressed to address the Tribunal directly. He submitted that this was a very unusual case where exceptional circumstances applied.

Sanction

55. The Tribunal had regard to the Guidance Note on Sanctions (2019). 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.

56. In assessing culpability the Tribunal listened carefully to Mr McLaren's submissions as to the Respondent's level of capability in dealing with both these proceedings and the civil claim, as it had done when considering when assessing the Respondent's evidence. The Tribunal again noted that there had been no medical evidence put forward that suggested the Respondent had been unfit to participate in the proceedings or to give evidence. The Tribunal found that the Respondent's motivation had been to succeed in the civil claim as he had a financial interest in the outcome. The Respondent stood to gain financially if the Judge had accepted this evidence.

57. The Tribunal noted that the Respondent had been asked a series of questions and had been taken through numerous documents at length. The misconduct could not therefore be described as spontaneous as it was not one question and answer but a prolonged line of questioning.

58. The Respondent was giving evidence in his own case about his own firm and therefore he had direct control and responsibility for the answers he had given. He was an experienced solicitor and litigator and would have been aware of his obligations to the Court.

59. In assessing harm, there Tribunal noted that the Respondent had been unsuccessful in the civil claim and therefore his untrue evidence had not resulted in any loss to an individual. However, there was fundamental damage to the profession caused by a solicitor being dishonest when under oath. The public would expect anyone to think carefully and give accurate evidence in Court and even more-so when it was a solicitor giving evidence.

60. 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"."

61. The Respondent ought reasonably to have known that he was in material breach of his obligations.

62. The misconduct was mitigated by the fact that while not limited to a brief duration, the misconduct did relate to a single piece of litigation. The Respondent had co-operated with the SRA. The Tribunal was unable to establish any real insight as the Respondent had continued to maintain that he had done nothing wrong.

63. 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 appropriate sanction was a strike-off. The protection of the public and of the reputation of the profession demanded nothing less. The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. The Tribunal had regard to the Respondent's personal circumstances both at the material time and at the time of the hearing and noted the submissions made by Mr McLaren. However, for the reasons outlined above, the Tribunal found there to be nothing exceptional about the circumstances of the misconduct. There was no justification for a lesser sanction and the only appropriate and proportionate sanction was that the Respondent be struck-off the Roll.

Costs

Applicant's Submissions

64. Mr McClelland told the Tribunal that the Applicant's total costs were £53,280 and applied for a costs order in that sum. The Respondent had accepted that there should be a costs order but had disputed the costs incurred since the adjournment. The costs figure before the adjournment was £26,642 and so the dispute was over the remaining £26,638 is what is in dispute.

65. Mr McClelland submitted that the costs claimed were entirely reasonable given that the hearing had lasted six days and been complex. Mr McClelland noted in comparison that the Respondent's costs had been £313,000 at the point of adjournment.

66. Mr McClelland submitted that the way in which the brief fees had been calculated was entirely reasonable given the gap of over a year between the start of the hearing and its conclusion. This involved reviewing the transcript of the first part of the hearing and further preparation in advance of the resumption of the hearing.

67. In terms of the solicitor's costs, the costs for first part of the hearing only related to work done since April 2019 and entirely post-dated the pleading of the case. Mr McClelland submitted that the fact that the hearing had concluded by way of remote hearing had increased logistical complications and added to the costs.

68. Mr McClelland rejected any criticism that may be made to the effect that the record of work done was inaccurate. There was correspondence that was copied to the Respondent and this was not a basis to reduce costs. There was also correspondence with the Tribunal which had been necessary as part of the re-listing arrangements.

69. Mr McClelland noted the statement of means provided by the Respondent and submitted that this should not be a basis for the Applicant to be deprived of its costs. The SRA was used to managing this sort of situation in recovering costs in a responsible and appropriate way. Mr McClelland noted that £110,000 of the debts were in fact guarantees and £70,000 were loans to the Respondent's family.

Respondent's Submissions

70. Mr McLaren told the Tribunal that the updated schedule of costs covering the second tranche of the three-day hearing was "absurd in that the costs had doubled despite substantial work having been done already and the fact that nobody had to travel to the Tribunal for second part."

71. Mr McLaren noted that communications with Respondent had been said to have increased by 8.5 hours and a further 29 letters or emails. The Respondent had only received four emails directly. The amount claimed for other communications had also increased substantially and could not be taken at face value. Mr McLaren also criticised the time claimed for attendance on documents and attendance at the hearing, both of which had doubled. Mr McLaren accepted that the Tribunal had sat on a further day.

72. Mr McLaren submitted that Mr McClelland's should have been dealt with by way of refreshers rather than a separate brief fee. He submitted it should have been one brief fee with five refresher fees. He did not dispute the brief fee of £14,000 or the refresher fees of £1,900 per day.

73. Mr McLaren submitted that taking all the factors into account, the appropriate course was to award the original costs and then add a modest uplift of approximately £8,000 for the resumed hearing. This would bring the total costs to around £30-35,000.

74. Mr McLaren then invited the Tribunal to make a further reduction based on the Respondent's statement of means. The Respondent had modest savings and his main asset was his car. He had £235,000 equity in his house with approximately £315,000 outstanding on the mortgage in respect of total equity The Respondent's income was around £12,000 per year and he had £400,000 of debts including £130,000 owing to HMRC. Mr McLaren submitted that the Respondent was financially "broken" and if he was ordered to pay significant costs this could result in the closure of the firm and the loss of jobs for its employees.

75. Mr McLaren invited the Tribunal to reduce the costs and to allow the Respondent extended payment terms.

The Tribunal's Decision

76. The Tribunal agreed that the Respondent should pay some of the Applicant's costs. In assessing those costs, the Tribunal agreed with Mr McLaren that Mr McClelland's fees should have been made up of one brief fee followed by refreshers. The Tribunal therefore deducted £14,000 and added £1,000 back to reflect time spent on the transcript of the first part of the hearing and £1,900 for the additional day that the Tribunal had sat. This took Mr McClelland's fees to £24,500. The Tribunal rejected Mr McClelland's submission that further costs had been incurred due to the hearing taking place remotely. There was no evidence to support that assertion and indeed travel time and costs had been saved.

77. In relation to the solicitor's costs, the Tribunal was not satisfied that all of the additional work and emails were justified, while accepting that work was generated by the delay in concluding the matter. The appropriate reduction was £2,000.

78. The Tribunal considered that the costs should reflect the fact that some Allegations had not been proved and it reduced the costs by a further £2,500 to reflect that. The Tribunal noted the Respondent's conduct in relation to his failure to check his witness statement. It did not conclude that any of the Allegations had not been properly brought. This reduced the overall costs to £34,884.

79. The Tribunal carefully reviewed the Respondent's means. It noted that not all of his liabilities were debts and some were guarantees. While the Respondent would not be earning as a solicitor that did not preclude him from other areas of work. It also noted that he had equity in his property and so the possibility of charging orders could be explored. The Tribunal would expect the SRA as a responsible regulator and public body to approach recovery of costs a reasonable and responsible way. The Tribunal therefore decided to make no further reduction on account of means.

Statement of Full Order

80. The Tribunal Ordered that the Respondent, RAMACHANDREN NARAYANASAMY, 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 £34,884.00.

Dated this 28th day of January 2021
On behalf of the Tribunal

JUDGMENT FILED WITH THE LAW SOCIETY
29 JAN 2021

H Dobson
Chair