SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12007-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

FAROOQ RAFIQ Respondent

Before:

Mrs C. Evans (in the chair)
Mr P. Lewis
Dr S. Bown

Date of Hearing: 27 – 28 January 2020

Appearances

Max Evans, counsel of Fountain Court Chambers, Fountain Court, Temple, London EC4Y 9DH instructed by John Tippett-Cooper, solicitor of Capsticks Solicitors LLP, 1 St George's Road, Wimbledon, London, SW19 4DR for the Applicant.

Chris Kirk-Blythe, Consultant of Umbrella Legal Ltd, 486 Manchester Road, Bradford, BD5 7LB for the Respondent.

JUDGMENT

Allegations

1. The allegations against the Respondent made by the Solicitors Regulation Authority ("SRA") were that while in practice as a partner at Broadway Solicitors ("the Partnership") and/or whilst a director and solicitor at Broadway Legal Limited, trading as Broadway Solicitors ("BLL") (together with the Partnership, "the Firm") between around January 2015 and December 2017 he:

1.1 caused or allowed the Firm to send Claims Notification Forms ("CNF") in personal injury claims:

1.1.1 Without the knowledge of the named client, and/or

1.1.2 Without proper grounds for signing the statement of truth; and

In doing so, he breached any or all of Principles (- withdrawn -) 6 and 8 of the SRA Principles 2011 ("the Principles").

1.2 failed to investigate and take appropriate remedial and/or any appropriate action despite being made aware of reports that the Firm had issued Claims Notification Forms in personal injury claims where the client did not have knowledge of the claim and/or where there were not proper grounds for signing the statement of truth.

In doing so, he breached any or all of Principles 2, 6 and 8 of the Principles.

2. Between around January 2015 and December 2017, as regards agreements supposedly entered into between clients and claims management companies, he failed, or failed to cause the Firm, to give proper or adequate advice as to whether these agreements were in the clients' best interests. In doing so, he breached any or all of Principles 2, 4, 5 and 6 of the Principles, and failed to achieve Outcomes 9.1, 9.2 and 9.3 of the SRA Code of Conduct 2011 ("the 2011 Code").

3. Between around January 2015 and December 2017, he caused or allowed the Firm to act for clients where there was a conflict of interests or a significant risk of a conflict of interests between the clients' interests and the Firm's interests. He therefore breached any or all of Principles 2, 4 and 6 of the Principles, and failed to achieve Outcome 3.4 of the 2011 Code.

4. - Withdrawn -

5. Between around January 2015 and December 2017, he caused or allowed the Firm to instruct claims management companies, who were referring clients to the firm (or with whom the firm had referral arrangements), to provide expert reports and treatments for clients without considering whether it was in their best interests to do so. In doing so, he breached any or all of Principles 2, 3, 4, 5 and 6 of the Principles, and failed to achieve Outcomes 9.3 and 9.4 of the 2011 Code.

6. - Withdrawn -

7. Between at least February 2016 and September 2018, he:

7.1 - Withdrawn -

7.2 Failed to act appropriately when he became aware that work on client matters was being outsourced overseas.

In doing so, he breached any or all of Principles 2, 4, 6 and 8 of the Principles.

8. - Withdrawn -

9. Further, and as regards the SRA Accounts Rules 2011 ("the Accounts Rules"):

9.1 For the period February 2017 to July 2017, he failed correctly to prepare any or adequate client account reconciliation statements every 5 weeks, in breach of any or all of Rules 29.12 and 29.13 of the Accounts Rules and Principles 6 and 8 of the Principles.

9.2 He caused a minimum cash shortage of £56,542.11 as at 28 February 2017, in breach of Rule 20.9 of the Accounts Rules and Principles 6, 8 and 10 of the Principles.

9.3 He caused a credit to the office account of £91,951.25 as at 28 February 2017, in breach of Principles 6 and 8 of the Principles.

9.4 As at 28 February 2017, the Firm held residual balances on 800 client matters totalling £232,533 in office balances and £10,372.84 in client balances, in breach of Rule 14.3 of the Accounts Rules and Principles 6 and 8 of the Principles.

9.5 He failed to maintain accurate client ledgers, in breach of Principles 6 and 8 of the Principles.

10. The Respondent failed adequately to carry out his role as a COFA and a COLP, and in so doing breached Rules 8.5(c) and 8.5(e) of the SRA Authorisation Rules 2011 ("the Authorisation Rules"), and Principle 7 of the Principles.

11. - Withdrawn -

12. By virtue of his convictions for the offences of assault of Person AF and Person HF on 5 April 2018 contrary to section 39 of the Criminal Justice Act 1988, the Respondent:

12.1 failed to act with integrity and therefore breached Principle 2 of the Principles; and/or

12.2 failed to behave in a way which maintained the trust the public placed in him and in the provision of legal services and therefore breached Principle 6 of the Principles.

13. By virtue of his conviction for the offence of assault of Person AF on 10 April 2019 contrary to section 39 of the Criminal Justice Act 1988, the Respondent:

13.1 failed to act with integrity and therefore breached Principle 2 of the Principles; and/or

13.2 failed to behave in a way which maintained the trust the public placed in him and in the provision of legal services and therefore breached Principle 6 of the Principles.

Documents

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

- Rule 5 Statement and Exhibit JHT1 dated 24 September 2019
- Rule 7 Statement and Exhibit JHT2 dated 19 November 2019
- Respondent's Answer to the Rule 5 Statement dated 5 November 2019
- Respondent's Answer to the Rule 7 Statement dated 4 December 2019
- Applicant's Reply to the Respondent's Answer to the Rule 5 Statement dated 19 November 2019
- Statement of Agreed Facts dated 23 January 2020
- Applicant's Statement of Costs dated 20 January 2020

Preliminary Matters

15. The parties jointly applied to amend allegation 1.1 so that it alleged that the Respondent caused or allowed CNF's to be "sent" as opposed to "issued" as originally alleged. The CNF was a pre-action form, and thus could not be "issued".

16. The Tribunal determined that it was in the interests of justice to allow the amendment. The allegation, as amended, properly reflected the conduct complained of.

17. The Applicant applied to withdraw a number of allegations made against the Respondent. Mr Evans explained that having fully reviewed the Respondent's Answer in the proceedings, it was considered that a number of the allegations made were no longer sustainable:

- As regards allegation 1.1, the alleged matters were no longer sustainable taking into account the Respondent's limited involvement, conflicts in the evidence that were discovered post the writing of the Rule 5 Statement, and additional documents that were examined.

- As regards allegation 4, the Respondent had provided a plausible explanation in his Answer. The Applicant had no adequate basis to impugn that explanation. Taking into account the standard of proof, the Applicant considered that the allegation was no longer sustainable and thus it was no longer proper to pursue it.

- As regards allegation 6, further investigation was undertaken in light of the Respondent's Answer. Those investigations revealed documents which cast doubt on the Applicant's case. Other documents referred to by the Respondent cast further doubt on the Applicant's case. In the circumstances, the Applicant considered that the allegation was no longer sustainable and thus it was no longer proper to pursue it.

- As regards allegation 7.1, in light of the Respondent's Answer, and taking into account the standard of proof, the Applicant considered that it was not sustainable and that it was no longer proper to pursue it

- As regards allegation 8, the explanation provided by the Respondent in his Answer was not able to be countermanded. In light of the Respondent's Answer, and taking into account the standard of proof, the Applicant considered that Allegation 8 was not sustainable and that it was no longer proper to pursue it.

- As regards allegation 11, this was premised on allegations that the Applicant did not consider it was proper to pursue. Accordingly, this allegation ought to be withdrawn.

18. The Respondent supported the application.

19. The Tribunal found that in circumstances where the Applicant no longer considered that it had sufficient evidence to sustain an allegation, that allegation ought not to be pursued. Given Mr Evans' submissions, the Tribunal considered that the application was properly made and it was in the interests of justice for it to be granted. Accordingly, the Tribunal permitted the withdrawal of the allegations for the reasons detailed above and as agreed between the parties. The allegations pursued against the Respondent were as detailed in paragraphs 1 – 13 above.

Factual Background

20. The Respondent, who was born in 1984, was a solicitor having been admitted to the Roll in April 2009. Between 17 November 2009 and 5 April 2011 the Respondent practised as a consultant for the practice known as "Broadway Solicitors", which was then the sole practice of Mrs AB. Between 4 March 2011 and 23 March 2016, the Respondent practised in partnership with Mrs AB under the name "Broadway Solicitors".

21. BLL was incorporated on 26 February 2016 and started trading on 23 March 2016, the same date that the Partnership ceased trading. On incorporation, BLL's directors were the Respondent and Mrs AB. Mrs AB resigned as a director on 1 June 2016.

22. From 1 June 2016 until the SRA's intervention into BLL on 22 November 2018, the Respondent was the sole director and manager of BLL. The Respondent was also the COLP and COFA of BLL from 23 March 2016 to 22 November 2018.

23. The Respondent's Practising Certificate for 2018/19 was suspended following the SRA's intervention into the Firm. On 23 January 2019 the suspension of his Practicing Certificate was terminated subject to various conditions.

24. The Firm employed between 15 and 18 members of staff in 2016/17 and, on or around 21 September 2017, employed 4 solicitors, 10 legal or administrative assistants/apprentices, and 1 CILEx member. From around February 2016, the Firm outsourced work to a company based in Nottingham called Alpha UK Business Services Limited ("Alpha"). Alpha retained 10-20 employees who worked full-time

for the Firm. The Firm also stationed roughly 3 of its own employees at Alpha's offices.

25. The Firm specialised in low-value personal injury claims ("PI claims"), which accounted for approximately 97% of the work undertaken by the Firm in 2017/18. It had 11,432 live cases in August 2018.

Witnesses

26. The Respondent provided oral and written evidence in mitigation.

Findings of Fact and Law

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

Integrity

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

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

29. **Allegation 1.1 – the Respondent caused or allowed the Firm to send Claims Notification Forms ("CNF") in personal injury claims: without the knowledge of the named client, and/or without proper grounds for signing the statement of truth; and in doing so, he breached any or all of Principles (- withdrawn -) 6 and 8 of the Principles.**

Allegation 1.2 – the Respondent failed to investigate and take appropriate remedial and/or any appropriate action despite being made aware of reports that the Firm had issued Claims Notification Forms in personal injury claims where the client did not have knowledge of the claim and/or where there were not proper grounds for signing the statement of truth. In doing so, he breached any or all of Principles 2, 6 and 8 of the Principles.

The Applicant and Respondent's Agreed Case

29.1 The PI claims in which the Firm specialised generally fell within the scope of the RTA Protocol. Such claims must be conducted through the Claims Portal, an electronic communication system through which information relating to claims can be exchanged between claimants and defendants or their insurers. The first stage for

such claims requires the claimant or their legal representative to complete a CNF, signed with a Statement of Truth, and send it to the defendant's insurer.

29.2 The Firm occasionally sent CNFs without an adequate basis for doing so. For instance, the Firm sent a CNF on behalf of Client RK in around April 2016, but Client RK has confirmed that she had never heard of the Firm, or instructed a solicitor to act on her behalf. The Firm's client file included an electronically-signed Client Authority document and CFA, but Client RK had also confirmed that she had not signed any papers authorising solicitors to act on her behalf; the electronic signature on these documents also pre-dated the Firm's first contact with the client. The Firm also sent a CNF on behalf of Client CC on 14 January 2015, but there was no evidence that Client CC gave the Firm authority to do so. There were no proper grounds for signing the Statements of Truth on the CNFs in these cases.

29.3 The Respondent admitted that between around January 2015 and December 2017, he (i) caused or allowed the Firm to send Claim Notification Forms without the knowledge of the named client, and/or without proper grounds for signing the statement of truth; and (ii) failed to investigate and take appropriate remedial and/or any appropriate action despite being made aware of reports that the Firm had sent Claims Notification Forms where the client did not have knowledge of the claim and/or where there were not proper grounds for signing the statement of truth. In doing so, he admitted that his conduct breached Principles 6 and 8 of the Principles. He also admitted that his conduct breached Principle 2 of the Principles in respect of sub-paragraph (ii) only.

29.4 In particular, the SRA considered, and the Respondent accepted, that the Respondent's failure to act on serious concerns raised by multiple third parties (i.e. sub-paragraph (ii)) amounted to a lack of integrity. Starting from December 2015, the Firm received several letters from defendant insurers and the Motor Insurers Bureau raising concerns about the veracity of certain claims submitted by the Firm. The Respondent was aware of such concerns, but did not alter the Firm's procedures; only very basic information was required to be obtained from clients at the outset of the Firm's instruction. Improved procedures could have included more rigorously identifying the Firm's clients' details at the start of a retainer, and ensuring better documentation of client contact and client consent.

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

29.5 The Tribunal found allegations 1.1 and 1.2 proved on the facts. The Tribunal considered the Respondent's admissions were properly made.

30. **Allegation 2 - Between around January 2015 and December 2017, as regards agreements supposedly entered into between clients and claims management companies, he failed, or failed to cause the Firm, to give proper or adequate advice as to whether these agreements were in the clients' best interests. In doing so, he breached any or all of Principles 2, 4, 5 and 6 of the Principles, and failed to achieve Outcomes 9.1, 9.2 and 9.3 of the 2011 Code.**

Allegation 3 - Between around January 2015 and December 2017, he caused or allowed the Firm to act for clients where there was a conflict of interests or a significant risk of a conflict of interests between the clients' interests and the Firm's interests. He therefore breached any or all of Principles 2, 4 and 6 of the Principles, and failed to achieve Outcome 3.4 of the 2011 Code.

Allegation 5 - Between around January 2015 and December 2017, he caused or allowed the Firm to instruct claims management companies, who were referring clients to the firm (or with whom the firm had referral arrangements), to provide expert reports and treatments for clients without considering whether it was in their best interests to do so. In doing so, he breached any or all of Principles 2, 3, 4, 5 and 6 of the Principles, and failed to achieve Outcomes 9.3 and 9.4 of the 2011 Code.

The Applicant and Respondent's Agreed Case

30.1 The Firm was financially dependent upon receiving clients from CMCs. These clients had entered into agreements with CMCs before being transferred to the Firm, which required the client to pay the CMC a fee at the conclusion of their case. This fee was additional to recommendation fees paid by the Firm to the CMC.

30.2 The client's payment to the CMC may well not have been in his or her best interests, since the client could have instructed the Firm (or another firm) directly without needing to pay such a fee to a CMC. In contrast, it was in the Firm's interests that the client would pay a fee to the CMC, since the Firm had a financial interest in maintaining its flow of clients from CMCs. The Firm thus acted for clients where there was a conflict of interests or a significant risk of a conflict of interests between the clients' interests and the Firm's interests.

30.3 The client-CMC agreements were within the scope of the Firm's retainer, and the Firm should have advised their clients to seek independent advice on them. It never did so.

30.4 The Respondent's Answer stated that he had adopted a blanket charging model which he considered was consistent with his clients' best interests, and which in some cases could lead clients to benefit substantially in financial terms. However, he accepted that this blanket approach was crude, and could not be relied on to ensure that each client's interests were best served; in particular, clients with very low-value and straightforward claims would not be best served by the model.

30.5 Additionally, the Firm procured second medical reports and medical treatments for its clients exclusively from CMCs on which the Firm was financially dependent, and from a company which shared a director with Alpha, the Firm's outsourcing provider to which the Firm paid large fees.

30.6 The Respondent's Answer stated that there was nothing improper or unlawful about the same companies providing both claims management and medical reporting/treatment services. However, these relationships led to an increased risk that the Firm's independence and professional judgement would be compromised, and of improper and inadequate referrals to the Firm. The relationships also meant that

these third parties had an interest in a referral back from the Firm, but clients were not informed of these interests. They could thus not make informed decisions about how their case was to be pursued, meaning the Firm was not acting in their best interests.

30.7 The Respondent admitted that between around January 2015 and December 2017:

- he failed, or failed to cause the Firm, to give proper or adequate advice as to whether agreements supposedly entered into between clients and claims management companies were in the clients' best interests. In doing so, he breached Principles 2, 4, 5 and 6 of the Principles, and failed to achieve Outcomes 9.1, 9.2 and 9.3 of the 2011 Code;

- he caused or allowed the Firm to act for clients where there was a conflict of interests or a significant risk of a conflict of interests between the clients' interests and the Firm's interests. He therefore breached Principles 2, 4 and 6 of the Principles, and failed to achieve Outcome 3.4 of the 2011 Code.

- he caused or allowed the Firm to instruct claims management companies, who were referring clients to the Firm (or with which the Firm had referral arrangements), to provide expert reports and treatments for clients without considering whether it was in their best interests to do so. In doing so, he breached Principles 2, 3, 4, 5 and 6 of the Principles, and failed to achieve Outcomes 9.3 and 9.4 of the 2011 Code.

30.8 In particular, the Applicant considered, and the Respondent accepted, that the Respondent's conduct identified in each of Allegations 2, 3 and 5 lacked integrity, because a solicitor acting with integrity would be expected to protect their clients' interests over that of a third party; would avoid the risk that the Firm's independence was being compromised by arrangements with those third parties; and would ensure that the clients had the information necessary to make informed decisions regarding how to pursue their case.

The Tribunal's Findings

30.9 The Tribunal found allegations 2, 3 and 5 proved on the facts. The Tribunal considered the Respondent's admissions were properly made.

31. **Allegation 7.2 - Between at least February 2016 and September 2018, he failed to act appropriately when he became aware that work on client matters was being outsourced overseas. In doing so, he breached any or all of Principles 2, 4, 6 and 8 of the Principles.**

The Applicant and Respondent's Agreed Case

31.1 Client matters were worked on from Pakistan, which the Respondent was not aware of until it was brought to his attention by the Applicant in interview on 11 January 2018.

31.2 The Applicant accepted that there was no evidence that the Firm directly outsourced client matters abroad. It appeared that the Firm's outsourcing agent, Alpha, had employees which worked on client matters abroad. The Firm's contract with Alpha

did not expressly prohibit Alpha from working on client matters abroad, despite there being no express permission for it to do so. If matters were worked on by Alpha employees abroad, they would have been subject to the terms of the Alpha contract, which contained adequate contractual arrangements to maintain client confidentiality, etc. The Applicant also accepted that clients were told that work may be outsourced overseas, meaning that (at least in broad terms) clients had consented to such an arrangement. However, when he was informed by the Applicant on 11 January 2018 that there was a risk that client matters were being worked on abroad, the Respondent failed to act appropriately. The Respondent himself did not actually know that client matters were being worked on overseas: this meant that he could not have adequately monitored what work was being done abroad, or (e.g.) consider what steps were being taken by the overseas provider to ensure client confidentiality. However, the Firm simply continued to work with Alpha as before, without identifying why client matters were being worked on abroad and what protections that work was subject to. The Applicant considered, and the Respondent accepted, that this failure was in breach of Principles 2, 4, 6 and 8 of the Principles.

The Tribunal's Findings

31.3 The Tribunal found allegation 7.2 proved on the facts. The Tribunal considered the Respondent's admission was properly made.

32. **Allegation 9.1 - For the period February 2017 to July 2017, he failed correctly to prepare any or adequate client account reconciliation statements every 5 weeks, in breach of any or all of Rules 29.12 and 29.13 of the Accounts Rules and Principles 6 and 8 of the Principles.**

Allegation 9.2 - He caused a minimum cash shortage of £56,542.11 as at 28 February 2017, in breach of Rule 20.9 of the Accounts Rules and Principles 6, 8 and 10 of the Principles.

Allegation 9.3 - He caused a credit to the office account of £91,951.25 as at 28 February 2017, in breach of Principles 6 and 8 of the Principles.

Allegation 9.4 - As at 28 February 2017, the Firm held residual balances on 800 client matters totalling £232,533 in office balances and £10,372.84 in client balances, in breach of Rule 14.3 of the Accounts Rules and Principles 6 and 8 of the Principles.

Allegation 9.5 - He failed to maintain accurate client ledgers, in breach of Principles 6 and 8 of the Principles.

The Applicant and Respondent's Agreed Case

32.1 Client account reconciliations were not completed every five weeks at the Firm for the period February 2017 and July 2017, but were completed retrospectively, and were inadequate.

32.2 As at 28 February 2017, the Firm had 78 matters which showed a total client account debit balance of £56,542.11.

32.3 As at 28 February 2017, the Firm had 191 matters which showed a total office account credit balance of £95,951.25.

32.4 As at 28 February 2017, the Firm held residual balances on 800 client matters totalling £232,533 in office balances and £10,372.84 in client balances, which had been dormant for a year or more and which had not been returned to the client. By 31 May 2017, this had increased to 1003 open matters with residual balances, with the office balances totalling £305,440.37 and client balances totalling £19,502.58.

32.5 No up-to-date client ledgers were provided to the FI officer at the time of the review, and ledgers which were later provided were inaccurate.

32.6 The Respondent admitted that he had breached the Principles and Accounts Rules as alleged.

The Tribunal's Findings

32.7 The Tribunal found allegations 9.1, 9.2, 9.3, 9.4 and 9.5 proved on the facts. The Tribunal considered the Respondent's admissions were properly made.

33. **Allegation 10 - The Respondent failed adequately to carry out his role as a COFA and a COLP, and in so doing breached Rules 8.5(c) and 8.5(e) of the Authorisation Rules, and Principle 7 of the Principles.**

The Applicant and Respondent's Agreed Case

33.1 The Applicant submitted, and the Respondent accepted that in light of his admitted conduct, he had failed to carry out his role as COLP and COFA appropriately. Accordingly, he had breached the Authorisation Rules and Principle 7 as alleged.

The Tribunal's Findings

33.2 The Tribunal found allegation 10 proved on the facts. The Tribunal considered that the Respondent's admission was properly made.

34. **Allegation 12 - By virtue of his convictions for the offences of assault of Person AF and Person HF on 5 April 2018 contrary to section 39 of the Criminal Justice Act 1988, the Respondent: failed to act with integrity and therefore breached Principle 2 of the Principles; and/or failed to behave in a way which maintained the trust the public placed in him and in the provision of legal services and therefore breached Principle 6 of the Principles.**

Allegation 13 - By virtue of his conviction for the offence of assault of Person AF on 10 April 2019 contrary to section 39 of the Criminal Justice Act 1988, the Respondent: failed to act with integrity and therefore breached Principle 2 of the Principles; and/or failed to behave in a way which maintained the trust the public placed in him and in the provision of legal services and therefore breached Principle 6 of the Principles.

The Applicant and Respondent's Agreed Case

34.1 On 13 September 2019, the Respondent was subject to a criminal trial at the Greater Manchester Magistrates court for three offences of assault by beating, contrary to section 39 of the Criminal Justice Act 1988. The Respondent pleaded not guilty. He was convicted on all counts. The Respondent was sentenced to a Rehabilitation Activity Requirement, an Unpaid Work Requirement, a restraining order and also ordered to pay a victim surcharge of £85.

34.2 The Applicant submitted, and the Respondent accepted that by virtue of those convictions, he had breached the Principles as alleged.

The Tribunal's Findings

34.3 The Tribunal found allegations 12 and 13 proved on the facts. The Tribunal considered the Respondent's admissions were properly made.

Previous Disciplinary Matters

35. None.

Mitigation

36. Mr Kirk-Blythe referred the Tribunal to the Respondent's statement in mitigation and supporting documents and to testimonials written on the Respondent's behalf. The Tribunal read all of that material in full.

37. In evidence, the Respondent described his medical issues, and steps he had taken to deal with those issues, including his ongoing treatment and courses he had attended.

38. The Respondent explained that he had not planned to run the Firm alone, and had been looking for someone to join him as a Director, however he was unable to find anyone. He described that governmental changes made it difficult to recruit and retain staff across all levels of the business.

39. He instructed a compliance advisor to assist in ensuring the Firm was compliant with its obligations. The compliance advisor was involved in creating the agreement between the Firm and Alpha. He also helped to create precedents for the Firm and reviewed files. The Respondent considered that he, in following the compliance advisor's advice, had addressed any compliance risks. He accepted that as the Principal of the Firm, he was ultimately responsible for the Firm's deficiencies, notwithstanding that he did not have direct knowledge of some of the matters. He considered that he had made a positive contribution to the community. He had represented a significant number of clients. He had trained a number of solicitors, some of whom now ran their own firms. He had offered pro-bono clinics, and had made a number of charitable donations. He apologised to the profession and was ashamed and embarrassed at his appearance before the Tribunal.

40. Mr Kirk-Blythe submitted that the Respondent's misconduct fell into two distinct and separate categories; the misconduct relating to the Firm, and the misconduct relating to the convictions.

41. As regards the misconduct relating to the Firm, it was submitted that the Respondent's culpability was low, any harm caused was not significant and that there were a number of mitigating factors. Taking all of that into account, the overall assessment of the seriousness of the Respondent's misconduct was low.

42. Mr Kirk-Blythe criticised the execution of the investigation. The Respondent had been over-prosecuted. His Firm had been intervened into, however many of the grounds for the intervention had not survived and did not form a part of the proceedings. Further, he had been refused permission to work by the Applicant.

43. The particulars of the agreed facts were not disputed, and were the result of negotiation between the parties. The Respondent had made a number of concessions. The agreed facts represented the outer limits of what the Respondent felt able to admit.

44. Wingate defined lack of integrity as "nebulous". It covered conduct that fell just short of dishonesty, but also covered conduct that was in breach of the rules and regulations. The Respondent's admission to breaching Principle 2 was on the basis that his conduct was in breach of other rules and Principles. The Principle 2 breaches were at the lowest possible end of seriousness. The Tribunal was referred to the examples in Wingate that demonstrated that a solicitors conduct lacked integrity. Mr Kirk-Blythe submitted that the examples given were all far more serious than the Respondent's misconduct. As regards allegation 1.2, the Respondent accepted that he could have dealt with the MIB claims better than he had. The agreed facts did not say, and the Respondent did not admit that he was aware that multiple parties had raised concerns. He was aware of the MIB concerns and admitted that he failed to deal with those precisely and robustly. That conduct was in breach of Principles 6 and 8 as admitted. The admitted Principle 2 breach arose as a result of the admitted Principle 6 and 8 breaches.

45. Mr Kirk-Blythe submitted that where facts were not detailed in the agreed facts, and were denied by the Respondent, the position was as detailed in the Respondent's Answer, and those were the facts that the Tribunal should adopt. The Tribunal was referred to paragraph 12 of the Guidance Note on Sanction which stated: "A Respondent may admit the alleged misconduct, but dispute particular details. The Tribunal will hear from the parties to determine whether in its view the disputed evidence would materially affect its sanction. If not, the Tribunal will proceed to determine the sanction of the Respondent's version of events. Where the dispute is such that it would materially affect sanction the Tribunal shall decide, having heard all the evidence, the factual basis upon which sanction will be based." Mr Kirk-Blythe submitted that he did not intend to go through each disputed fact as it would be disproportionate and turgid to do so.

46. The Respondent accepted the Applicant's interpretation of the Rules in relation to allegations 2 and 3. His misconduct was as a result of his mistaken but genuine belief that it would be improper for him to advise clients on the contracts they had entered

into with the CMCs, given that he did business with those CMCs. It was not admitted that the contracts were not in the clients best interests. There appeared to be no harm caused, and there had been no complaints from any clients.

47. It was common ground that there were 5 cases under allegation 5 where physiotherapy had been provided to clients by the same company that initially referred the client to the Firm. There was 1 case where a second medical report had been provided by the company referring the case to the Firm. Mr Kirk-Blythe submitted that this was a small number when taking into account that the Firm had conducted 43,000 matters. There was no evidence that the Respondent knew that this was the case. He had no involvement in the selection of the agencies, nor did he have any commercial, financial or other interest in who was selected. Further, there was no evidence that any harm had been caused to the clients. The Respondent's culpability was low.

48. The Respondent discussed the concerns raised by the Applicant that form the basis of allegation 7.2 with his compliance advisor. He was advised that he should address those concerns. He attempted to amend the agreement and served notice on Alpha. He had to withdraw that notice as he was unable to recruit the staff to undertake those administrative tasks. The Respondent admitted that he breached Principle 2 on the basis that he ought to have extricated himself more swiftly.

49. His admission to allegation 9 had been immediate. There was no evidence that the Accounts Rules breaches had led to any client losing money.

50. There was no suggestion that the Respondent had failed to co-operate or that he had sought to mislead or obstruct the Applicant's investigation. The impact on those directly affected appeared to be minimal. There was no suggestion that any of his misconduct was deliberate, calculated or that he took advantage of any vulnerable persons. The number of incidents that had formed the basis of the misconduct were low and not unexpected in a Firm that was the size of the Respondent's Firm. If the Respondent had appeared solely for those matters, it would have been submitted that only a light sanction was appropriate. The Respondent felt a sense of grievance in relation to certain aspects of the investigation and prosecution. However, that sense of grievance co-existed with his sense of genuine remorse.

51. Mr Kirk-Blythe submitted that the misconduct that arose as a result of the Respondent's convictions took the case into a different category of seriousness. The Respondent had pleaded not guilty to the matters on the advice of his legal representatives. He was contrite and devastated. Following his conviction, he was strongly advised to appeal, however he accepted the decision of the Court and had provided considerable evidence of his rehabilitation. The Tribunal was referred to other matters where the Tribunal had sanctioned solicitors for criminal conduct. In one case a solicitor with a conviction for ABH (which was more serious than common assault) received a 15 month suspension.

52. The Respondent had suffered as a result of these matters. His Firm had been intervened into. The intervention was financially ruinous for him. His reputation had suffered both in the community and in the profession. He had lost his family. The Respondent was a broken man who had made commendable efforts to repair himself

and his wrongs. His rehabilitation had been considerable and ongoing. It would be disproportionate to permanently exclude him from the profession.

53. The Tribunal requested assistance with what appeared to be a discrepancy between the agreed facts and the mitigation advanced, namely that the Respondent was only aware of the complaints made by the MIB (and not the other insurers). Other apparent discrepancies were set out by the Tribunal.

54. Mr Evans submitted that the scope and position of the agreed facts was clear. The Respondent had admitted that "starting from December 2015, the Firm received several letters from defendant insurers and the Motor Insurers Bureau raising concerns about the veracity of certain claims submitted by the Firm. The Respondent was aware of such concerns, but did not alter the Firm's procedures". It was plain from the admitted and accepted fact that the Respondent was aware of the concerns.

55. If the Tribunal did not consider that the Respondent was aware of the concerns from a number of sources, it was submitted that it would not make any difference to the sanction. The Respondent accepted that he had not conducted himself appropriately when he was aware that CNF's were being sent out without client consent. This was serious whether he was aware of this from one source or multiple sources.

56. As regards allegation 2, this related to the Respondent's failure to advise on the agreements. It was not alleged that the contracts themselves were not in the clients best interests. They may or may not have been. The Respondent was in no position to comment on those contracts, as he had not seen them and had failed to advise his clients about them.

57. The position as regards numbers of clients for allegation 5 was agreed.

58. It was not accepted that the admissions to Principle 2 breaches were as a result of the admissions to the other Principle or Rule breaches. For each Principle 2 admission, there was an explanation as to why Principle 2 had been breached. That explanation was not that it was a consequential breach following other Rule/Principle breaches.

59. The Tribunal considered whether it was necessary to have a Newton Hearing, given the disputed facts raised by the Respondent during his mitigation. As regards allegation 5, the parties had reached an agreed position. The Tribunal considered the agreed position as regards allegations 2 and 3. There had been no finding that the contracts entered into were of themselves not in the best interests of the client. The allegation made, and admitted was that the Respondent failed to advise on the contracts, or to advise clients to take independent legal advice. It was in that context that it was said, and admitted, that the Respondent had failed to act in the best interests of his clients.

60. As regards allegation 1.2, the facts admitted by the Respondent were clear. His failure to act on serious concerns raised by *multiple* third parties amounted to a lack of integrity. He was aware of "such concerns". The submissions made on behalf of the Respondent, that this admission 'could be read' to refer exclusively to the MIB was incompatible with the agreed facts. The Tribunal considered that even if it accepted that the Respondent was only aware of the concerns raised by the MIB, it was not so

material that it would materially affect sanction. The Respondent had admitted that he was aware that CNFs were being sent without client consent, and also, on occasion, without the client having instructed the Firm. That admission demonstrated serious misconduct. Taking into account the other admitted matters, the Tribunal determined that the factual dispute, if indeed there was one, would not materially alter the sanction it imposed.

61. The Tribunal did not accept that the Respondent's admitted breaches of Principle 2 were at the lowest level. As regards allegation 1.2 the Respondent had failed to take appropriate action when he was informed (in effect) that potentially fraudulent CNFs had been sent by the Firm and signed with a statement of truth. The action that the Respondent had taken in that knowledge had been wholly insufficient. A CNF was significant in RTA claims and ought to be able to be relied on as truthful and accurate, particularly when the statement of truth had been signed by the Firm. The Tribunal considered that no solicitor, acting with integrity, would have conducted themselves in the way that the Respondent did. The breach of Principle 2 was serious and was much more than being consequential to the admitted breaches of the other Principles.

62. As regards the Principle 2 breaches for allegations 2, 3 and 5 the Tribunal considered that the Respondent had subordinated his clients' interests for his own. It had been submitted that the Respondent considered that to advise the clients on the contracts might have caused a conflict. That conflict, however, was not with the client, but with the companies who provided 97% of the Firm's work. The Respondent's concern was not with the best interests of his clients, but with the best interests of the Firm, and ensuring that he did not jeopardise the relationship with the companies which provided the Firm's major income stream. Subordinating clients' interests for the solicitors own interest was one of the examples given in Wingate. Such conduct in and of itself, clearly lacked integrity, was serious, and was more than a consequential breach following other admitted breaches.

63. The Respondent, accepted that he "may not have done enough" and "may not have made good decisions" when he was advised about the risks with outsourced work being conducted abroad. He was advised by his compliance advisor as the appropriate course of action. He failed to take that action, the Tribunal determined, due to the financial consequences for him and for the Firm. Again, the Respondent had subordinated the interests of his clients for his own and that of the Firm.

64. For the reasons detailed above, the Tribunal rejected the submission that the Principle 2 breaches were consequential breaches and at the lowest end of seriousness.

Sanction

65. The Tribunal had regard to the Guidance Note on Sanctions (7th Edition). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

66. The Tribunal considered that the Respondent's motivation for his misconduct as regards the Firm was financial. He wanted to continue running his practice which, on his own account, was generating significant turnover given the size of the Firm. When issues were brought to his attention, he did very little to remedy or rectify those issues. He had repeatedly and consistently subordinated the interests of his clients for his own interests and that of the Firm. His major concern was to protect his source of work and to ensure that his systems protected those sources. The Respondent was directly in control. He was the COLP and the COFA, yet he failed to act appropriately in those governance roles. His responsibilities were not mitigated by the fact that he was not the fee earner on those matters that were of concern. He had ignored warnings from third parties as to the veracity of claims and had failed to amend his systems so as to avoid the risks and matters complained of. He did not do as he ought to have done given his position as the sole Director. His conduct was entirely inconsistent with his roles as the COLP and COFA. The Respondent was sufficiently experienced to appreciate the risks that his systems allowed for non-compliance. Indeed, the risks were specifically notified to him. His compliance advisor suggested compliance measures as regards the outsourcing of work. He did not act on that advice in an appropriate manner. Further, he had failed to properly monitor the Firm's accounts, which had led to a minimum cash shortage on the client account in the sum of £56,542.11. Client ledgers were inaccurate and when compared to documents held. The Tribunal considered that the Respondent's failings, both in terms of the conduct of the work and the mismanagement of the Firm's accounts, demonstrated systemic failings in the Respondent's systems. Contrary to Mr Kirk-Blythe's submissions, the Tribunal determined that the Respondent's culpability was high.

67. He had caused significant harm to the reputation of the profession. The Respondent had admitted numerous breaches of Principle 4 (failing to act in his clients best interests) and Principle 6 (failing to maintain the trust placed in him and in the provision of legal services). His conduct had allowed the policy approach to low value RTA claims to be undermined. He had turned a "Nelsonian blind eye" to significant and serious issues raised by third parties so as to protect his source of work and, ultimately, the fees this generated. Taking the breaches together, the Tribunal considered that the Respondent had caused significant harm to the reputation of the profession. There was no evidence of any individual loss to any client, beyond his acceptance that some low value claimants may have been better served by another approach (to the 'blanket fees' charged by his firm).

68. The Respondent's failings as regards the Firm were aggravated by the period of time over which they had continued. The Tribunal found that he ought to have known that he was in material breach of his obligation to protect the public and the reputation of the profession.

69. In mitigation, the Respondent had demonstrated a degree of insight. He had made a number of early admissions. The Respondent had robustly, and properly defended the withdrawn matters, which had included serious allegations.

70. The Tribunal accepted Mr Kirk-Blythe's submission that the criminal convictions increased the seriousness of the Respondent's overall misconduct. Of particular concern was that the victims of the assaults were, given their domestic status, deemed

vulnerable. It was accepted that the assaults themselves were at the lower end of the scale, however the third assault was particularly serious as it had been committed by the Respondent when he was already on bail for the first two matters. The Respondent, in committing that assault, had not only committed a further criminal act, but he had done so in direct contravention of bail conditions imposed by the Court. Such conduct, the Tribunal determined, was very serious. As a solicitor, the Respondent would have been aware of the importance of complying with conditions imposed by the Court to protect those who had already been subjected to criminal acts committed by him. The authorities referred to by Mr Kirk-Blythe were of no assistance – they did not deal with offences committed in breach of Court bail conditions.

71. The Tribunal considered that sanctions such as No Order, a Reprimand or a Fine did not adequately reflect the seriousness Respondent's misconduct. The Tribunal determined that there was a need, in order to protect the public and the reputation of the profession, to remove the Respondent's ability to practise. The Tribunal found that the Respondent's misconduct as regards the Firm was serious. Further, he had caused significant harm to the reputation of the profession. This Tribunal determined that the seriousness of the totality of the Respondent's conduct was at the highest level. It considered that having regard to the overall facts of the Respondent's misconduct, the Respondent's departure from the standards of integrity, probity and trustworthiness was very serious. The Tribunal was mindful of the comments in Bolton v The Law Society [1994] 1 WLR 512: "Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him…".

72. The Tribunal took account of the testimonials submitted on the Respondent's behalf, which attested to his work, character and rehabilitation. The Tribunal noted the further comments in Bolton, namely:

> "Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. …. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears, likely to be so the consequence for the individual and his family may be deeply unfortunate and unintended. But it does not make suspension the wrong order if it is otherwise right. The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price."

73. The Tribunal considered that the totality of the Respondent's conduct was such that allowing the Respondent's name to remain on the Roll would have an adverse effect on public confidence in the reputation of the profession. Accordingly, the Tribunal determined that the only appropriate and proportionate sanction in order to protect the reputation of the profession was to strike the Respondent off the Roll.

Costs

74. The parties agreed costs in the sum of £55,000.00. The Tribunal considered that the agreed sum was proportionate and appropriate and ordered the Respondent pay costs as agreed.

Statement of Full Order

75. The Tribunal Ordered that the Respondent, FAROOQ RAFIQ, 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 agreed sum of £55,000.00.

DATED this 20th day of February 2020
On behalf of the Tribunal

C. Evans
Chair