SOLICITORS DISCIPLINARY TRIBUNAL

Case No. 11925-2019		
Applicant		
Respondent		
Cube, 199 Wharfside		
The Respondent did not attend and was not represented.		

Allegations

- 1. The allegations against the Respondent made by the Solicitors Regulation Authority ("SRA") were that:-
- 1.1. On or around 5 February 2015 he submitted certificates, purportedly from BPP University College and which he knew or should have known to be false, to the SRA in support of his application for admission to the Roll of Solicitors. In doing so he breached all or alternatively any of Principles 2, 6 and 7 of the SRA Principles 2011 ("the Principles").
- 1.2. On or around the same dates, he submitted an application to the SRA for admission to the Roll of Solicitors which contained information which he knew, or should have known, to be untrue. In doing so he further breached all or alternatively any of Principles 2, 6 and 7 of the Principles.
- 2. The allegations 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 allegation.

Documents

- 3. The Tribunal reviewed all the documents submitted by the parties, which included:
 - Notice of Application dated 13 February 2019
 - Rule 5 Statement and Exhibit SG1 dated 13 February 2019
 - Applicant's Schedule of Costs dated 3 June 2019

Preliminary Matters

Application to proceed in the Respondent's Absence

4. The Respondent did not attend the hearing and was not represented. Mr Johal applied for the case to proceed in the Respondent's absence, pursuant to Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR"), which provides that:

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

Mr Johal submitted that proper notice of the hearing was provided to the Respondent. In January 2019, the Respondent informed the Applicant that he was moving and provided an email address as his contact address. The Applicant applied for the proceedings to be served via email to the Respondent's email address. The Tribunal granted the application for substituted service on 19 February 2019. The Tribunal served the proceedings papers on the Respondent by email on 20 February 2019. The Respondent did not contact the Tribunal to obtain the password to access the documents.

- 6. Following the Respondent's non-compliance with Standard Directions, a non-compliance hearing took place on 2 April 2019. The Respondent did not participate in that hearing. Notice of that hearing was sent to the Respondent's registered address by Recorded Signed for delivery on 27 March 2019. The Royal Mail track and trace service showed that the letter had been delivered and signed for by "IFZAL" at 1.18pm on 28 March 2019.
- 7. The Memorandum from that hearing was sent to the Respondent. That Memorandum included details of the substantive hearing date. A further hearing took place on 30 April 2019. The Respondent did not participate in that hearing. The Memorandum of that hearing was also sent to the Respondent, and again included details of the substantive hearing date. Mr Johal submitted that the Tribunal could be sure that the Respondent had been properly served with notice of the hearing date in accordance with the SDPR.
- 8. The Tribunal was referred to GMC v Adeogba [2016] 1 WLR. That case confirmed that when considering whether to proceed in the Respondent's absence, fairness to the Respondent was of prime importance, but fairness to the Applicant should also be taken into account. The Tribunal, when considering the exercise of its discretion to proceed in the Respondent's absence, should take account of all the circumstances of the Respondent's failure to appear.
- 9. Mr Johal submitted that the Respondent's conduct was such that he had clearly waived his right to appear. He failed, from the outset, to engage in the investigation and the proceedings. Emails containing the proceedings papers and information as regards the hearings had been sent, however the Respondent had failed to reply or acknowledge receipt. Given his history of non-engagement, it was highly unlikely that an adjournment would secure his attendance. The Respondent had provided no reason for his non-attendance. It was in the interests of the public for the matter to be dealt with expeditiously.
- 10. The Tribunal determined that the Respondent had been properly served with notice of the hearing date. Whilst he had failed to contact the Tribunal to obtain the password for those documents that were password protected, the Standard Directions, which contained notice of the hearing date, were not password protected, and were thus readily available to the Respondent. The emails had been sent to an email address provided by the Respondent to the Applicant.
- 11. The Tribunal considered that an adjournment would not secure the Respondent's attendance at any future hearing. Were the case to be adjourned, it was unlikely to be listed before October 2019. Such a delay, in all the circumstances was not justifiable, nor was it in the interests of the public. The Respondent had failed entirely to engage in the proceedings. He had not complied with any directions and had made no contact with the Applicant or the Tribunal throughout. Given the Respondent's complete lack of engagement, the Tribunal determined that the Respondent had deliberately failed to engage in the process. The Tribunal noted the requirement for it to consider with the utmost care and caution proceeding in the Respondent's absence. As detailed above, it was plain that the Respondent had notice of the hearing. The Tribunal was satisfied that in this instance the Respondent had chosen voluntarily to absent himself from the hearing and had thus waived his right to appear. Further, the Tribunal found that it

was in the public interest and in the interests of justice that this case should be heard and determined as promptly as possible. The Tribunal determined that in all the circumstances, it was just to proceed with the case, notwithstanding the Respondent's absence.

Jurisdiction

- 12. Mr Johal highlighted that the conduct complained of took place prior to the Respondent's admission to the Roll. He referred the Tribunal to In the matter of a Solicitor (Ofosuhene) [1997] C.L.Y 3375 in which it was held that the Tribunal had jurisdiction over a Respondent if the Respondent was a solicitor at the time of the application. This was the position whether the conduct complained of had taken place before or after admission. The Tribunal was also referred to SRA v Bains (Case No 11689-1997), in which that proposition was accepted and applied by the Tribunal.
- 13. The Tribunal considered the authorities cited. It was clear that Section 47 of the Solicitors Act, under which applications were made to the Tribunal as regards a solicitor, did not limit the complained of conduct to when the Respondent was a solicitor. Rose LJ found in Ofosuhene that it was "plain that the whole purpose of [Section 47] is to enable jurisdiction to be exercised over those presently practising as solicitors", and that it was plain that Section 47 "confers jurisdiction on a Tribunal in relation to anyone who, at the time of the application, is a solicitor".
- 14. The Respondent had been admitted to the Roll in April 2015. The application to the Tribunal was dated 13 February 2019. Thus, at the time of the application, the Respondent was a solicitor. In accordance with Ofosuhene, the Tribunal determined that it had jurisdiction to hear and determine the matters complained of, notwithstanding that such conduct took place prior to the Respondent's admission to the Roll.

Factual Background

- 15. The Respondent was born in 1975 and was admitted to the Roll in April 2015. The Respondent did not, and had never held, a current Practising Certificate.
- 16. On 31 March 2011 the SRA issued the Respondent with a Certificate of Eligibility under the Qualified Lawyers Transfer Regulations 2009 ("the QLTR"). This confirmed that he was eligible, under Regulation 10, to apply to be admitted to the Roll of Solicitors of England and Wales after having undertaken certain tests. The tests the Respondent was required to undertake before making an application for admission were Litigation, Professional Conduct and Accounts, Principles of Common Law and Property. The Certificate of Eligibility remained valid until 31 August 2013. By that date, the Respondent was required to have completed the tests.
- 17. The Respondent undertook the Litigation test with Kaplan Altior. The remaining tests were undertaken with BPP University College.

Witnesses

18. None

Findings of Fact and Law

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

Dishonesty

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

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

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

Integrity

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

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

23. Allegation 1.1 - On or around 5 February 2015 he submitted certificates, purportedly from BPP University College and which he knew or should have known to be false, to the SRA in support of his application for admission to the Roll of Solicitors. In doing so he breached all or alternatively any of Principles 2, 6 and 7 of the Principles.

Allegation 1.2 - On or around the same dates, he submitted an application to the SRA for admission to the Roll of Solicitors which contained information which he knew, or should have known, to be untrue. In doing so he further breached all or alternatively any of Principles 2, 6 and 7 of the Principles.

The Applicant's Case

- 23.1 By way of an application dated 5 February 2015, the Respondent applied to the SRA for admission to the Roll of Solicitors. Certified copies of the following were included with the application:
 - a certificate, purportedly from BPP University College, dated "30 Auguest [sic]
 2013" stating that the Respondent had passed the Principles of Common Law test;
 - a certificate, purportedly from BPP University College, dated 27 August 2013 stating that the Respondent had passed the Property test; and
 - a certificate, purportedly from BPP University College, dated 14 July 2013 stating that the Respondent had passed the Professional Conduct and Accounts test.
- In an email dated 20 September 2017, BPP Professional Development (part of the same group of companies as BPP University College) informed the SRA that a Muhammad Ifzal had (i) failed the Principles of Common Law test on 15 June 2013; (ii) failed the Property test on 27 August 2013; and (iii) passed the Professional Conduct and Accounts Test, however had done so on 14 June 2013 (not 14 July 2013). The email also stated that "[a]ll of the certificates submitted are forgeries".
- A further undated letter from BPP Professional Development, sent to the SRA on 27 February 2018, stated that "[a]ny other documents which were submitted to the SRA [save for those relating to the Professional Conduct test] were not issued by BPP".
- 23.4 In Section 4 of his application, under the heading "Qualified Lawyers Transfer Scheme Regulations" the Respondent ticked the boxes stating "I have satisfied the requirements of the Certificate of Eligibility issued under the above regulations"; and "I have attached to this application all required documentation".
- In Section 5 of his application (relating to The SRA Suitability Test 2011), under the heading "Regulatory history", the Respondent ticked the box marked "No" in answering the questions: "Have you ever... failed to disclose information to a regulatory body when required to do so, or provided false or misleading information" (question 6(ii)); and "Have you ever... breached the requirements of a regulatory body" (question 6(iii)).
- The Respondent signed and dated Section 10 of his application, under the heading "Declaration", in which he confirmed (amongst other things) that he had "read and understood the pre-completion notes and the information given in this application is correct and complete to the best of my knowledge and belief".

- 23.7 Under the section headed "QLTT (QUALIFIED LAWYERS TRANSFER REGULATIONS) Check QLTT applied conditions" the SRA Officer who reviewed the application had noted that all four "test heads" had been applied in relation to the Respondent. In relation to the three BPP tests, the SRA Officer (i) noted that the test provider was "BPP"; (ii) detailed the dates that the tests were passed as those on the certificates; and (iii) confirmed that as a result of receiving these certificates, the SRA's relevant internal system (known as "Regis") could be "updated to show condition satisfied".
- 23.8 On 15 April 2015, the Respondent was admitted to the Roll.
- 23.9 Mr Johal submitted that given the information provided to the SRA by BPP, it was clear that Certificates submitted to the SRA by the Respondent with his application dated 5 February 2015, did not originate from BPP. The Respondent must have known that they were not genuine at the time that he submitted them to the SRA.
- 23.10 The details of the Muhammad Ifzal referred to in the email from BPP dated 20 September 2017 corresponded with those of the Respondent. Mr Johal submitted that the inference that the Respondent knew that he had failed the tests undertaken with BPP University College in relation to Property and Principles of Common Law when he submitted his application dated 5 February 2015 to the SRA was irresistible. However, if for any reason he did not know the outcome of those tests at that stage, then he was bound to enquire as to his results before he did so. Whether he had prepared the falsified certificates himself, or obtained them from a third party, he knew, or should have known, that they contained incorrect information concerning matters which were material to his application.
- 23.11 The Respondent also knew from the Certificate of Eligibility dated 31 March 2011 that in order to be admitted to the Roll of Solicitors, he would have to demonstrate that he had passed the tests in relation to (amongst other things) Property, Professional Conduct and Accounts and Principles of Common Law. The Respondent would have known that the statements that he made in his application to the SRA for admission were incorrect. The application was signed and dated by him.
- 23.12 Mr Johal submitted that solicitors were expected to act with moral soundness, rectitude and with a steady adherence to an ethical code. Solicitors held a privileged and trusted role in society and a higher standard was expected from them by both society and other members of the profession. The Respondent would have known that the three certificates that he submitted to the SRA in relation to his application for admission as a solicitor were not accurate. In relation to Property and the Principles of Common Law, the Respondent would have known that he had not passed those tests. In relation to Professional Conduct and Accounts, the Respondent would have known that, although he had passed the test, the certificate that he was submitting was not correct. The Respondent would have known the relevance of these documents in the context of his application to be admitted as a solicitor. Such conduct, it was submitted demonstrated a failure by the Respondent to act with integrity in breach of Principle 2 of the Principles.

23.13 Further, his conduct demonstrated a failure to maintain the trust that the public placed in both him and the provision of legal services, in breach of Principle 6 of the Principles. In addition, by providing falsified certificates to the SRA, and in making an inaccurate declaration to the SRA, the Respondent failed to comply with his regulatory obligations and to deal with his regulator in an open and co-operative manner, in breach of Principle 7.

Dishonesty

- 23.14 The Applicant agreed that the appropriate test for dishonesty was that set out in Ivey. Mr Johal submitted that the Respondent knew that, in order to be admitted to the Roll of Solicitors (either within the time period specified on the Respondent's Certificate of Eligibility or at all), he would have to demonstrate that he had passed the tests in relation to (amongst other things) Property and Principles of Common Law. The Respondent was aware that he had failed the tests undertaken with BPP University College in relation to Property and Principles of Common Law.
- 23.15 In addition, whilst the Respondent passed the Professional Conduct and Accounts test, he knew that he did not take this on the date specified on the certificate. Mr Johal did not speculate as to why the Respondent provided a falsified certificate in relation to this result.
- 23.16 The Respondent was aware that the purposes of passing these tests was to demonstrate that he had the requisite legal knowledge and skill required to be admitted to the Roll of Solicitors in England and Wales. In failing the tests in relation to Property and the Principles of Common Law he would have known that he had not demonstrated this.
- 23.17 In his application to the SRA, the Respondent stated matters which he knew not to be the case, namely that:
 - he had satisfied the requirements of the Certificate of Eligibility;
 - attached all the required documentation;
 - he had never failed to disclose information to a regulatory body when required to do so, or provided false or misleading information;
 - he had never breached the requirements of a regulatory body; and
 - the information given in his application was correct and complete to the best of his knowledge and belief.
- 23.18 In addition, in the Suitability Test section of his application, under the heading "Any other behaviour", the Respondent checked the box stating "I have read and understood this statement" in relation to the statement that "[a]ll material information relating to your application must be disclosed. Failure to disclose material information will be treated as prima facie evidence of dishonest behaviour. You must disclose any matter that have occurred in the UK and/or overseas".

23.19 The Respondent knew the relevance of these documents in the context of his application to be admitted as a solicitor. Therefore, by submitting certificates which he knew to be falsified to the SRA for the purposes of obtaining admission to the Roll of Solicitors, and by declaring that he had complied with his obligations of disclosure and that the relevant documentation was attached, the Respondent was dishonest. Given the Respondent's state of knowledge, ordinary decent people would consider his behaviour to be dishonest.

The Tribunal's Findings

- 23.20 The Tribunal found that the Respondent had submitted the certificates in the knowledge that he had not passed the exams. He had knowingly submitted falsified certificates to the Applicant in support of his application. The Tribunal did not accept that the Respondent could have submitted the certificates believing that he had passed the exams, nor could he have believed that the certificates were genuine.
- 23.21 The statement of KH detailed the dates and exam results for the Respondent as taken from BPP's electronic records. Those records clearly detailed that the Respondent had not passed the exams as detailed in the certificates. The records detailed the following:
 - 15 March 2013, the Respondent received a mark of 47% for the Professional Conduct and Accounts Test. This was not a passing grade. On 14 June 2013, the Respondent received a mark of 59% for the Professional Conduct and Accounts Test. This was a passing grade. A certificate and notification of this was sent to the Respondent on 6 August 2013.
 - 15 June 2013, the Respondent received a mark of 28% and on 30 August 2013 the Respondent received a mark of 42% for the Principles of Common Law Test. These were not passing grades.
 - 27 August 2013, the Respondent received a mark of 42% for the Property Test. This was not a passing grade.
- 23.22 The Tribunal examined the certificates provided by the Respondent. The certificate for the Principles of Common Law Test had spelling and grammatical mistakes. The certificate provided for Professional Conduct and Accounts was dated on a date when KH confirmed that no Test in that area had been administered by BPP. KH, in her statement, confirmed that the certificates provided by the Respondent to the SRA had not been issued by BPP and were forgeries.
- 23.23 The Tribunal accepted in its entirety the evidence of KH. It was clear that the certificates provided to the SRA by the Respondent had not come from BPP.
- 23.24 It was also plain that the on the application, the Respondent had wrongly ticked the boxes confirming:
 - That he had satisfied the requirements of the Certificate of Eligibility and attached all required documentation;

- That he had not provided false information to a regulatory body; and
- That he had not breached the requirements of a regulatory body.
- 23.25 Further, the Respondent had signed the declaration at the end of the application and had thus declared, (amongst other things) that he had read and understood the pre-completion notes and that the information given in the application was correct and complete to the best of his knowledge. This was evidently not the case. The Respondent had completed the application and submitted documents on the basis that he had successfully passed the Tests he was required to take when he had not done so.
- 23.26 The Tribunal found that members of the public expected a solicitor, when completing an application for admission to the Roll, to provide genuine documents evidencing that the criteria for admission had been met. They also expected solicitors to ensure that the information contained on the application form was accurate and true. The Respondent had provided false certificates and false information in his application form. Members of the public would not trust a solicitor who had been admitted to the Roll on the basis of false information. That such conduct was in breach of Principle 6 was plain beyond reasonable doubt. It was also evident beyond reasonable doubt that such conduct was not in compliance with the Respondent's legal and regulatory obligations in breach of Principle 7.
- 23.27 The Tribunal determined that a solicitor acting with integrity would not submit fraudulent documents to the SRA in support of an application for admission. Nor would a solicitor of integrity provide and confirm information in an application which he knew to be untrue. The Respondent's conduct had fallen far below the standards expected of him by members of the public and the profession. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent's conduct was in breach of Principle 2.
- 23.28 The Tribunal then considered whether the Respondent's conduct had been dishonest. In accordance with <u>Ivey</u>, it first assessed his state of knowledge. The Tribunal had found, as detailed above, that the Respondent knew that the certificates he submitted in support of his application were not genuine. He had received notification from BPP that he had not passed the Principles of Common Law and Property Tests. He also knew that whilst he had passed the Professional Conduct and Accounts Test, that test was passed on 14 June 2013, and not 14 July 2013 as stated on the certificate. Accordingly, the Respondent knew that the information contained in his application was not correct, and that he had not satisfied the requirements of the Certificate of Eligibility. He also knew that the information he had provided was false.
- 23.29 The Tribunal found that reasonable and decent people operating ordinary standards of honesty would find the Respondent's conduct had been dishonest. Honest people would not submit false documents in support of an application, nor would they provide false information within the application. Thus, the Tribunal found beyond reasonable doubt that the Respondent's conduct was dishonest in accordance with the test set out in Ivey.

23.30 Accordingly, the Tribunal found allegations 1.1 and 1.2 proved beyond reasonable doubt, including that the Respondent's conduct as regards both allegations had been dishonest.

Previous Disciplinary Matters

24. None.

Mitigation

25. None.

Sanction

- 26. The Tribunal had regard to the Guidance Note on Sanctions (December 2018). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.
- 27. The Tribunal determined that the Respondent's conduct was motivated by his desire to be admitted to the Roll notwithstanding that he had not successfully completed the admission requirements. His actions were planned. He had either created the certificates himself, or arranged for someone to do that on his behalf. His conduct was in breach of the trust placed in him by the Applicant to provide genuine documentation in support of his application, and to complete the application truthfully. The Respondent was wholly in control and fully responsible for his conduct. Whilst he was not an experienced solicitor (this being his application for admission to the Roll) he was aware of what was required to produce for him to be admitted. He had deliberately misled the regulator. Indeed, the regulator had been misled, as the Respondent had been admitted to the Roll. The Tribunal determined that the Respondent's culpability was high.
- 28. The Respondent's conduct had been a complete departure from the standards of integrity, probity and trustworthiness expected of him, and as such had caused harm to the reputation of the profession. The foreseeable harm arising from his conduct was significant. Had he applied for, and been granted a practising certificate, the Respondent would have been able to represent clients. Those clients would have believed that he was legitimately practising, whereas the Respondent had failed to meet the standards required for admission to the Roll.
- 29. The Respondent's conduct was aggravated by his proven dishonesty, which was in material breach of his obligation to protect the public and maintain public confidence in the reputation of the profession; as per Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin:
 - "34. There is harm to the public every time that a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in <u>Bolton</u>, a solicitor can be "trusted to the ends of the earth"."

- 30. The Respondent's conduct was also aggravated by its deliberate and calculated nature. The Tribunal did not find any mitigating features. Whilst the Respondent had a previously unblemished career, he had attempted to commence his career using forged documents.
- 31. Given the serious nature of the allegations, the Tribunal considered and rejected the lesser sanctions within its sentencing powers such as no order, a reprimand or restrictions. The Tribunal had regard to the case of <u>Bolton v Law Society</u> [1994] 2 All ER 486 in which Sir Thomas Bingham stated:
 - "....Lapses from the required standard (of complete integrity, probity and trustworthiness)....may....be of varying degrees. The most serious involves proven dishonesty....In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced by the solicitor, ordered that he be struck off the roll of solicitors."
- 32. The Tribunal did not find any circumstances (and indeed none were submitted) that were enough to bring the Respondent in line with the residual exceptional circumstances category referred to in the case of Sharma. The Tribunal decided that in view of the serious nature of the misconduct, in that it involved dishonesty, the only appropriate and proportionate sanction in order to protect the public, and maintain public confidence in the integrity of the profession and the provision of legal services, was to order that the Respondent be struck off the Roll.

Costs

- Mr Johal applied for the costs of and incidental to the application. The costs schedule detailed costs in the sum of £4,424.50. Mr Johal submitted that there should be a reduction from the estimated 6 hours hearing time to 2 hours. When asked about the time it had taken him to prepare for the hearing, Mr Johal confirmed that that time ought to be reduced.
- 34. The Tribunal reduced the time allowed for the hearing from 6 hours to 2 hours, it also reduced the preparation time from 6 hours to 4 hours. The Tribunal ordered the Respondent to pay costs in the sum of £3,644.50, which it determined was the appropriate and proportionate amount in this case.

Statement of Full Order

35. The Tribunal Ordered that the Respondent, MUHAMMAD IFZAL 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 £3,644.50.

Dated this 3rd day of July 2019 On behalf of the Tribunal

D. Green Chairman Judgment filed with the Law Society on 03 JUL 2019