The Respondent appealed the Tribunal's decision dated 11 December 2019. The appeal was heard by Saini J on 3 and 4 February 2021 and Judgment handed down on 11 February 2021. The appeal was dismissed. El Diwany v Solicitors Regulation Authority [2021] EWHC 275 (Admin).
On 29 March 2021 the Court of Appeal refused the Respondent's application for permission to appeal the judgment of the Administrative Court.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11990-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

FARID EL DIWANY Respondent

Before:

Mr G. Sydenham (in the chair)
Mr J. C. Chesterton
Mrs C. Valentine

Date of Hearing: 10 and 11 December 2019

Appearances

Inderjit Singh Johal, barrister, of The Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant

The Respondent represented himself

JUDGMENT

Allegations

1. The allegations made by the Applicant against the Respondent were set out in a Rule 5 Statement dated 22 July 2019 and were that:

1.1 On 2 November 2001 and 17 October 2003 he was convicted of harassment offences in Norway in contravention of Section 390(a) of the Norwegian Penal Code. Consequently, he acted in breach of Rule 1.08(1) of the Solicitors Practice Rules 1990 ("SPR90");

1.2 He failed to notify his regulator about the convictions referred to in allegation 1.1 in breach of the following:

1.2.1 From the date of convictions until 1 July 2007: Rule 1.08(1) of the SPR 90;

1.2.2 From 1 July 2007 until 5 November 2011: All or alternatively any of Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007 ("CC07");

1.2.3 From 5 November 2011: All or any of Principles 2, 6 and 7 of the SRA Principles 2011 ("the Principles") and Outcome 10.3 of the SRA Code of Conduct 2011 ("CC11").

Documents

2. The Tribunal considered all of the documents in the case which included:

Applicant

- Electronic trial bundle containing the application, Rule 5 Statement, exhibits and email from the Respondent dated 24 October 2019
- Reply dated 14 October 2019 and exhibits
- Schedule of costs to issue and updated schedule to the hearing dated 5 December 2019
- Correspondence between the Respondent and the Applicant from September and October 2019
- Extracts from the Protection from Harassment Act 1997 and the Malicious Communications Act 1998

Respondent

- Various Answer documents (sent by email) dated 3, 7 and 19 September 2019
- Respondent's witness statement dated 28 November 2016 (from High Court defamation proceedings)
- Respondent's supporting documents including: sample "hate emails" sent to the Respondent; letters to the Respondent from Ms H and various emails of support sent to the Respondent
- Respondent's witness statement dated 14 November 2019
- Extract from a letter to the Respondent from Roll, Komnaes & Wesenberg Advokatene (Norwegian lawyers) dated 28 February 1995

Factual Background

3. The Respondent was admitted to the Roll of Solicitors in 1990. He practised as a consultant at Scott & Co from 23 May 2005 until 15 May 2008. He subsequently practised at Nasir & Co from 8 February 2010 until 31 July 2014. He last practised as a solicitor at Gawor & Co. He was employed at that firm from 23 February 2015 until 1 February 2017.

4. In February 2017 the Applicant received a report from a partner at Gawor & Co to the effect that the Respondent had recently stated that he had a criminal record in Norway some years ago for harassment and that he had failed to disclose that fact at his interview or in the subsequent two years that he had been employed at the firm. The Respondent was dismissed following the disclosure of his conviction.

5. During the Applicant's investigation the Respondent acknowledged the fact of the convictions and that he had not reported them to the Applicant. He stated that the convictions for harassment related to a former girlfriend and he made various submissions and assertions relating to the convictions and surrounding circumstances. The Respondent informed the Applicant that he had received a fine and a suspended prison sentence.

6. At the date of the hearing the Respondent was not practising as a solicitor. His last practising certificate was for the year 2016/17 and was revoked by the Applicant on 6 December 2017.

Witnesses

7. The Respondent gave oral evidence. The Tribunal found his evidence about why he failed to notify the Applicant of his convictions was less credible than the evidence he gave in relation to allegation 1.1. With regards to his evidence on allegation 1.1, whilst not all characterisations and submissions were accepted, the Tribunal found the Respondent gave evidence which reflected his honestly held convictions and perceptions. Written and oral evidence is quoted or summarised in the Findings of Fact and Law below. The evidence referred to is that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

8. The Respondent made reference in emails and other documents before the Tribunal to a book he had written and also to a website he maintained, stating that the contents of both were relevant to the allegations and his response. The Tribunal carefully considered all of the material provided by the parties but did not review the book and website, save where extracts had been included in the hearing bundle by the Respondent. The Respondent was given the opportunity to introduce specific documents he considered to be relevant but the Tribunal did not consider it appropriate, in accordance with its directions on disclosure and preparation of the hearing bundle or fair to the Applicant for such extensive material to be incorporated by passing reference.

9. The Tribunal took regular breaks throughout the hearing to allow the Respondent time to manage and prepare his case.

Findings of Fact and Law

10. 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.

11. **Allegation 1.1: On 2 November 2001 and 17 October 2003 the Respondent was convicted of harassment offences in Norway in contravention of Section 390(a) of the Norwegian Penal Code. Consequently, he acted in breach of Rule 1.08(1) of the SPR90.**

The Applicant's Case

11.1 The Applicant relied on copies of the 2001 and 2003 Norwegian criminal court judgments (together with certified English translated versions). The Applicant's case was based on a summary of the facts underlying the convictions extracted from the certified translation of the Norwegian judgments.

2001 November Conviction

11.2 The Respondent was convicted of a violation of section 390a of the Norwegian Penal Code and was sentenced to a fine of 10,000 Norwegian Krone (around £897). Section 390a states:

> *"any person who by frightening or annoying behaviour or other inconsiderate conduct violates another person's rights to be left in peace, or who aids and abets thereto, shall be liable to fines or imprisonment for a term not exceeding two years. A public prosecution will only be instituted when it is requested by the aggrieved person and in the public interest."*

11.3 The conviction arose out of the Respondent's harassment of a Norwegian national, Ms H, over a period of years stretching from the mid-1990s up until August 1998. The Respondent had befriended Ms H in the early 1980s and their friendship lasted for some years but evidently deteriorated.

11.4 The harassment was by means of numerous telephone calls made by the Respondent to Ms H and by sending over 200 letters and cards from England to her in Norway and to various individuals and public and private bodies in Norway. The letters sent by the Respondent contained repeated themes about Ms H's sex life, abortions, suicide attempts, and her partner's drug abuse. They also contained references to personal issues relating to her parents.

11.5 In its Judgment, the Norwegian Court exemplified a card postmarked 7 April 1995 sent by the Respondent to Ms H. In the card, the Respondent wrote:

> *"[Ms H], in Norway it may be normal for a slut like you to sleep with tens of men (even taking heroin!) – 'for company' as you told someone but I have been scared by your sick behaviour. Your step mother called you 'a whore' after your second abortion. She was so right and she also told me you were [incomprehensible text]. The fact that you were in demand for sex doesn't mean you fuck like an unpaid whore. Your unborn children you put in the dustbin – the reality is even garbage like your lovers want someone better than you, Christian pervert!"*

By way of further example, the following text was sent from the Respondent to Ms H in November 1997:

> *"You know, I really wish you were dead and buried, you filthy pervert. It's hard to Imagine anyone more evil and sick than you. I bet you helped kill your own mother, Even after her death you paid her memory the compliment of two abortions. You are a disgusting piece of dirt.*
>
> *Fuck off and die and go to hell. I don't know how you sleep at night. You hate Muslims, you hate life and only associate with criminals and odd crazy people. You represent the sickness that is in Norwegian society and for as long as I live I'll make sure you pay for the wickedness you've inflicted on me. Maybe a living death is better for you - as you get older, things will get tougher. I hope [redacted name] turns against you just as you turned against your mother and me.*
>
> *I will do all I can to ensure the truth is spread far and wide about you - killer!"*

11.6 The Applicant alleged that in March/April 1995 the Respondent sent a "report" about Ms H to her neighbours, friends and relations amongst others. The report consisted of one typed page and related to the Respondent's version of Ms H's life history. The report contained similar details about Ms H's life as was contained in the letters and cards sent by the Respondent. The report was widely circulated by the Respondent (50 to 60 examples were documented to the Norwegian Court) following a newspaper article in May 1995 in which Ms H talked about her experiences (without naming the Respondent).

11.7 In 2001 the Respondent issued a notice of proceedings in a private prosecution against Ms H and others and in the notice he repeated in essence the previously mentioned description of her past and personal circumstances.

11.8 The harassment by the Respondent was said to have had a detrimental effect on Ms H as she had to move to a secret address, obtain an unlisted number and reportedly felt scared to go out. She also informed the Court that it had been very difficult for her that so many people in her immediate environment had received the "report" from the Respondent and thus became aware of circumstances that were of a highly personal nature.

11.9 The Respondent was convicted in his absence, the Court having found the charge proved beyond all reasonable doubt.

17 October 2003 Conviction

11.10 The second conviction related to the period of February 2002 to 31 August 2003 when the Respondent sent faxes from England to various individuals and public and private firms/institutions in Norway in which he wrote about similar issues to those contained in the letters and cards to Ms H. In the faxes he encouraged recipients to obtain more information about Ms H on a website on which he wrote disparaging comments which were again similar to the comments previously made in his letters and cards. The Respondent's website was publicly available from 1 September to 16 October 2013.

11.11 The Applicant relied on the Respondent having acknowledged his guilt at Court and having made an unreserved confession. In assessing sentence, the Court attached weight to the fact that there was considered to have been a "gross violation" of Section 390a of the Penal Code and that the information about Ms H was of a very private nature. An aggravating feature of the case was the fact that the information was available to the entire world on the internet. The Court also noted that this was the Respondent's second conviction for the same offence against Ms H.

11.12 The Respondent was sentenced to an 8-month prison sentence, suspended for 2 years. The sentence was imposed with conditions that the Respondent remove the offending information from the website and refrain from contacting Ms H in any way.

UK libel claims brought by the Respondent

11.13 Details of the Respondent's convictions appeared in a High Court judgment dated 29 July 2011. The judgment related to the Respondent's libel actions for damages against a Norwegian journalist (Mr R) and a Norwegian police officer (Ms T) and against the Ministry of Justice and Police of Norway. The High Court struck out the Respondent's claims against all the defendants.

Breach of the Rule 1.08 (1) of the SPR90

11.14 This rule, which regulated the behaviour of solicitors outside legal practice at the time of the Respondent's convictions provided that *"Solicitors are officers of the Court and must conduct themselves so as not to bring the profession into disrepute*". It further stated:

> *"Solicitors, whether practising or not, are officers of the Supreme Court. Certain standards of behaviour are required of solicitors, as officers of the Court and as members of the profession, in their business activities outside legal practice and even in their private lives. Disciplinary sanctions may be imposed if, for instance, a solicitors behaviour tends to bring the profession into disrepute."*

11.15 The Respondent was convicted of two criminal offences in Norway involving the harassment of Ms H. The harassment took place over several years and involved, amongst other matters, the sending by the Respondent of deeply unpleasant letters and cards to third parties through which he disclosed intimate and distressing details. The Respondent also set up a website in which he repeated the same details about her. He was fined for the first offence and sentenced to imprisonment (suspended for 2 years)

for the second offence. It was submitted that the Respondent's convictions for serious harassment offences clearly brought the profession into disrepute in breach of Rule 1.08(1) of the SPR90.

Going behind the convictions

11.16 Mr Johal, for the Applicant, submitted that much of the Respondent's case was irrelevant to the allegations and facts relied upon. This was on the basis that the Applicant's case was based upon the fact of the Respondent's Norwegian convictions whereas the Respondent sought to go behind the convictions. Mr Johal relied upon Rule 15(2) of the Solicitors Disciplinary (Proceedings) Rules 2007 ("SDPR") which provided:

> *"A conviction for a criminal offence may be proved by the production of a certificate of conviction relating to the offence and proof of a conviction shall constitute evidence that the person in question was guilty of the offence. The findings of fact upon which that conviction was based shall be admissible as conclusive proof of those facts save in exceptional circumstances".*

11.17 Mr Johal stated that the Tribunal had previously admitted a foreign conviction into evidence and accepted that Rule 15 of the SDPR was engaged (in a case related to a conviction for bribery offence in the United States (SRA v Jeffrey Tesler, Case Number 11076-2012). In that case Counsel for the Applicant commented that the United States was not a jurisdiction which should cause the Tribunal any concern and that they could safely rely upon the conviction. It was submitted that the same could be said of the Norwegian convictions.

11.18 Mr Johal submitted that the practice of the Tribunal was not to look behind a conviction unless there were exceptional circumstances. That practice was submitted to have been upheld by the High Court in Shepherd (CO/3076/95). Guidance on what may amount to exceptional circumstances was provided in Shepherd, in which reference was made to two Privy Council cases relating to disciplinary proceedings in Singapore, Ratnam v Law Society of Singapore [1976] 1 MLI 195 and Jeyaretnam v Law Society of Singapore [1989] 2 All ER 193. In Ratnam, their Lordships declined to set out what would generally be considered so exceptional as to permit the question of whether the accused was rightly convicted to be raised, beyond saying in the context of the case that an important consideration was whether an appeal against the conviction had been available. Ratnam was cited with approval in Jeyaratnem where Lord Bridge considered that there were exceptional circumstances arising from errors of law compounded by the unavailability of an appeal.

11.19 There was also reference in Shepherd to the case of Hunter v Chief Constable of the West Midland Police [1982] AC 529 which was a civil action bought by a claimant in which there was a collateral attack on his previous criminal conviction. Lord Diplock in that case referred to:

> *"fresh evidence obtained since the criminal trial and the probative weight of such evidence justifying the making of an exception to the general rule of public policy that the use of civil actions to initiate a collateral attack on final decisions… of criminal courts …as an abuse of process"*

11.20 Mr Johal also referred the Tribunal to the test laid down in Phosphate Sewerage Company Ltd v Molleson [1897] 4 AC 801 and 814, that "*the new evidence must be such as entirely changes the aspects of the case*". The High Court in Shepherd commented that the test in Phosphate was consistent with the requirement of exceptional circumstances adopted by the Privy Council in the Singaporean cases and with the practice of the Tribunal.

11.21 It was submitted that there were no exceptional circumstances which permitted the Tribunal to look behind the Norwegian convictions. In the event that the Respondent had genuine concerns with the fairness of the criminal proceedings, it was submitted that he should have exercised a right of appeal against both convictions. He did not seek to appeal either conviction. It was further submitted that he had put forward no significant new evidence which entirely changed the aspects of the criminal cases against him.

The offences were of strict liability and would not amount to criminal offences in the UK

11.22 The Applicant's position was that contrary to the Respondent's assertions, the offences he was prosecuted for were not strict liability offences. In the 2011 judgment, the Norwegian criminal court found that "*on the basis of the facts described above, the Court finds it proven beyond all reasonable doubt that the defendant behaved as described in the charge, and that he acted wilfully. Both the actus reus and mens rea elements of the offences of a crime are deemed present*". In the 2003 judgment, the Court found it proved that the Respondent acted with intent. It was accordingly submitted that the mental element of the offences was to act wilfully or intentionally.

11.23 It was not accepted by the Applicant that had the defendant's actions been in the UK they would not have amounted to a criminal offence as he contended. The Respondent's course of conduct in sending offensive letters, post cards and making telephone calls to Ms H over the course of many years and disclosure of intimate and personal details to third parties known to her and publishing the same on a website, was submitted to have potentially been offences under the Protection from Harassment Act 1997 and/or Malicious Communications Act 1998.

The Respondent's Case

11.24 The Respondent's case was set out in various emails from September 2019, a witness statement prepared for these proceedings and in various other supporting documents and statements. He summarised his key contentions when giving oral evidence and making oral submissions during the hearing. He submitted that there were various exceptional circumstances which meant that the Tribunal could and should look beyond the undisputed fact of the two convictions.

The convictions were unsound

11.25 The Respondent stated that the convictions against him were unsound. There were various reasons for this. One was that the evidence of Ms H, on which the convictions were said to be based, was described as being thoroughly unreliable. The Respondent stated that she openly discussed her mental health problems with him and was a wholly unreliable witness. His evidence was that the treating medical professional shared his view about her. She had volunteered the relevant personal information and everything he had written about her was true.

11.26 By way of example of her unreliability, the Respondent described informing Ms H's father out of concern for her, in 1986, that he needed to intervene to help her. The Respondent stated that it was shortly after this that he was accused of attempted rape. This was something which had never been raised previously and was described, by the Respondent, as a complete fabrication. He described Ms H as a fantasist. He said that in due course the allegation subsequently changed to one of actual rather than attempted rape – again entirely without foundation.

11.27 The Respondent had included within the hearing bundle, and made reference in his evidence and submissions, to various emotional and affectionate letters from Ms H that demonstrated that it was plainly untrue that she had felt harassed by him from soon after they met as she later claimed. The suggestion that he had written 400 obscene letters which Ms H had thrown away (as he stated the Norwegian court had been informed) was described by the Respondent as an invention. These letters were never produced in the Norwegian criminal proceedings and he attributed the harassment allegations to Ms H being a fantasist and a pathological liar.

11.28 The Respondent stated that in May 1995, on the basis of information from Ms H, newspapers in Norway printed articles stating that he had threatened to kill Ms H and members of her family. Whilst not named he considered that he was identifiable. He was also described as having been a "sex pest" since he met Ms H in the 1980s. He stated that the articles focused heavily on his religious faith and described him essentially as a Muslim degenerate. He stated that he was being publicly described as a "*Muslim sex-terrorist suffering from an extreme case of erotic paranoia who had threatened to kill [Ms H] and her family and neighbours*". He described his communications in response as his "right to reply" to this public airing of offensive, untrue, discriminatory and damaging material.

11.29 The Respondent described the failure of the Norwegian newspapers to seek his comment before publishing or to offer him any right of reply as the root cause of everything which followed. He considered that they had failed to abide by their own stated code of ethics which provided such rights for those featuring in articles. It was one reason why he stated that the events could not happen in the UK; he stated that no UK based newspaper would print what was essentially Islamophobic "filth" and as a minimum would seek a response from anyone involved in such a story.

11.30 The Respondent was particularly incensed that newspapers in Norway had printed what he regarded as a demonstrably false, and outrageous, statement that he had been sectioned in the past. He attributed this to the investigating police officer, Ms T, against whom he took (unsuccessful) defamation proceedings in the UK in relation to

her comments. The Respondent produced documentation which he submitted showed that what was suggested was impossible. It was this public lie about having been sectioned, he suggested, which led to much of the subsequent abuse he suffered. The Respondent was deeply unsatisfied with the outcome of the UK defamation proceedings, considering the outcome and judgment to have in effect condoned the Islamophobic material he had received.

11.31 The Respondent referred the Tribunal to numerous examples of hate mail he had received following newspaper articles about him. He had received email correspondence referring to the Prophet Mohammed as "*a confused paedophile"*. The examples included the phrases: "*Go fuck Allah the camel*" and "*When you eat pigs do you like to lick the pig's arsehole clean before digging in*". The Respondent stated he had reported these and similar emails to the UK Police who had reportedly liaised with Interpol regarding them. The Respondent's case was that when he corresponded with Ms H, and others, in the way he did, this followed very extreme and very public provocation and vilification of him. The catalyst for everything which followed was Ms H discussing such personal matters (including grossly offensive untruths) about him in interviews with Norwegian journalists.

11.32 The Respondent also stated that there was a six year delay between the conduct ultimately complained of and the harassment prosecution. The Respondent considered that this delay indicated that the motivation for the eventual criminal prosecution was the publicity that his website was by then starting to achieve – rather than his conduct itself.

11.33 The Respondent stated that the section of the Norwegian penal code under which he was prosecuted did not provide for a "justified comment" defence. Through his lawyer he had sought for an alternative section which did provide for such a defence to be used but he stated that this was rejected by the Norwegian judge, who the Respondent described as inexperienced, without explanation. His evidence was that he was told by his Norwegian lawyer that there was no point in appealing the conviction and that the background circumstances and the provocation by the newspaper articles was irrelevant.

11.34 The Respondent also considered that the timing of the first criminal prosecution added to its unfairness. It was timed, deliberately in his view, three weeks before the trial in a civil claim in Norway that he had brought against Ms H (to seek to remedy the untruths she had, in his view, caused to be published about him). This meant he had very limited time in which to prepare. He also objected to the fact he was not permitted to cross-examine Ms H, which was on the basis she was not considered mentally fit. This further undermined the fairness of the process in his view.

11.35 The Respondent stated that he was let down by two lawyers he engaged in Norway who missed limitation deadlines. This was said to have had the effect that he was unable to make use of judicial means to seek to respond to the untruths that Ms H had caused to be published about him. Accordingly he had used other means to respond.

11.36 The Respondent also referred the Tribunal to paragraphs 44 and 45 of the Renvoi Doctrine (concerning the conflict of laws between jurisdictions) and submitted that these rules supported his contention that there was a discretion, which should be

followed, to declare that his Norwegian convictions were not recognised in the UK due to a conflict of laws.

11.37 The Respondent's case was that the second conviction was the result of duress. He considered that the motivation for bringing the prosecution was his website which he stated was by 2003 receiving thousands of views from all over Norway. His website dealt with various issues relating to Norway and not just those relating to Ms H. The Respondent's evidence was that he was invited to "freely" confess to what was alleged or face eight months in prison. He stated that he was advised by his Norwegian lawyer that he would go to prison unless he confessed. The Respondent considered that had he not been a Muslim the prosecution would never have been brought. Accordingly, the Respondent's position was that this conviction should be disregarded. At the time he made his confession, the Respondent's evidence to the Tribunal was that having not slept or eaten for a day before the hearing, he would have done or said anything to leave the country.

Characterisation of his actions

11.38 The Respondent accepted that he had written to Ms H in what he described as "industrial language". He explained that he was "telling her off in the most definitive terms" for her hypocrisy and for the public airing of what he regarded as the most unpleasant falsehoods about him. She had described him publicly, in words reported in the Norwegian press, as a rapist and potential child killer. In reply, and by way of context and rebuttal, the Respondent stated that he "acquainted the Norwegian public with [Ms H's] past". In his evidence he described taking "revenge" on Ms H.

11.39 The Respondent maintained that what he had said was all accurate, and that in the absence of a formal right to public reply, he had "every right" to respond as he did publicly. He stated that the Norwegian judge in his 2002 civil libel trial accepted that what he had written was "more or less correct". During cross examination, the Respondent stated that the industrial language he used should not be interpreted literally, saying "drop dead", for example, does not mean that someone actually wishes death on another; it was a figure of speech. He also stated that his letters to Ms H were private letters to her which he contrasted with the very public comments made about him. The Respondent read out UK press articles mentioning UK judges swearing – when the context warranted it – and he submitted his situation also warranted the use of language which would be inappropriate in other circumstances. The Respondent considered that Ms H had waived her right to anonymity by identifying him in interviews with journalists and in his view fabricating the most offensive lies about him.

11.40 The Respondent's evidence was that the specific examples of his correspondence to which the Tribunal had been directed (two of which are set out above in paragraph 11.5) were written in the immediate aftermath of him learning of particularly egregious fabrications about him. One was that he was said to have written a letter threatening to kill Ms H's two year old son, and another was that Ms T had stated that he had been sectioned (both of which were false).

11.41 The Respondent stated that he had received, and referred the Tribunal to, messages of support from many Norwegians who shared his view about the justice system and prevalence of Islamophobia within society more generally. This included female correspondents. He said he had put up his website as a corrective to the material which had by then been widely published about him. He further submitted that he had a right of free expression under the European Convention on Human Rights which he exercised through his response to the abuse he received both from the Norwegian press and also from Ms H, who he described as his ultimate accuser.

Going behind the convictions

11.42 The Respondent submitted that the cases relied upon by the Applicant were distinguishable from his. He was not involved in a blatant fraud, as was the case in the US conviction case cited by Mr Johal. His was a dubious conviction for responding to a very public and hurtful denigration of his character in which his faith played a significant part (both in the initial vilification and, in his view, in the legal processes which followed). He accepted that he wrote the letters in question. The letters alone would not have resulted in any conviction in his view; his case was that the convictions depended on the unchallenged evidence of a serial fantasist.

11.43 The Respondent submitted that an overly-literal reliance on the rules and cases to which the Applicant had referred risked subtle Islamophobia tainting the proceedings. He considered that had there been a Muslim Member on the Tribunal, the degree to which he had been a victim of unfair treatment would have been more readily recognised. The Respondent's position was that any "normal human" would react as he had done to the "oppressions" to which he had been subjected. He accepted that if his conduct had been unsolicited then it would be wrong; in his case however it was provoked and natural. The Respondent submitted that if the Tribunal Members did not read his website, which catalogued the "filth" which had been written about him, they could not understand why he acted in the way he did. He concluded by stating that he took the Islamophobic aspect of the abuse and treatment he received personally and he invited the Tribunal to be alive to this issue and to avoid covering it up.

The Tribunal's Decision

11.44 The Tribunal considered that Rule 15 of the SDPR permitted it to rely upon foreign convictions, unless there were fact specific reasons not to do so. The Rule did not include any territorial limitation and as the Applicant had indicated, the Tribunal had had regard to foreign convictions previously. The Tribunal noted that in paragraph [70] of her judgment in the Respondent's unsuccessful defamation case ([2011] EWHC 2077 (QB)) the Honourable Mrs Justice Sharpe stated of the High Court: *"in my judgment the court in this jurisdiction is entitled to have regard to the fact of the convictions, in particular in the light of the admission of the Claimant made of his guilt … as well as to the evidence set out in the judgments, both civil and criminal, much of which, as I have said, consists of a factual recitation of the Claimant's own words and conduct"*.

11.45 As the SDPR make clear, the Tribunal's usual practice is not to go behind a conviction, but to treat the conviction as proof of the allegations for which a Respondent was convicted. This usual practice reflects the fact that as the then Lord

Chief Justice, Lord Taylor, stated in Shepherd "*the Tribunal was not designed nor equipped to go behind a conviction*". Rule 15(2) of the SDPR states that "*A conviction for a criminal offence may be proved by the production of a certificate of conviction relating to the offence and proof of a conviction shall constitute evidence that the person in question was guilty of the offence. The findings of fact upon which that conviction was based shall be admissible as conclusive proof of those facts save in exceptional circumstances"*. This usual practice was endorsed in Shepherd in which Lord Taylor stated *"Public policy requires that, save in exceptional circumstances, a challenge to a criminal conviction should not be entertained by a Disciplinary Tribunal"*.

11.46 The Tribunal had regard to the discussion in Shepherd in which leading cases on what may amount to exceptional circumstances were reviewed. Whilst, inevitably, these circumstances were not exhaustively defined, Lord Diplock, in Hunter, referred to "*fresh evidence obtained since the criminal trial and the probative weight of such evidence justifying making an exception to the general rule of public policy that the use of civil actions to initiate collateral attacks on final decisions ... should be treated as an abuse of the process of the Court*". Lord Diplock adopted the test from Phosphate which stated "*the new evidence must be such as entirely changes the aspect of the case"*. The Tribunal also had regard to the two Privy Council cases also mentioned in the discussion in Shepherd (Ratnam and Jeyaretnam) in which it was said that when considering whether exceptional circumstances existed *"an important consideration would be whether an appeal against the conviction was available"*.

11.47 The Respondent accepted the fact of his two convictions for harassment offences in Norway in 2001 and 2003 (whilst maintaining they were unsafe). In 2001 the Respondent was convicted in his absence whilst in 2003 he attended and acknowledged his guilt (which he stated was a result of duress). The harassment offences contravened Section 390(a) of the Norwegian Penal Code. The certified translation defined section 390(a) as: *"frightening or annoying behaviour or other inconsiderate conduct to have violated another person's right to be left in peace"*.

11.48 The Tribunal accepted that the certified copies of the Norwegian criminal court judgments were equivalent to UK certificates of conviction for the purposes of Rule 15(2) of the SDPR. The Tribunal accordingly accepted that the fact of the two convictions had been proved beyond reasonable doubt. The Tribunal noted that it was clear from the certified translations of the Norwegian criminal court judgments that the offence of which the Respondent was twice convicted was not a strict liability offence. The judgment referred to intent being a necessary element of the offence. Whether the convictions amounted to conclusive proof of the facts on which the convictions were based, which was the default position as set out above, turned on whether there were exceptional circumstances such that the usual presumption to this effect should not apply.

Was the Respondent's conduct was a justified response?

11.49 A recurring theme of the Respondent's defence to the allegation was that everything he had communicated had been accurate and was justified in the light of what was publicly stated about him. The Tribunal recognised that the Respondent had received deeply unpleasant correspondence following the publicity he had received in Norway.

The Respondent's characterisation of examples of such correspondence as vile and Islamophobic was one the Tribunal accepted and shared. Similarly, the Respondent considered that it was understandable that the publication in newspapers of what he regarded as grossly offensive material about him which again focused on his faith, which on his evidence had been made without advance notice or scope for reply, would trigger a wish to respond. The Tribunal accepted the Respondent's submission that anyone in the position he described would be extremely upset and angry and would wish to take remedial action.

11.50 Despite having considerable sympathy and recognition of this provocation, the form of the action taken in response was unacceptable. The Respondent had described in his evidence taking "revenge" on Ms H, as he considered her to be the originator of the public lies and vilification of him. Even accepting the Respondent's case in full that her account and evidence was unreliable and fabricated, the way in which he responded went beyond an understandable and acceptable response. The Tribunal considered that he must have known he had "crossed the line". The correspondence to Ms H to which the Tribunal had been directed, which the Respondent accepted sending, was itself profoundly unpleasant. The Tribunal could not accept the characterisation of the examples set out in paragraph 11.5 above as an understandable and acceptable response to the undoubted provocation the Respondent suffered:

11.51 The "report" that the Respondent had acknowledged circulating to Ms H's neighbours, friends and relations amongst others contained similarly personal information and could not plausibly be described solely as an attempt to "set the record straight" and provide his side of the story. The Respondent's anger appeared to have been directed as Ms H who had not herself published anything. If the Respondent's case about her vulnerability and personal difficulties were accepted as true, the Tribunal considered that this made such an aggressive, personal and public campaign against her worse rather than justifying the Respondent's conduct.

11.52 The evidence of provocation was not "fresh evidence obtained since the criminal trial" as envisaged in Hunter. The Norwegian criminal court had considered and rejected similar submissions. It was still less evidence "as entirely changes the aspects of the case" as the test from Phosphate Sewerage envisaged. The Tribunal did not consider that the provocation, even accepting the Respondent's account of the publication of unfair, untrue and offensive material without notice or right of reply, could be regarded as an exceptional extenuating circumstance such that it could or should go behind the conviction on this basis. This issue was raised with the Norwegian criminal court and in any event the Tribunal rejected the submission that the letters and "reports" sent by the Respondent which made repeated and extensive reference to Ms H's sex life, mental health, suicide attempts, partner's drug use and issues relating to her parents could sensibly be regarded as any kind of legitimate response to any provocation. The Tribunal noted that appeals against both convictions were available, which according to Ratnam and Jeyaretnam was relevant to an assessment of whether exceptional circumstances existed. The Tribunal found that no exceptional circumstances based on provocation had been demonstrated and accordingly this was no basis for the Tribunal to look behind the conviction.

Were the convictions unsafe due to being based on perjury?

11.53 A related submission from the Respondent was that the convictions were unsound because they were based on perjured evidence of witnesses including Ms H. The Tribunal was not equipped to rehear the case and reassess isolated examples of evidence presented during the criminal trial. A right of appeal against both convictions existed, but was not exercised by the Respondent. The Respondent stated in one of his emails provided in answer to the allegation (dated 7 September 2019) that he did not appeal against his convictions as he was advised that he would definitely be sent to prison if he appealed the first conviction and he considered there was no prospect of a fair hearing. The Tribunal found the Respondent's evidence and submissions on this topic to be unpersuasive. The certified copies of both judgments specifically mentioned the right of appeal. An appeal was the appropriate forum for pursuing such concerns about witness evidence.

11.54 The Tribunal considered that even taking and accepting in full the Respondent's case at its highest, unreliable evidence from Ms H was incapable of amounting to an "exceptional circumstance" such that the Tribunal should go behind the fact of the convictions for harassment. The Respondent was convicted, at least in part, for the materials he accepted writing and circulating. During the hearing he minimised the significance of this accepted physical evidence, and suggested that no conviction could or would have been based on the letters and reports alone without witness evidence. Nevertheless, in both judgments, the Norwegian criminal court made extensive reference to these written materials as examples of the Respondent's harassment of Ms H. The Tribunal found that no exceptional circumstances based on allegedly perjured evidence had been demonstrated. An appeal was the appropriate mechanism to pursue such a challenge and in any event the witness evidence was supported by physical evidence, which the Respondent accepted he had sent. Accordingly there was no basis for the Tribunal to look behind the conviction.

11.55 Comments from Ms T, the Norwegian investigating policewoman who also gave evidence at the first trial in 2001, were clearly a source of distress and anger to the Respondent. He considered that her comments were comprehensively rebutted by evidence he produced during the Tribunal hearing, and had produced during his unsuccessful 2011 libel case against Ms T and others in the UK. The Tribunal considered that even accepting the Respondent's characterisation of Ms T's evidence, including his view of what he maintained was the demonstrable lie about him being sectioned, this evidence was not provided by Ms T until the correspondence and "report" mentioned above, which contributed to his convictions, had already been sent by the Respondent. Again, even accepting the Respondent's own case with respect to the details made public by Ms T in her newspaper interview of 2005, the Tribunal did not accept that this amounted to an exceptional circumstance such that it should go behind the fact of the earlier harassment convictions. Such comments could not be said to entirely change the aspect of the case as per the test from Phosphate Sewerage.

Was the confession to the second conviction given under duress?

11.56 Whilst in the 2001 case, the Respondent was convicted in his absence, in the 2003 trial he appeared and admitted his guilt. The Tribunal did not accept that what the Respondent described as "duress" leading to his confession and acceptance of the

second conviction met the legal definition of "duress". It was clear from the material before the Tribunal that the Respondent had stated he accepted the impact that the conduct had had on Ms H, was advised of his right of appeal and had received legal advice on his case (although he stated he was not represented during the second trial itself).

11.57 Whilst the Respondent may understandably have found the advice from his lawyer that he was highly likely (or definitely as per the Respondent's evidence) to have been imprisoned had he not pleaded guilty unpalatable, the basis for the Norwegian criminal court's decision was clear. The Court stated that there had been a gross violation of Section 390(a) of the Penal Code aggravated by the fact that the very private information about Ms H had been made available to the entire world over the internet. This was the second conviction for the same offence against Ms H. The sentence for the 2001 conviction for harassment (of NOK 10,000) had been described by the Court as lenient and was said to have been imposed on grounds of procedural economy (the Respondent being based in the UK). In 2003 the Norwegian criminal court indicated that the sentence should not lie at the lower end of the penalty range. In these circumstances, given that a right of appeal existed, and given that the comments acknowledged to have been made by the Respondent (even on his case) did not appear inconsistent or incongruous with him facing a second conviction for the same harassment offence, the Respondent had not raised any exceptional circumstances such that the Tribunal should or could go behind the convictions.

The conduct would not amount to a criminal offence in the UK

11.58 The Tribunal did not accept the Respondent's submission that a conviction in the UK would not have been a likely outcome from the same set of facts. The Tribunal considered that even disregarding the oral evidence of Ms H, for the reasons put forward by the Respondent, the correspondence itself to which the Tribunal had been directed (an example of which is quoted above) was likely to be capable of sustaining a harassment prosecution in the UK. This was not a persuasive, much less exceptional, reason to go behind the fact of the harassment convictions.

Human Rights arguments

11.59 The Respondent raised issues under the Human Rights Act in the context of his own right to privacy and also of his right to expression (to respond to material made public about him). The Tribunal considered his reference to his right to privacy under Article 8 (which relates to private and family life, home and correspondence) demonstrated a familiarity with issues which he must have appreciated also applied to Ms H's right to some degree of privacy. The Tribunal did not consider that the Respondent's reference to his right to expression (under Article 10) raised any exceptional circumstances such that the Tribunal could go behind the decision of the Norwegian criminal court. It is well known and understood that the right is not absolute and to the extent that the Respondent did not consider his convention rights were respected the appropriate route for challenge was by way of an appeal.

The alleged breaches

11.60 The Applicant alleged that the convictions for harassment offences in 2001 and 2003 beached Rule 1.08(1) of the SPR90 in that they brought the profession into disrepute. Having found there was no basis on which to go behind the two convictions, the Tribunal considered the impact of the convictions on the reputation of the profession. The Tribunal accepted, as was clear from the rule itself, that Rule 1.08(1) applied to conduct in a solicitor's private life. The proven harassment involved sending to Ms H, with whom the Respondent had originally had an amicable relationship, and to third parties, offensive and highly personal letters, cards and "reports" through which he disclosed intimate and distressing details about Ms H, her partner and her family. These details were also made available on the internet (and at the date of the hearing remained available contrary to the condition on which his 2003 sentence was based). The first conviction attracted a fine whilst the second conviction attracted an 8 month suspended prison sentence. The Tribunal had no doubt whatsoever that two such convictions for serious harassment offences inevitably brought the profession into disrepute. The Tribunal found that the breach of Rule 1.08(1) SPR90 was proved beyond reasonable doubt and therefore allegation 1.1 was proved in full.

12. **Allegation 1.2: The Respondent failed to notify his regulator about the convictions referred to in allegation 1.1 in breach of the following:**

1.2.1 From the date of convictions until 1 July 2007: Rule 1.08(1) of the SPR 90;

1.2.2 From 1 July 2007 until 5 November 2011: All or alternatively any of Rules 1.02 and 1.06 of the CC07;

1.2.3 From 5 November 2011: All or any of Principles 2, 6 and 7 of the Principles and Outcome 10.3 of the CC11.

<u>The Applicant's Case</u>

12.1 The Respondent failed to report his convictions in 2001 and 2003 for harassment offences to his regulator, despite being sentenced to a suspended prison sentence for the second conviction. It was submitted that it would have been apparent to the Respondent that the foreign convictions were unlikely to be bought to the attention of his regulator without him doing so.

12.2 The convictions were disclosed to the Applicant by way of a report in February 2017 after the Respondent had disclosed them to a partner of the firm at which he was working.

12.3 The Respondent made applications for practising certificates to the Applicant through his "MySRA" account. In the applications he made for practising years 2012/13 to 2014/15 he answered in the negative to questions as to whether any of the events/circumstances in Regulation 3 or 3.1 of the SRA Practising certificate Regulations 2011 applied to him. The circumstances and events in Regulation 3.1 included the following:

3.1 (o) "the applicant has been charged with an indictable offence"
3.1 (p) "the applicant has been convicted of an indictable offence"
3.1 (s) "the applicant has been subject to in another jurisdiction of any circumstance equivalent to those listed in (j) to (r).

<u>*Breach of the Rules*</u>

1.08 (1) SPR90

12.4 As noted above, whether practising or not, solicitors were required by Rule 1.08 (1) to conduct themselves so as not to bring the profession into disrepute and specific provision was made to the standard of behaviour required as officers of the court and as members of the profession within their private lives. Although the convictions related to the Respondent's conduct within his private life, it was submitted that it should have been apparent to him that he was expected to comply with the same high standards that applied irrespective of whether he was practising as a solicitor or conducting matters within his private life. It was said to follow that he should have reported the convictions as conduct which brought the profession into disrepute and that his failure to do so constituted a further example of a breach of this rule.

Rule 1.02 and 1.06 SCC 2007

12.5 Rule 1.02 required solicitors to act with integrity and Rule 1.06 required them not to behave in a way that diminished the trust the public placed in them and in the profession. The guidance to Rule 1 stated "*members of the public must be able to place their trust in you. Any behaviour within or outside your professional practice which undermines this trust damages not only you but the ability of the profession as a whole to serve society"*. Had the Respondent been acting with integrity it was submitted that he would have disclosed his convictions to the Applicant. His failure to do so undermined the trust that the public place in him and in the profession as members of the public would expect solicitors who have been convicted of criminal offences to notify their regulator. Again, it was submitted that it would have been clear to the Respondent that conduct outside of practise could damage public trust in the profession.

Principles 2, 6 and 7 of the Principles and Outcome 10.3 of the CC11

12.6 Principle 2 required solicitors to act with integrity. The Applicant submitted that the Respondent failed to comply with the ethical standards of his own profession by failing to report his convictions to the Applicant and referred the Tribunal to <u>Hoodless & Blackwell v FSA</u> [2003] FSMT 007, <u>Newell Austin v SRA</u> [2017] EWHC 411 (Admin) and <u>Wingate & Evans v SRA</u> [2018] EWCA Civ 366 in support of this. He was under a specific obligation to notify the Applicant of material changes to relevant information about him under Outcome 10.3, but his failure to notify his regulator continued. Outcome 10.3 provided indicated "*you notify the SRA promptly of any material changes to relevant information about you including serious financial difficulty, action taken against you by another regulator and serious failure to comply with or achieve the principles, rules, outcomes and other requirements of the handbook."* Principle 7 required solicitors to "*comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-*

operative manner." The notes to Principle 7 provided solicitors should, for example, "*ensure that you comply with all reporting and notification requirements".*

12.7 The Applicant alleged that the Respondent should have notified the Applicant about his convictions pursuant to Principle 7 and Outcome 10.3. Had the Respondent dealt with the Applicant in an open and co-operative manner it was submitted that he would have reported the convictions, on the basis that they amounted to a material change to relevant information about him in light of his previous non-disclosure. The Respondent's failure to notify the Applicant about his convictions was also submitted to amount to a breach of Principe 6 as it undermined the trust the public placed in him and in the provision of legal services.

The Respondent's Case

12.8 The Respondent stated that one reason he did not notify the Applicant of his convictions was that he took his challenge to the outcome to the European Court of Human Rights (ECtHR). His case was rejected on the papers by that Court in 2006 which the Respondent attributed to a Norwegian judge, who was one of the three judges who considered the case.

12.9 More fundamentally the Respondent submitted that it was obvious that his conduct would not have led to a conviction in the UK and that "any fool" could see the conviction could be disregarded on that basis. He stated that he did not consider he was obliged to report such "utter rubbish".

12.10 After 2006, when the ECHR avenue was closed, the Respondent stated that it being so clear that the entire episode would not happen in the UK (from the behaviour of the newspapers to the conduct of the police investigation and trial) there was no obligation to inform the Applicant. He stated that in any event the conviction was a matter of public record which was available for anyone to see and he stated the fact that no one who knew about it had reported it to the Applicant illustrated that it was not regarded as serious. He submitted that his position was analogous to a protester in Hong Kong who may acquire a criminal record for participating in protests after what he described as being the antithesis of a fair criminal procedure.

12.11 In response to a question during cross examination, suggesting that he did not report because it would affect his practise, the Respondent replied that he had an income to earn and he had been provoked. He also said during cross-examination that he did not know at the time there was a duty to report the conviction to the Law Society. In response to a question from the Tribunal about whether he could not have reported the fact of the convictions but made representations about them being unsafe the Respondent stated that initially he was still litigating related points and then he had considered that there was no obligation to disclose something so flawed.

The Tribunal's Decision

12.12 The Tribunal considered that convictions for harassment offences unambiguously fell within the circumstances about which solicitors were obliged to tell their regulator. The relevant rules, principles and outcomes pleaded under allegations 1.2 all applied to conduct in a solicitor's private life and are not limited to charges or convictions in

the UK. As set out under the findings in relation to allegation 1.1, the harassment convictions were inevitably serious matters and it should have been clear to any solicitor that it was necessary to inform the Applicant of the convictions.

12.13 During the hearing the Respondent had stated that he now understood that there was a duty to report, but had not realised this at the time. The Respondent's belief that the convictions were unfair was clearly strongly held. His case was that in all the circumstances it was obvious that the convictions were unsafe and/or his actions in response to extreme provocation were justified and so any obligation to report did not apply. The Respondent had referred to having an income to earn, amongst other things, when asked about his failure to report his convictions. This indicated to the Tribunal that the practical implications of reporting the convictions also played a part in the Respondent's decision not to do so. The Respondent's answer indicated that he was aware that reporting the convictions could have an impact on him professionally.

12.14 The Tribunal did not consider that it was credible that a solicitor could be unaware that a conviction for harassment was a serious matter nor that it fell within the range of relevant circumstances which must be notified to the Applicant. The Respondent's applications for practising certificates had included prompts about any relevant circumstances. It was not open to a solicitor to unilaterally determine that the circumstances were such that it was unnecessary to report such a conviction. Given the strongly held convictions described by the Respondent, the appropriate course of action would be to make the report whilst also noting his points of concern in mitigation.

12.15 The Respondent accepted that he had failed to report the convictions to the Applicant. The Tribunal considered that public confidence in the regulatory framework for solicitors required that relevant matters be reported to the body responsible for regulating the profession in the public interest. The Tribunal found beyond reasonable doubt that the failure to make the report, whether it be through ignorance of the requirement or a conscious decision that circumstances did not warrant it, amounted to a further breach of the relevant rules, principles and outcomes in force at the time as set out in the allegation. Whilst ignorance of the requirement did not afford the Respondent a defence to the allegation drawing on what the Respondent said in his evidence the Tribunal found that he had in fact made a conscious decision not to disclose.

12.16 Specifically, the Tribunal found that the failure to report the convictions would: further bring the profession into disrepute in breach of Rule 1.08(1) of SPR90; diminish the trust that the public placed in the Respondent in breach of Rule 1.06 of the SCC and undermine the trust placed by the public in him and in the provision of legal services in breach of Principle 6. The continuing failure breached the relevant provisions in force at the relevant time. The Tribunal considered that the public would regard such a failure as serious.

12.17 The Tribunal accepted the Applicant's submission that a solicitor acting with integrity would have reported such convictions. By reference to the test set out in Wingate v SRA [2018] EWCA Civ 366 the Tribunal found that such a failure amounted to a clear failure to adhere to the ethical standards of the profession. The Reporting obligations, which under the Practising Certificate Regulations expressly

required that foreign convictions be reported, were necessary for effective regulation of and public confidence in the profession and it was a fundamental ethical requirement of the profession that individual solicitors comply with this regime. As noted above, the Respondent had made reference to the practical impact of making the report and the Tribunal considered this indicated his failure to do so was caused at least in part by a desire to avoid this impact. The Tribunal considered that such conduct prioritised his interests over the ethical requirements of the profession. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent had acted with a lack of integrity in breach of Rule 1.02 of the SCC 2007 and Principle 2 of the Principles at the relevant times.

12.18 Principle 7 requires solicitors to "*comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and cooperative manner*". Outcome 10.3 provides that a solicitor should "*notify the SRA promptly of any material changes to relevant information about you including serious financial difficulty, action taken against you by another regulator and serious failure to comply with or achieve the principles, rules, outcomes and other requirements of the handbook*". In light of the findings set out above, the Tribunal found beyond reasonable doubt that the Respondent had inevitably breached both of these obligations by failing to report relevant information to his regulator. That he genuinely considered that the convictions were unsafe or that the surrounding circumstances exonerated or excused him was no answer to the failure to report; any such arguments or explanation should have been provided along with the disclosure rather than the Respondent effectively usurping the role of the regulator to form its own conclusion. Allegation 1.2 was proved in full.

Previous Disciplinary Matters

13. There were no previous Tribunal findings.

Mitigation

14. The Respondent made oral submissions in mitigation, which to an extent repeated many of the points summarised above. He maintained that the events could not have happened in the UK for various reasons. Firstly, the newspapers would not have printed such personal, untrue and vitriolic material about him without giving him an opportunity to reply. Secondly, the prosecution, which he considered was tainted by discrimination, would not have been brought in the UK. The Respondent considered Ms H's untrue comments to reporters, and evidence to the Norwegian criminal court, to be the root cause of the matters giving rise to the allegations. He invited the Tribunal to take account of the highly unusual circumstances and to accept his submission that none of the events, including his own retaliation, would have happened but for the unfair and outrageous conduct which had first been directed at him.

15. The Respondent referred again to the deeply unpleasant and hateful emails he had received which had focused on his religion. He considered that he had been failed by the legal processes in Norway and also in his unsuccessful defamation case in the UK in which he considered that a hurtful, damaging and demonstrable lie had been allowed to persist about him. The Respondent submitted that it was unrealistic to have

expected him to respond to fabricated stories about him threatening to kill a child, for example, by writing a polite letter expressing his discontent. When deeply offensive, and discriminatory, fabrications about him were made publicly he considered that he had a right to express his anger publicly in reply and he invited the Tribunal to give due weight to this understandable human impulse. The two most troubling examples to which the Tribunal had been referred were private letters to Ms H and were sent immediately upon the Respondent having just found out particularly upsetting inventions which had been made publicly about him.

16. The Respondent stated that it was not until 5 years after the articles had been printed about him in the Norwegian press that he had set up his website. He had done so in the absence of any other means of obtaining any right of reply. He stated that most of his current website concerned wider issues in Norwegian society and that the material relating to Ms H was to some extent hidden and was not prominent.

17. The Respondent also stated that the Norwegian criminal court judgment was an incomplete record of the hearing. The degree of provocation and the inherent unreliability of the evidence on which the prosecution was based was minimised. The fact that Ms H's partner had stated he wanted to kill the Respondent, for example, was omitted. The Respondent's own account of the hearing was fuller and more honest. The Respondent stated that he had struggled to obtain representation in Norway and that his lawyer for the first hearing did not have the benefit of much of the relevant material that the Respondent had supplied to rebut the allegations made against him.

18. The Respondent stated that his integrity in his practice was unquestioned and unquestionable. He stated that whilst working as a locum he had previously made a report to the Applicant when he had been asked to carry out an unlawful act. He lost work in that example which illustrated his commitment to ethical practice. He stated that he was no risk whatsoever to the profession – and he had been fighting to clear damaging and untrue things that had been said about him including about his mental health. He submitted that a reprimand for not declaring his convictions would be an appropriate sanction, or alternatively a suspension from practice of a month.

19. During the hearing the Respondent provided an oral account of his financial circumstances. No supporting documentation was provided and the detail is not repeated here other than to note that he confirmed that he owned the property in which he lived outright.

Sanction

20. The Tribunal referred to its Guidance Note on Sanctions (7th Edition) when considering sanction. The Tribunal assessed the seriousness of the misconduct by considering the level of the Respondent's culpability and the harm caused, together with any aggravating or mitigating factors.

21. In assessing culpability, the Tribunal found that the motivation for the conduct on which the convictions were based was revenge for what the Respondent perceived to be lies which he had been unable to rectify through other means. He sought to balance the picture of him which had been publicly portrayed in the press. The Tribunal considered that the failure to report the convictions was caused by a wish to avoid the

issues that doing so would bring, together with his conviction that in all the circumstances the convictions were unsound. The conduct was plainly planned, as it included posting information on a publicly available website and included multiple communications; the Respondent himself referred to a public information campaign which could not be described as spontaneous even if some of the specific examples were immediate responses to particular events. The Tribunal noted that Ms H had shared private and intimate information with the Respondent about her background and health and that sharing such information publicly, when he stated that he knew she had experienced mental health difficulties, was a breach of that trust, albeit in response to what he considered her own breach of trust. The Respondent had direct control of and responsibility for the form his reaction to the publication of information about him in Norway took, which was what gave rise to the harassment convictions. The Respondent was at the time an experienced solicitor, having been admitted to the Roll in 1990. This was particularly so in relation to his continuing failure to declare his convictions. The Tribunal considered that his failure to report his convictions, motivated at least in part by a desire to avoid the impact that would have, amounted to the continuing misleading of his regulator. Each year he applied for a practising certificate he wrongly confirmed that he had nothing relevant to report. The Tribunal assessed the Respondent's culpability as high.

22. The Tribunal considered the harm caused by the misconduct to have been foreseeable. The impact on Ms H was predictable and potentially very significant. This was not to minimise the impact of the publicity about the Respondent himself, which had not on the evidence emanated from Ms H but from press articles, but the response taking the form of conduct which led to two convictions for harassment inevitably caused harm to the reputation of the profession. The Tribunal considered that the form that the Respondent's response took amounted to a significant failure to act with integrity. He took the deliberate decision to send the communications he did and to make public the details in the way he did. The Tribunal assessed the harm caused as significant.

23. The Tribunal then considered aggravating factors. The misconduct amounted to a criminal offence. His conduct continued after his first conviction and gave rise to a further conviction. The events giving rise to the convictions were calculated, deliberate and repeated over an extended time period. The fact that Ms H was vulnerable, as the Respondent was aware, added to the seriousness. The Respondent had concealed his misconduct to the extent that he had not declared his convictions to his regulator (and had wrongly confirmed that he had nothing relevant to disclose when renewing his practising certificate). The Respondent ought to have known that his conduct was in breach of his obligations. The Tribunal considered that his statement that he had a living to make as part of his explanation for his failure to report his convictions demonstrated that he was aware that there would be implications of doing so and that he was consciously in breach of his obligations. The nature of the material about Ms H which was made public and the way it was shared so widely was a further aggravating factor. He was aware of issues of privacy, referring to his own having been violated, and his response knowingly failed to extend any such considerations to Ms H on the basis that he had unilaterally determined that her own conduct excused and legitimised the form him response took.

24. The Tribunal also considered mitigating factors. The Respondent had a previously unblemished career. The Tribunal did not accept the submission that the convictions would not have been received in the UK. Whilst the Norwegian prosecution may have relied, as outlined by the Respondent, on the witness evidence of Ms H, and even if his case that her evidence was unreliable was accepted in full, the Tribunal considered the specific uncontested examples of correspondence from the Respondent to which it had been referred were completely unacceptable. It was particularly noteworthy that in the second hearing before the Norwegian Court in 2003 the Respondent had agreed and was ordered to take down his Website which had been a material aspect of that case but had not done so by 2019, some 16 years later. The Tribunal considered that the Respondent had no insight into his misconduct whatsoever. He considered that the form his response took was wholly excused by the provocation he had received.

25. The Tribunal considered the purely personal mitigation presented by the Respondent to be very strong. The Respondent's account of being identified, despite not being named, in press reports which focused on his faith and made untrue allegations about sexual threats, misconduct and mental health, clearly amounted to very substantial and unpleasant provocation to which anyone would wish to respond. The Tribunal accepted that the Respondent's anger and sense of grievance at the publication of articles in the Norwegian press about him were genuinely and strongly, and even understandably, held, but did not consider that this amounted to an adequate justification for his behaviour towards Ms H which took the form of repeated harassment. He directed his anger at what he considered the failings of newspapers and the judicial process at Ms H, exposing the most intimate personal details about her health and family to a deliberately wide audience of neighbours, friends and relations of Ms H as well as to the wider public. Whilst accepting the provocation of media coverage possibly identifying him and focusing on his faith, and recognising that he had received disgraceful emails again focusing on his faith, the Tribunal considered his own reaction to be totally unacceptable and to amount to a protracted and profound departure from the range of potentially reasonable responses to the provocation he faced.

26. The overall seriousness of the misconduct was high. Given the convictions for harassment in the circumstances outlined above, compounded by a failure to report those convictions, the Tribunal did not consider that No Order, a Reprimand, Fine, Restrictions on practice or Suspension were adequate sanctions. The Tribunal had regard to the observation of Sir Thomas Bingham MR in Bolton v Law Society [1994] 1 WLR 512 that the fundamental purpose of sanctions against solicitors was:

> *"to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth".*

27. The Tribunal considered that a fine was an inadequate sanction given the need to protect the reputation of the legal profession in addition to the inherent seriousness of the conduct. The convictions for harassment were inevitably serious in themselves having attracted a two year suspended prison sentence, and the form of the harassment, to examples of which the Tribunal was referred, heightened that seriousness. This was compounded by the fact that the Respondent had misled his regulator over an extended period. He had not only failed to report the convictions as required, but had repeatedly confirmed that he had nothing relevant to disclose when

renewing his practising certificate. Similarly, the Tribunal did not consider that there were restrictions on practise that could meaningfully address its concerns to reflect these factors.

28. The Respondent had indicated a fixed term suspension of one month would be a sufficient and appropriate sanction. The Guidance Note on Sanctions states that a suspension may be appropriate where the Tribunal has determined that a Reprimand, Restrictions on Practice or a Fine were not appropriate, and where the need to protect the public and the reputation of the profession from future harm was made out but not such that Strike Off from the Roll was justified. The Tribunal did not consider that a suspension of one month remotely reflected the seriousness of the misconduct which the Tribunal considered to be at the highest level, nor met the need to protect the reputation of the profession.

29. The Guidance Note on Sanctions states that an Indefinite Suspension may be appropriate where the seriousness of the misconduct was such that Strike Off was the appropriate sanction but where truly compelling and exceptional personal mitigation made that sanction unjust. The nature of the misconduct, both the convictions and the failure to report them, indicated a degree of continuing risk to the public on the basis that the Respondent considered himself beyond regulation; it being a matter for him what form his response to provocation took or whether a serious matter needed to be reported to his regulator. Whilst recognising the very strong personal mitigation presented by the Respondent, the Tribunal considered that his complete lack of insight heightened the risks set out above. His website was still published at the date of the hearing. The Tribunal considered that the public would be profoundly concerned by the misconduct and that the implications for the reputation of the profession were very significant. Accordingly, the Tribunal determined that the findings against the Respondent required that the appropriate sanction was strike off from the Roll.

Costs

30. The total costs claimed in the Applicant's schedule of costs was £6,096.56. Mr Johal invited the Tribunal to reduce this amount to reflect the fact that 12 hours had been estimated for advocacy whilst the case concluded half way through the second day. He otherwise invited the Tribunal to make an order for costs as claimed. The Respondent provided oral information about his financial means, as noted above, but did not make any submissions on the costs claimed.

31. The Tribunal assessed the costs for the hearing. The Tribunal had heard the case and considered all of the evidence. The Tribunal accepted that it was appropriate to reduce the figure claimed for advocacy by three hours (by £390 in total). The Tribunal considered that having regard to the level of documentation and the work necessarily involved in the Application, the remaining costs claimed were reasonable in all the circumstances. The Tribunal consequently ordered the Respondent to pay the Applicant's costs of and incidental to this application fixed in the sum of £5706.56.

Statement of Full Order

32. The Tribunal ORDERED that the Respondent, FARID EL DIWANY, 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 £5,706.56.

Dated this 17th day of January 2020
On behalf of the Tribunal

G. Sydenham
Chairman

JUDGMENT FILED WITH THE LAW SOCIETY
17 JAN 2020