SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12063-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD Applicant

and

ALBERTO KHADRA-POZO Respondent

Before:

Mr J C Chesterton (in the chair)
Ms C Jones
Mrs N Chavda

Dates of Hearing:
7-10 September 2020, 19 November 2020, 4-7 May 2021, 24-28 May 2021, 21-24 June 2021

Appearances

Rory Mulchrone, Barrister of Capsticks Solicitors LLP, 1 St George`s Road, London, SW19 4DR, for the Applicant.

Victor Okoh, Solicitor of Burgess Okoh Saunders, 3 Wimpole Street, London, W1G 9SQ for the Respondent

---

JUDGMENT

Allegations

1. The Allegations made against the Respondent were as follows:

1.1. On 9 October 2018, the Respondent submitted a judicial review application which had the potential to mislead a Court, in that:

1.1.1 he wrongly said he had followed the pre-action protocol;
1.1.2 [deleted]
1.1.3 he implied that there had been a delay since 2015, when the Home Office had dealt with the matter in 2017; in breach of all or alternatively any of Principles 1, 2 and 6 of the SRA Principles 2011 and failing to achieve Outcome 5.1 of the SRA Code of Conduct 2011.

2.1. On 9 October 2018, the Respondent submitted a judicial review application which the Respondent had drafted incompetently. The application complained of delay by the Home Office and did not deal with an enclosure that showed there had not been any delay. The Respondent either did not see the letter, which demonstrated incompetence, or did see the letter, in which case he should have dealt with it its implications. The Respondent therefore breached all or alternatively any of Principles 1, 2, 4 and 6 of the SRA Principles 2011 and failed to achieve Outcomes 1.2 and 1.5 of the SRA Code of Conduct 2011.

2.2. In September 2018, the Respondent accepted instructions to file an application for leave to remain on behalf of a client. The Respondent did not ensure that the application was filed. The Respondent therefore breached all or alternatively any of Principles 2, 4 and 6 of the SRA Principles 2011 and failed to achieve Outcomes 1.2 and 1.5 of the SRA Code of Conduct 2011.

2.3. In August 2017, the Respondent accepted instructions and money from Client C in order to bring a claim against a defendant in Sri Lanka. By December 2018 proceedings still had not been issued and Client C asked for the return of his money. The Respondent denied receiving any money. The Respondent had therefore breached all or, alternatively, any of Principles 2, 4, and 6 of the SRA Principles 2011.

2.4. In March 2018, the Respondent accepted instructions and money from Client A in order to bring a claim against a defendant in Sri Lanka. By September 2018 proceedings still had not been issued and Client A asked for the return of his money. The Respondent did not reply. The Respondent had therefore breached all or any of Principles 2, 4, and 6 of the SRA Principles 2011.

3.1. On around 21 August 2018, the Respondent told Client M that he had made an application to the Home Office in circumstances in which that was not true, in breach of all or alternatively any of Principles 2 and 6 of the SRA Principles 2011.

3.2. On 19 December 2018 the Respondent told Client C that he had not received £2,000 from him in circumstances in which that was not true and even though on 17 April 2018 he had acknowledged its receipt, in breach of all or alternatively any of Principles 2 and 6 of the SRA Principles 2011.

4. [deleted]

5.1. On a number of occasions in 2018, the Respondent described himself as a notary public in circumstances in which he is not and never has been a notary, in breach of all or alternatively any of Principles 2 and 6 of the SRA Principles 2011, and failing to achieve Outcome 8.1 of the SRA Code of Conduct 2011.

6. In addition, Allegations 1.1.1, 3, and 5 were advanced on the basis that the Respondent's conduct was dishonest. Dishonesty was alleged as an aggravating feature of the Respondent's misconduct but was not an essential ingredient in proving the Allegations.

Factual Background

7. The Respondent was admitted to the Roll on 1 July 2004. At the time of the hearing he held a practising certificate subject to conditions.

Allegations 1.1 and 2.1 (Client Z)

8. On 9 October 2018, the Respondent lodged an application for judicial review, on behalf of Client Z. The Respondent stated that he was working for Sky Solicitors, though the address was that of Haven Green Solicitors.

9. The judicial review concerned Client Z's application for asylum. The box on the form had been ticked to state that he had complied with the pre-action protocol for judicial review. The Applicant's case was that he had not, in fact, complied with the protocol despite the Respondent signing a statement of truth to that effect.

10. The application stated that Client Z originally came to the UK legally from Syria in 2003 with a visitors 'visa, which he overstayed. In 2007, Client Z claimed asylum, under a false name and nationality. However, he returned to Syria in 2009. Client Z then came to the UK in 2015, illegally, and claimed asylum. In November 2015, Client Z had an appointment to attend a language test. In December 2015, Client Z had an appointment to attend an interview, but he did not attend, as there was a mistake made relating to his name. There was no further information as to how the application had proceeded. The application went on to claim that the Home Office "acted inconsistently with its own policy when they failed to consider the claimant's case for protracted period of time which serves as breach of its own policy". The application was on the basis that "time wasting and delay are in doubt [sic] detrimental to the claimant's interest which are by all intent and purposes not in conformity with the principles of the overriding objective and hence, there is no doubt that the delay has contributed in strengthening the claimant private life in the UK and weekend [sic] significantly any ties they may have in their country of origin".

11. The application did not refer to anything that had happened after 2015. The Applicant's case was that this had given the impression that Client Z had been waiting since December 2015 for the Home Office to consider his application, when in fact it had been considered in some detail.

12. On 1 September 2017 the Home Office had rejected Client Z's application for asylum. In October 2017 Client Z had made a request for reconsideration. On 17 October 2017 the Home Office wrote to Client Z's solicitors, stating that the Home Office would not reconsider the decision. Client Z made further submissions on 20 February 2018. On 29 March 2018, the Home Office rejected the submissions, as Client Z's solicitors had posted them, whereas Client Z needed to make the submissions in person. The Respondent did not mention these matters in the application, save for the inclusion of the 17 October 2017 letter from the Home Office, which was part of an unpaginated bundle of supporting documents.

13. The Home Office defended the application on the basis that it had already made a decision relating to the matters in the application. On 6 December 2018, the Upper Tribunal refused the application as being totally without merit. In the decision, the Upper Tribunal issued a notice to Sky solicitors to provide details of who had acted on the case, as the Respondent was not listed as a solicitor at Sky. It also invited any further representations relating to the conduct of the case, as the Court intended to consider referring the matter to the SRA. On 14 December 2018, Sky replied to the stating that:

- Sky had not issued the application;
- it had no knowledge of the application;
- the Respondent used to work for Sky;
- the Respondent lodged the application "in his personal capacity";
- it had asked the Respondent to explain why he has used (intentionally or unintentionally) Sky Solicitors name in his personal client's JR matter.

14. The Upper Tribunal accepted Sky's explanation and asked the Respondent to show cause.

15. On 20 December 2018, the Respondent replied, stating that he was "a self- employed solicitor" at Haven Green. He stated that he moved to Haven Green after filing the claim form. The Respondent said that "I was aware that there had been a decision dated 15 September 2018 [sic]...the reference to delay concerned Home Office delay in responding to further submissions on 22 March 2018. The response had been sent to [Client Z's solicitors] on 29 March 2018. I understand that [Client Z's solicitors] had not received it...the grounds made reference to delay, but that delay concerned the letter of 29 March 2018 not the decision of 1 September 2018 [sic]. I accept that this was not clear from the grounds. But I hope that my explanation demonstrates that there was no intent to deceive the Tribunal." On 15 January 2019, the Respondent, writing on Haven Green letterhead, stated that;" we would like to withdraw from the above Judicial Review Application" and that Client Z was willing to pay costs.

16. On 22 January 2019 Mr Justice Lane wrote to the SRA stating that he was concerned about the Respondent's conduct. He stated that the application was "not only of an unacceptable low standard but also misleading". He stated that the grounds "clearly set out contentions of delay in relation to an application made in 2015. This is the application mentioned at section 3 of the T480 claim form and in the grounds appended to the firm. However this was not factually correct...". He further stated the Respondent "knew the application of 2015 had been refused but the challenge in this judicial review was actually to submissions made in March 2018...the Upper Tribunal does not

consider that this explanation is supported by the application form and grounds...the application form and grounds plainly related (only) to the alleged delay since 2015."

17. On 20 March 2019, the SRA wrote to the Respondent regarding Mr Justice Lane's concerns. The Respondent's counsel replied on 3 May 2019 stating that Client Z's application was Client Z's second judicial review, and the Respondent did not have papers relating to the first. The Respondent was authorised by Sky solicitors to file Client Z's claim and that Client Z had waited a year for the reconsideration of his claim. His counsel stated that it was the Respondent's "subjective and honestly held belief" that this was an unreasonable delay. The Respondent would not have included the 17 October 2017 letter had he intended to deceive the Upper Tribunal. It was accepted that the Respondent had drafted the grounds "carelessly".

Allegations 2.2 and 3.1 (Client M)

18. On 12 February 2018, Client M applied for indefinite leave to remain in the United Kingdom, on the basis that he was a dependant spouse. On 24 May 2018 the Home Office rejected his application and on 7 July 2018, on the Applicant's case, Client M instructed the Respondent to re-apply for indefinite leave to remain. Client M paid £200.

19. The Applicant's case was that the Respondent said that he and Mr Hammad would work on Client M's application, which was likely to succeed. He provided a receipt in the name of CLS and on 24 July 2018 sent an email, on CLS paper, asking for information. Client M met the Respondent and Mr Hammad on a number of occasions. On 24 July 2018 Client M handed over a number of documents, including a biometric card, which they said they would send to the Home Office. Client M stated that he was told that the application for indefinite leave to remain was sent on 21 August 2018, and that the Home Office had received it. The Respondent sent Client M a copy of the application on Sky's notepaper. Client M stated that he did not know that the Respondent was working for Sky and had not instructed that firm.

20. On 29 January 2019 Client M threatened to withdraw instructions. The Applicant's case was that the Respondent said that he would meet Client M to prepare a letter for the Home Office. As a result of that Client M signed a letter of authority for the Respondent to act, at his new firm, Haven Green. The Respondent did not arrange an appointment to meet Client M and Haven Green denied that the Respondent did any work for Client M while at Haven Green. As a result of what he saw as a lack of progress, Client M complained to his MP. On 6 March 2019, UK Visas & Immigration wrote to Client M's MP, stating that it had not received an application for indefinite leave. By this point, Client M was now out of time to make such an application.

Allegations 2.3 and 3.2 (Client C)

21. In August 2017, on the Applicant's case, Client C instructed the Respondent on a debt collection claim against a Sri Lankan defendant and paid £2,000 on account of costs. On 28 September 2017 Client C signed a witness statement in support of his claim, which the Respondent said he would have certified at the Sri Lankan High Commission. On 31 October 2017, Client C and the Respondent had a meeting, and the Respondent handed Client C his statement. There was no certification by the High Commission, but

the Respondent had stamped it as "solicitor of the Supreme Court England & Wales". On 22 January 2018, the Respondent wrote to the proposed defendants regarding the claim. The Respondent signed the email off as "Solicitor & Notary Public" on behalf of CLS. On 13 February 2018 the Respondent instructed an attorney, Mr Lakshan, in Sri Lanka.

22. On 17 April 2018, Client C sent an email directly to Mr Lakshan, complaining about delays on the part of the Respondent and asking for confirmation that he had received the documents and fees. On 17 April 2018, the Respondent replied to the email, stating that Client C's decision to write directly to Mr Lakshan was "insulting". The Respondent confirmed he had received £2,000 from Client C and he had paid Mr Lakshan.

23. On 19 December 2018, Client C sent an email to the Respondent, asking him to return the balance of £2,000 and his papers, on the basis of a breakdown of relationship. The Respondent said that the papers were in Sri Lanka and denied having received £2,000. Client C therefore instructed new solicitors and subsequently complained to the SRA.

24. The Respondent told the SRA that on 18 May 2017, he had sold his interest in CLS, but remained as in-house counsel. He further stated that Client C's instructions came via a former colleague. He stated that he introduced Client C to Mr A, who in turn sought a Sri Lankan lawyer. The Respondent denied giving any legal advice to Client C and described the complaint as malicious.

25. The Respondent stated that a former colleague paid £1,000 to CLS on behalf of Client C and he said that he had no knowledge as to how CLS dealt with Client C's payments.

Allegation 2.4 (Client A)

26. On 14 March 2018, on the Applicant's case, Client A instructed the Respondent on a debt collection claim against the same Sri Lankan defendant as Client C. Client A signed an authorisation to act on CLS-headed paper. The Applicant's case was that the Respondent initially advised that it would be a straightforward criminal case and asked for £2,500 on account of costs for the criminal part of proceedings, and £2,500 for the civil part. Client A stated that he sent the Respondent £1,400 on 24 March 2018 on account of costs. Client A stated that he understood that, as his claim was in Sri Lanka, the Respondent would instruct a local lawyer.

27. In September 2018 Client A found that nobody had filed his case. On 1 February 2019 and 8 February 2019, Client A asked for the money paid on account to be returned. The Respondent did not respond.

Allegation 5

28. In his emails and on his publicity the Respondent described himself as a solicitor and notary public. The Respondent admitted he was not a notary public, but stated that "the qualifications details of 'notary public 'was only added to my signature because of the mistaken belief that on the continent of Europe, the work done by a notary is equivalent to that of a solicitor".

Preliminary Issues

29. Application to stay allegations relating to Clients A, C and M for abuse of process (witness access to hearing bundle)

29.1 The first witness called by the Applicant was Dr Murad (Client M's). As he was about to commence his evidence, the Applicant disclosed to the Tribunal that he, along with the other witnesses for the Applicant, had been granted access to the hearing bundle some days in advance of the hearing.

29.2 By way of background, the Tribunal operates an electronic, paperless system for its hearings. This requires participants to register with CaseLines. Once registered, access is granted to the papers. The level of access depends on the nature of the participant. The parties will have access to all the papers. The Tribunal and witnesses will have access to a hearing bundle, which does not necessarily contain all papers with within the master bundle. During a hearing it is the hearing bundle that is relied on.

29.3 On 14 August 2020 the clerk to the case had emailed the parties about various administrative matters in preparation for the hearing. At paragraph 3 he had written:

> "3. Please provide us with the names and email addresses of your witnesses so that we can arrange for CaseLines invitation to be sent to them just before they give their evidence. You can provide them with the Zoom invitation when you receive it."

29.4 As a result of a misunderstanding as to the procedures, the solicitor with conduct of the matter on behalf of the Applicant, Mr Horton, had granted access to the hearing bundle.

Respondent's Submissions (1)

29.5 Mr Okoh submitted that this was a further example of a direction from the Tribunal being breached by the Applicant. There was a wealth of evidence and documentation that had been made available, which was not supposed to be viewed by any witness at any time. The potential result of this was that witnesses may tailor their evidence to meet that documentation. Mr Okoh invited the Tribunal to take into account, when reaching its determination, the fact that the Applicant's witnesses may have already had sight of material.

29.6 Mr Okoh made clear that he was not suggesting any bad faith on the part of Mr Horton. Mr Okoh told the Tribunal that he was not making a submission of abuse of process at this stage.

Applicant's Submissions (1)

29.7 Mr Mulchrone told the Tribunal that the clerk's email was a request rather than a direction, which the clerk confirmed to the Tribunal was the case. Mr Mulchrone observed that if the Tribunal did not use CaseLines then the papers would have had to have been posted to the witnesses as the hearing was proceeding remotely due to the Covid-19 pandemic. In that scenario, they would have had access to the bundle in advance anyway. Mr Mulchrone told the Tribunal that what Mr Horton had done had

simply been to do what had always been done, which was to enable the participation of the witness. Mr Mulchrone submitted that it was not known at present whether any or all of the witnesses had actually viewed the bundle and so it was speculative to suggest that their evidence may have been tailored to suit the documents. Mr Mulchrone reiterated that Mr Horton had acted in good faith.

The Tribunal's Decision (1)

29.8 The Tribunal understood that it was possible to interrogate the CaseLines system to see who had actually accessed the bundle and the appropriate course was for that information to be obtained before determining how to proceed.

29.9 The report from CaseLines was produced the following morning and was circulated to the parties. This showed that three of the Applicant's witnesses had accessed the CaseLines bundle.

Respondent's Submissions (2)

29.10 Mr Okoh submitted that allegations that related to Clients A, C and M (Allegations 2.2, 2.3, 2.4, 3.1 and 3.2) be stayed on the grounds of abuse of process.

29.11 Mr Okoh told the Tribunal that it was clear from the report that the Applicant's witnesses had accessed the bundle on approximately 1600 occasions. He submitted that Client C and A were "aligned" and had reviewed almost all the witness statements on multiple occasions. Client M had also done so. Client M had reviewed the Respondent's witness statements and the statement of Mr Hammad that contradicted his own witness statement. Mr Okoh submitted that Clients C and A had worked together either in bringing legal action in Sri Lanka and on the complaint against the Respondent. It was "likely" that the review of the documentation had been discussed between C and A. Mr Okoh submitted that the relevant Allegations should be dismissed for prosecutorial misconduct and abuse of process. The Respondent was clearly prejudiced on the basis that if the matters proceeded the witnesses would most likely tailor their answers.

29.12 Mr Okoh invited the Tribunal, if it was not with him on the abuse of process submission, to treat the evidence of the witnesses with caution.

Applicant's Submissions (2)

29.13 Mr Mulchrone submitted that the jurisdiction to stay allegations should be exercised extremely rarely. It should not be used as a means by which to punish the Applicant. Mr Mulchrone submitted that the matters should only be stayed if a fair hearing is now impossible, in that there were no measures that could be taken that could remedy any prejudice identified or where to proceed would offend the Tribunal's sense of justice and propriety, in line with R v Maxwell [2010] UKSC 48.

29.14 Mr Mulchrone submitted that the Respondent's complaint appeared to be that an element of surprise had been lost. He submitted that the Respondent was not entitled to surprise a witness and that the Tribunal operated a "cards on the table" approach, in which issues should be clearly stated during a hearing. There should be no advantage gained by surprises or ambushes.

29.15 Mr Mulchrone submitted that the Respondent had drafted his responses having seen Client M's statement and so had had the benefit of tailoring his own evidence to that of Clients M and C. It was "most unusual" to exchange statements sequentially. If any prejudice had arisen then it cut both ways.

29.16 Mr Mulchrone noted that Client M had viewed his own statement and exhibits. There was no issue with that. He had looked at Client C's statement, but his complaint had no relevance to Client C. The same was true of the evidence of Client A. Mr Mulchrone conceded that it was "not ideal at all" that Client M had viewed the witness statement of Mr Hammad– one of the Respondent's witnesses. However Mr Hammad had also viewed the statement of Client M and so if any tailoring had occurred it had happened on the Respondent's side in first instance.

29.17 Mr Mulchrone further accepted that Client M had viewed the statement of Client Z and that this was also not ideal. However there was nothing in Client Z's statement that Client M did not already know.

29.18 Mr Mulchrone submitted that the suggestion that there could not be a fair trial was unsustainable.

29.19 The parties each made further submissions in response to each other. The Tribunal listened to them carefully but they are not set out here as they amounted to no more than reiteration of the key submissions summarised above.

The Tribunal's Decision (2)

29.20 The appropriate test when considering a submission of abuse of process was set out in Maxwell at [13]:

> "It is well established that the court has the power to stay proceedings in two categories of case, namely (i) where it will be impossible to give the accused a fair trial, and (ii) where it offends the court's sense of justice and propriety to be asked to try the accused in the particular circumstances of the case. In the first category of case, if the court concludes that an accused cannot receive a fair trial, it will stay the proceedings without more. No question of the balancing of competing interests arises. In the second category of case, the court is concerned to protect the integrity of the criminal justice system. Here a stay will be granted where the court concludes that in all the circumstances a trial will offend the court's sense of justice and propriety (per Lord Lowry in R v Horseferry Road Magistrates 'Court, Ex p Bennett [1994] 1 AC 42, 74 g) or will undermine public confidence in the criminal justice system and bring it into disrepute (per Lord Steyn in R v Latif [1996] 1 WLR 104, 112 f)."

29.21 The Tribunal also had regard to R v Skinner [1994] 99 Cr. App.

29.22 The Tribunal noted carefully the submissions of both parties. In considering the submission that certain allegations be stayed, the Tribunal had regard to the sequence of events that had led to this position, which are set out above.

29.23 The Tribunal noted that it was the Applicant that had brought the issue to the attention of the Tribunal and the Respondent and that the granting of access by Mr Horton was accidental. The Tribunal was of the clear view that witness access to bundle must remain in the control of the Tribunal and not the parties and it was a matter for the Tribunal to decide how and when the witness saw the bundle. This applied equally to virtual hearings, hybrid hearings and hearings in-person.

29.24 The Tribunal was nevertheless satisfied that a fair trial could take place. The Tribunal was an expert Tribunal that was capable of attaching the appropriate weight to the evidence and, where appropriate, excluding evidence. Insofar as there was any prejudice, steps could be taken to remedy this. This included taking into account the context in which the evidence was given.

29.25 The Tribunal noted that some of what the witnesses had read had no relation to them or to their evidence. As for the evidence that was relevant to them, an assessment as to whether their evidence had been tailored could only be made upon hearing the evidence, including cross-examination on that point if Mr Okoh chose to do so. After the evidence was given then the Respondent would be in a position to make submissions on that evidence. The Tribunal would consider those submissions carefully, always mindful of the burden of proof.

29.26 The Tribunal did not find this to be prosecutorial misconduct. The situation arose from a series of very unfortunate circumstances that occurred when an email from the clerk was overlooked. The Tribunal was clear that this must not happen again. However this did not lead to the conclusion that the Allegations should be stayed or that the evidence of the witnesses should be excluded before it had been given. The Respondent could have a fair hearing and proceeding to hear the evidence would not offend the Tribunal's sense of justice and propriety.

30. Respondent's application to exclude the evidence of Client M

Respondent's Submissions

30.1 During the course of Client M's evidence, Mr Okoh made an application for his evidence to be excluded. Mr Okoh submitted that the Tribunal had an inherent power to regulate its own proceedings. He referred to the fact that on five occasions during the course of Client M's evidence, he had not followed clear directions from the Tribunal not to refer to documents other than those contained in the hearing bundle and on CaseLines. Mr Okoh submitted that it was clear that some of the answers given were from a pre-prepared script or with annotations to documents in his possession. He submitted that in those circumstances it was greatly prejudicial to allow this witness to proceed.

Applicant's Submissions

30.2 Mr Mulchrone told the Tribunal that he had asked for authority for Mr Okoh's proposition that the Tribunal had the power to dismiss a witness while they were giving evidence and thereby depriving the Applicant of the right to call witnesses. Mr Mulchrone submitted that it was incumbent on Mr Okoh to provide a legal basis beyond the suggestion that the Tribunal had an inherent power to do this. Mr Mulchrone

submitted that this would be an impermissible step into the arena and told the Tribunal that he had not heard of such a step being taken.

30.3 Mr Mulchrone submitted that if a witness was found to have deliberately ignored instructions, which he did not accept had occurred, then he should be given a "very stern talking to" and such weight would be ascribed to his evidence as the Tribunal saw fit. That was a matter for closing submissions and matter for the Tribunal's judgment.

The Tribunal's Decision

30.4 The relevant sections of the Solicitors (Disciplinary Proceedings) Rules 2019 ("SDPR 2019") were Rules 4, 6(1) and 38, which stated as follows:

> "The overriding objective
> 4.—(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases justly and at proportionate cost.
> (2) The Tribunal will seek to give effect to the overriding objective when it— (a) exercises any power under these Rules; or (b) interprets any rule or practice direction.
> (3) Dealing with a case justly and at proportionate cost includes, so far as is practicable— (a) ensuring that the parties are on an equal footing; (b) ensuring that the case is dealt with efficiently and expeditiously; (c) saving expense; (d) dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues.
> (4) The parties are required to help the Tribunal to further the overriding objective set out above."
>
> "Regulation of procedure and practice directions
> 6.—(1) Subject to the provisions of the 1974 Act, these Rules and any other enactment, the Tribunal may regulate its own procedure."
> "Evidence and submissions during the hearing
> 38.—(1) The Tribunal may consent to a witness giving, or require any witness to give, evidence on oath or affirmation and may administer an oath or affirmation for that purpose.
> (2) The Tribunal may, at any hearing, dispense with the strict rules of evidence.
> (3) Without restriction on the general powers in Parts 2 and 3 of these Rules, the Tribunal may, pursuant to the overriding objective set out in rule 4(1), give directions in relation to— (a) the provision by the parties of statements of agreed matters; (b) issues on which it requires evidence to be given or submissions to be made and the nature and manner of the evidence or submissions it requires; (c) the time at which any evidence or submissions are to be given or made; (d) the time allowed during the hearing for the presentation of any evidence or submission; (e) the time allowed for cross-examination of a witness."

30.5 The Tribunal was satisfied that it did have the power to exclude the evidence of a witness at any time, including once that witness had started giving oral evidence. Witnesses gave evidence with the consent of the Tribunal. The question was whether the Tribunal should withdraw that consent and exclude the evidence of Client M in light of his failure to adhere to directions given by the Tribunal. The Tribunal had been clear that Client M should not be referring to other documents or notes beyond those on

CaseLines. The Tribunal recognised that he was an important witness for the Applicant. Mr Okoh had the opportunity to cross-examine him and to put the Respondent's case to him, as he had been doing during this hearing. The matters that gave rise to Mr Okoh's application were matters to be dealt with when the Tribunal reviewed the evidence at the conclusion of the case. The Tribunal would then decide what weight to attach to the evidence of Client M and the other witnesses. However, if the problem persisted then the Tribunal recognised that it may be necessary to reconsider whether consent for the witness to give evidence should be withdrawn. The Tribunal would give the witness a further opportunity to comply with directions.

30.6 The application to exclude the evidence of Client M was therefore refused.

31. Respondent's second Application to stay allegations relating to Clients A, C and M for abuse of process

31.1 The hearing was adjourned part-heard before Client M had completed giving his evidence. The Respondent lodged further applications for a stay on the grounds of abuse of process. This application was heard before the resumption of Client M's evidence.

31.2 The application took the form of applications dated 25 September 2020 and 2 October 2020. The latter was out of time in that the Tribunal had directed that any such applications be lodged by 25 September 2020. The Tribunal granted leave to the Respondent to advance both arguments. In this Judgment, unless otherwise stated, "the application" therefore relates to both applications.

Respondent's Submissions

31.3 The application dated 25 September 2020 stated as follows:

> "The Respondent applies for an order that:
> 1. The SDT Stays proceedings in regards to the complaint made by Client M on the grounds that the manner in which the Applicant has conducted its prosecution of its case against the Respondents [sic] constitutes an abuse of process of the rules in that it would no longer be possible to have a fair trial or that it would be unfair of [sic] the Respondent to defend the allegations in relation to Client M.
> 2. In the alternative, the Tribunal should disregard witness evidence of Client M as he has had unauthorised access to the case bundle and has crafted evidence to suit the case against the Respondent"

31.4 The application dated 2 October 2020 stated as follows:

> "The Respondent applies for an order that:
> 1. The SDT Stays proceedings in regards to the complaint made by Client M, C and A on the grounds that the manner in which the Applicant has conducted its prosecution of its case against the Respondents [sic] constitutes an abuse of process of the rules in that it would no longer be possible to have a fair trial or that it would be unfair of [sic] the Respondent to defend the allegations in relation to Client M, C and A.

> 2. In the alternative, the Tribunal should disregard witness evidence of Client M, C and A as he has had unauthorised access to the case bundle and has crafted evidence to suit the case against the Respondent
> 3. The time lines as provided for in the directions order dated 10th September 2020 to be amended by 7 days.
> 4. The Respondent to be permitted to make this application out of time."

31.5 The application was supported by a witness statement from the Respondent and a skeleton argument prepared by Mr Okoh. Mr Okoh submitted that during the first part of the hearing;" it became apparent to the Respondent and the Tribunal" that witnesses C, M and A had "substantively prepared" for the hearing with access to the material in advance.

31.6 The skeleton argument continued:

> "8. It is the Respondent's contention that witness M had been coached and provided with a script as well as written prompts in relation to his statement for the purposes of answering cross-examination questions. This coaching was undertaken by Haven Green Solicitors, the firm where the Respondent had previously worked.
> 9. Similarly witnesses C and A appeared to have been pre-prepared in advance of the Hearing.
> 10. Furthermore, during the course of the Hearing, the Applicant alluded that it had provided witnesses C, M and A with documentation to have an advanced read some 14 days prior to the Hearing".

31.7 Mr Okoh submitted that Rule 27(2)(d) of the SDPR 2019 gave the Tribunal the power to exclude evidence where that evidence is late, where it was in a manner noncompliant with directions, where it would be unfair to admit it or where it was not in the interests of justice. Mr Okoh also reminded the Tribunal of the test in Maxwell, as well as numerous authorities cited in his skeleton argument.

31.8 Mr Okoh referred to instances of Client M having relied on pre-prepared notes during his cross-examination and to his prior access to the hearing bundle. Mr Okoh's submissions are not set out in detail here as they covered ground that had been addressed in earlier applications. Mr Okoh cited a number of examples which he submitted demonstrated that Dr Murad had prepared his evidence by reference to other material in the hearing bundle and by reference to unused material recently disclosed by the Applicant.

31.9 Mr Okoh further submitted that while Client A may not have had as much access to the hearing bundle, he still did have some access. It was inappropriate for him to give evidence as he and Client C, as well as Client M, would have prepared and were still preparing the evidence they intend to give. In those circumstances it would be improper for the Tribunal to allow that evidence to be adduced or for those Allegations to continue against the Respondent.

31.10 The Chairman invited Mr Okoh to address the Tribunal on the possibility that it could also treat the witnesses 'evidence like anyone else's to take account of all circumstances, placing whatever weight on it that the Tribunal saw fit. Mr Okoh told

the Tribunal that this might have been appropriate in circumstances where the conduct was not as "pervasive or as pronounced" as it was in this case.

31.11 Mr Okoh submitted that it was clear that Client M had printed out material to which he was referring when giving replies. He has been cross-examined and now had the opportunity to reflect on those questions. He also now had 3-4 months to continue to refer to the material. Mr Okoh further submitted that Client M had studied extensively before the first hearing and had been coached. In relation to Clients C and A, it was not possible to examine the extent to which they might have prepared.

31.12 Mr Okoh maintained that his primary submission was that the allegations should be stayed for abuse of process. In the alternative, the evidence of these three witnesses should be excluded.

Applicant's Submissions

31.13 Mr Mulchrone submitted that the first application was founded on essentially the same grounds as the one already decided, namely premature access to the hearing bundle. He submitted that the Respondent could not keep making the same application.

31.14 Mr Mulchrone further submitted that the credibility or otherwise of Client M was not central to the Applicant's case. The actual issue was whether his application was posted to the Home Office or not, and if it was not, then whether the Respondent had misled Client M about that.

31.15 The issues in relation to Clients A and C related to the scope of the Respondent's retainer and whether he was culpable for any untoward delay.

31.16 Mr Mulchrone responded to the submission made about the premature access to CaseLines. Again, these are not summarised here, as they reiterated points made earlier in the proceedings.

31.17 Mr Mulchrone submitted that there was no evidence of improper coaching of the witnesses. Client M had taken his responsibilities seriously and approached the proceedings "with care and concern".

31.18 Mr Mulchrone submitted that even if there had been any prejudice, the question was whether it was so serious and severe that no fair trial was possible – that was the test for such an exceptional course of action. There had been a regrettable failure by Client M to put his notes away. He was not used to giving evidence remotely and English was not his first language, though he was competent in the English language. Mr Mulchrone submitted that Client M had been "over-eager" in his desire to help the Tribunal. Mr Mulchrone submitted that there was no basis to exclude his evidence or that of Clients A or C.

The Tribunal's Decision

31.19 The Tribunal again applied the test in Maxwell.

31.20 The parties had already made lengthy submissions on the issue of access to the CaseLines bundle having been granted sooner than it should have been. The Tribunal had already made a determination on that matter and there was nothing materially different in relation to the circumstances since that application had been considered. The Tribunal had made clear that the granting of access was not something that should have happened and it rejected the suggestion that it was nothing out of the ordinary. However the Tribunal had already ruled that it did not amount to an abuse of process and there was no basis to reach a different decision on a similar application. The Tribunal was still mid-way through Client M's evidence and had not yet heard from Clients A or C.

31.21 The Tribunal did not find this to be an abuse of process for the same reasons as it had set out when considering the first application for a stay earlier in the proceedings.

31.22 The Tribunal found there to be no evidence of coaching or training. The fact that Client M had made earlier statements was not in itself evidence coaching and did not give rise to prejudice on the evidence the Tribunal had seen. Mr Okoh would have the opportunity to cross-examine Client M on this point and to call evidence himself. The Tribunal would consider all of that evidence at the end of the case. The Tribunal found no basis to either stay any of the Allegations, or to exclude the evidence of any of the three witnesses.

31.23 The Tribunal did not consider the late disclosure to amount to an abuse of process. The Applicant was under a continuing duty of disclosure and had complied with that. The material had been disclosed before Client M had finished his evidence and before any other witness had commenced their evidence. In view of the part-heard adjournment there could be no possible prejudice to the Respondent.

31.24 The Respondent's application was refused in its entirety.

32. Applications to adduce late evidence

32.1 Throughout the hearing there were a number of applications to adduce evidence beyond the time specified in the directions. These applications were not opposed and so the details of the submissions are not set out in this Judgment. The Tribunal granted all the applications and the evidence was duly admitted.

Witnesses

33. Dr Murad (Client M)

33.1 Dr Murad confirmed that his witness statement was true to the best of his knowledge and belief.

33.2 Dr Murad confirmed that he had applied for a visa in Turkey and had come to the United Kingdom in 2013. This was on the basis of family reunion. Dr Murad told the Tribunal that he had arrived in the United Kingdom in August 2013 and his visa expired in March 2018. He had therefore made an application in February 2018 for an extension. He made that application without the assistance of a solicitor and helped by two of his friends. Mr Okoh put to Dr Murad that it was unusual for such an application to be dealt

with individually. Dr Murad told the Tribunal that he only needed to fill in a form and send it to the Home Office. Dr Murad confirmed that he had read the form. Mr Okoh asked him if he had understood the questions that were asked on the form. Dr Murad stated that he had not necessarily understood them but he had asked his friends and later and they had guided him to the answer. Mr Okoh asked Dr Murad if he was aware that he was making an application on the basis that he was married. Dr Murad denied this, stating that he was divorced.

33.3 Mr Okoh put to Dr Murad that he should have left the United Kingdom when he was no longer in a relationship with his wife and that he therefore stayed illegally. Dr Murad told the Tribunal that he did not know about this as he had not received a letter from the Home Office asking him to leave. He told the Tribunal that he had not received a letter explaining the rights or restrictions as to what he could do in the United Kingdom and was not aware of the requirement to notify the Home Office. Mr Okoh put to Dr Murad that this was untrue and that he had lied to the Home Office. Dr Murad denied this.

33.4 Mr Okoh pointed out to Dr Murad that in his complaint to the SRA he had said that the Respondent had introduced him to Mr Hammad but that in his witness statement in these proceedings he had stated that it was his friend that had done so. Dr Murad told the Tribunal that he had received a refusal letter from the Home Office on 4 June 2018 and the next day he had called his friend. She had called him later that evening and said that she had called Mr Hammad who was now retired. She had given Dr Murad Mr Hammad's phone number and Dr Murad had phoned him. Mr Hammad had suggested that Dr Murad meet the Respondent and the following day Dr Murad had met both the Respondent and Mr Hammad. Mr Okoh asked Dr Murad if it was correct to say that the Respondent had told him that he worked for Sky solicitors. Dr Murad stated that the Respondent had told them that he was working at CLS and Sky solicitors in Ealing. Dr Murad confirmed that he had met Mr Hammad and the Respondent at the Ealing office of Sky solicitors. Dr Murad denied that the Respondent had stated that Sky solicitors would be dealing with the application. Mr Okoh put to Dr Murad that the Respondent told him that he had just started and did not have business cards yet. Dr Murad denied this and told the Tribunal that the Respondent told him that he was working for both companies and that he had given a receipt and a business card in the name of CLS. Dr Murad confirmed that he had withdrawn £200 from his bank account which he had paid, obtaining a receipt from CLS. He told the Tribunal that when he had been at the office they had agreed the figure of £200 by way of the first payment. He had then left the building and withdrawn the money.

33.5 Dr Murad agreed that on 22 August 2018 he had sent an email to the Respondent thanking him for the work undertaken on his case. He was satisfied at that point that the application had been lodged with the Home Office as that was what the Respondent had told him. Dr Murad agreed that considerable time has been spent by him, Mr Hammad and to some extent the Respondent in dealing with his application. Dr Murad told the Tribunal that he had met the Respondent and Mr Hammad at the Ealing office twice, once at Sky solicitors and once at CLS. Mr Okoh put to Dr Murad that his witness statement was inconsistent with his evidence in relation to the number of times he had met the Respondent and Mr Hammad. Dr Murad stated that it was four times in total.

33.6 Dr Murad confirmed that in Arabic there was no distinction between the terms for a barrister or a solicitor and he confirmed that his friend had referred to Mr Hammad as a "lawyer". Dr Murad understood that Mr Hammad was retired at the time. He said that Mr Hammad had also told him this on the telephone and so he had had to meet the Respondent. Mr Okoh asked Dr Murad if, when he had met them, the advice was given by both the Respondent and Mr Hammad. Dr Murad confirmed that this was correct. Dr Murad stated that sometimes he met Mr Hammad alone and on four occasions he had met both Mr Hammad and the Respondent, making a total of six meetings. Mr Okoh put to Dr Murad that the primary person giving advice was Mr Hammad. Dr Murad stated that, on the phone this was correct, but in the office the Respondent gave the advice. Mr Okoh put to Dr Murad that when he had met him alone it was Mr Hammad giving the advice. Dr Murad denied this and stated that this was about meeting with a case worker at the Home Office and was after the application had been purportedly sent to the Home Office.

33.7 Dr Murad told the Tribunal that he had complained about Mr Hammad but that the SRA had rejected the complaint. He told the Tribunal that it was mostly the Respondent that worked on the application and that he had been in the office while the application was being prepared. He accepted that he was not there when the final letter was prepared. Mr Okoh put to Dr Murad that he did not know if most of the work had been done by the Respondent or by Mr Hammad. Dr Murad stated that he was in the office and that his connection had been with the Respondent.

33.8 Dr Murad told the Tribunal that he had an understanding of the amount of work that would be required and how much it would cost initially. The total was £700, of which he had paid £200 on account, leaving £500 outstanding. The arrangement was that if the application was not sent and Dr Murad did not get his indefinite leave to remain, then he did not have to pay the balance. Mr Okoh put to Dr Murad that he did not know whether the Respondent and Mr Hammad had failed to send the application to the Home Office. Dr Murad stated that he did know because they could not show him any evidence, receipt or acknowledgement of the application having been sent.

33.9 Upon the hearing resuming in May 2021, Dr Murad was re-sworn and was asked again about how many times he had met Mr Hammad. He told the Tribunal that he had met him twice with the Respondent and twice alone. He then stated that he had met him four times with the Respondent and twice alone. In his complaint to the SRA he had stated that he had met Mr Hammad at least three times on his own. Mr Okoh took Dr Murad through a number of documents from December 2018 to January 2019. He put to Dr Murad that, from those documents, it was clear that the idea to make a complaint to the MP to get a decision on his application to the Home Office, came from Mr Hammad. Dr Murad stated that Mr Hammad did not advise him but said that he had met with his MP, Kate Hoey, and she had said that she would do a letter to the Home Office and that he would arrange a meeting with her. Mr Okoh took Dr Murad through a series of text messages between himself and Mr Hammad, following which he put to Dr Murad that the person who had day-to-day conduct of his case was Mr Hammad. Dr Murad stated that Mr Hammad had spoken about involving the MP but was doing nothing and finally he was dealing with the Respondent, who was his solicitor and was responsible for the case. Dr Murad told the Tribunal that Mr Hammad had been lying to him. He told the Tribunal that the promises about approaching the MP and the caseworker were made by Mr Hammad, but only these two aspects of the case were

being dealt with by him. He told the Tribunal that when he had referred to the word "you" he had been talking primarily about Mr Hammad but also about the Respondent. Dr Murad told the Tribunal that his reason for complaining about the Respondent was to protect other people from harm. He denied that it was because it would assist in his application to the Home Office. Mr Okoh put to Dr Murad that his complaint was not really about the Respondent but was about the fact that there was no evidence that his document had been received by the Home Office. Mr Okoh suggested that the true caseworker was Mr Hammad and not the Respondent. Dr Murad denied all of this. Mr Okoh put to him that his version of events was contradicted by the text messages that he had been taken to. Dr Murad denied this.

34. Catherine Warner (Home Office)

34.1 Ms Warner confirmed that her witness statement was true to the best of her knowledge and belief.

34.2 Ms Warner confirmed that on 12 February 2018, the Home Office had received an application for ILR from Dr Murad that had been rejected. At that point, in the absence of another pending application, he would have been an overstayer.

34.3 Ms Warner was asked whether the fact that there was no trace of any further application having been received was conclusive of the fact that one had not been received. Ms Warner told the Tribunal that she was unable to answer that.

34.4 Mr Okoh referred Ms Warner to media reports concerning the loss of original documents by the Home Office. Ms Warner told the Tribunal that she could only comment on the facts set out in her statement.

35. Asem Alhawa (Client A)

35.1 Mr Alhawa confirmed that his witness statement was true to the best of his knowledge and belief.

35.2 Mr Alhawa confirmed that he had spoken to the Respondent in October 2017. Mr Alhawa confirmed that he had emailed the Respondent in October 2017 and they had spoken by WhatsApp in November, following which there had been no more contact from the Respondent until March 2018. Mr Okoh asked Mr Alhawa if it was Mr Najjar who had said that the matter would take a maximum of three months. Mr Alhawa agreed and stated that the Respondent also confirmed that later. The Respondent stated that Mr Najjar was only confirming what the Respondent had told him before. They had both promised Mr Alhawa that within three months he would receive his money back from the agency.

35.3 Mr Okoh put to Mr Alhawa that the wording of his complaint was very similar to that of the complaint made by Mr Charaf. Mr Alhawa told the Tribunal that Mr Charaf had helped him with the complaint but that the complaint was his. Mr Charaf had only helped him find the website and tell him where he could send the complaint. He told the Tribunal that he had written it himself and he had explained everything that had happened to him. Mr Alhawa agreed that it was not the Respondent who had taken £100,000 from him, but the agency, and the person who introduced him to the agency

was Mr Charaf. Mr Charaf also introduced him to the Respondent. Mr Okoh put to Mr Alhawa that his difficulties were not caused by the Respondent but by Mr Charaf. Mr Alhawa denied this. Mr Okoh put to Mr Alhawa that regardless of how he felt about the Respondent, he had paid for and received a service. Mr Alhawa denied this and stated that he had not received anything despite paying £2,000.

36. Jamal Charaf (Client C)

36.1 Mr Charaf confirmed that his witness statement was true to the best of his knowledge and belief.

36.2 Mr Okoh asked Mr Charaf if Mr Najjar was known to him and was a friend. Mr Charaf replied that Mr Najjar was a friend but not a close friend. He confirmed that he had met the Respondent for the first time on 18 October 2017. He told the Tribunal that he had previously spoken to him on the telephone. Mr Charaf confirmed that the person who gave him the figure of £2,000 was not the Respondent but Mr Najjar. Mr Charaf confirmed that this was correct. Mr Okoh put to him that he had not spoken to the Respondent directly. Mr Charaf stated that Mr Najjar had told them this on behalf of the Respondent. Mr Charaf confirmed that he had asked Mr Najjar for updates as to his case and he understood that Mr Najjar and the Respondent worked for the same firm. Mr Charaf told the Tribunal that he was looking for a recommendation for a solicitor in Sri Lanka who could assist him. He did not think that a solicitor in London would be able to recover the monies. Mr Charaf confirmed that it was clear from the advice given by the Sri Lankan police that all three complainants had to be in the country to file the case and that he was better off bringing a private claim rather than a criminal claim. Mr Charaf confirmed that the Respondent had been assisting him in obtaining a visa to fly to Sri Lanka to make a complaint. Mr Charaf denied that Mr Najjar was involved in advising him stating that he was only providing updates, including on the WhatsApp group. He stated that sometimes Mr Najjar gave the updates and sometimes it was the Respondent. Mr Charaf told the Tribunal that he was making a complaint against the Respondent because he was in charge of the office. Mr Okoh put to Mr Charaf that his complaint against the Respondent was contradicted by the emails and the WhatsApp messages which showed that he has been updated by the Respondent, who had given the correct information. Mr Charaf denied that he was simply upset with the Respondent.

36.3 Mr Okoh put to Mr Charaf that he was the instigator for the complaints against the Respondent. Mr Charaf stated that this was because everybody was blaming him and accusing him of scamming them. Mr Charaf confirmed that that he had assisted Mr Alhawa with his complaint because he did not speak English. Mr Charaf denied submitting the complaint and claiming to be Mr Alhawa.

37. Ziyad Zackaria

37.1 Mr Zackaria confirmed that his witness statement was true to the best of his knowledge and belief. In cross-examination he confirmed that he had obtained Mr Hammad's phone number from Dr Murad. Mr Zackaria and Dr Murad were housemates at the time. Mr Zackaria confirmed that Dr Murad had given him Mr Hammad's number as the person who would assist him as opposed to the Respondent's number.

37.2 Mr Zackaria told the Tribunal that he had met to the Respondent and Mr Hammad at a coffee shop in Ealing Broadway and he had also met the Respondent in an office in Ealing but he did not know which company it was. He had never attended the offices with Dr Murad. Mr Okoh asked Mr Zackaria if it was correct that, when he had met the Respondent and Mr Hammad, the documents that he complained had not been returned to him, were not in fact given to them at that time. Mr Zackaria stated that the first time he saw them, he gave them all the documents and paid the deposit. Mr Okoh put to Mr Zackaria that the person who he gave the documents to was Mr Hammad. Mr Zackaria told the Tribunal that he was not sure and that he might have done. He had given the Respondent and Mr Hammad the Immigration Tribunal decision and the residency card. There were some other documents but he could not remember what they were. Mr Zackaria told the Tribunal that he was chasing both the Respondent and Mr Hammad for the return of the documents.

37.3 Mr Okoh put to Mr Zackaria that the reason why no application was made on behalf of his daughter was because the Respondent and Mr Hammad had made clear to him that prior to making any such application they had to meet her. Mr Zackaria denied this and stated that they had never asked to meet his daughter. Mr Okoh further put to Mr Zackaria that they had also said that they would need to determine if his daughter qualified for naturalisation. Mr Zackaria denied this and stated that she qualified straightaway, and the Respondent and Mr Hammad had never said there was any doubt about that.

37.4 Mr Zackaria confirmed that he had asked the Respondent to assist him in retrieving the documents, which the Respondent had done by retrieving them from Mr Hammad in October 2019. Mr Okoh put to Mr Zackaria that when he had said that the Respondent had told him that Mr Hammad had done this to another client, that was not true. Mr Zackaria denied this and maintained that the Respondent had told him this. Mr Okoh put to Mr Zackaria that the Respondent had told him that Mr Hammad had acted for Dr Murad. Mr Zackaria stated this was not correct and that the Respondent had told him that he was acting for Dr Murad. He stated that the Respondent told them that he had given the papers to Mr Hammad and that he had lost them or had failed to send them. Mr Zackaria agreed that the moment he had a problem retrieving the documents from Mr Hammad, he had spoken to the Respondent who was able to recover the documents from Mr Hammad. In re-examination he confirmed that there were no original documents that were not returned.

38. <u>The Respondent</u>

38.1 The Respondent confirmed that his witness statements were true to the best of his knowledge and belief.

<u>Client Z</u>

38.2 The Respondent confirmed that the judicial review application referred to Sky Solicitors and he also pointed out that his name was spelt incorrectly on the form. Mr Mulchrone took the Respondent to the section on the form which asked whether or not the pre-action protocol had been complied with. This had been ticked ‘yes ’and the Respondent confirmed that he had not ticked it personally. The Respondent confirmed that he had signed the statement of truth and that by doing so, he was satisfied that the

contents of the judicial review claim form were correct. Mr Mulchrone put to the Respondent that he had not complied with the pre-action protocol. The Respondent stated that to the best of his belief he had complied. Mr Mulchrone put to the Respondent that he had given no reason for not complying with the pre-action protocol, to which the Respondent reiterated that at the time of signing his belief was that this was correct and that he had complied with the protocol. The Respondent told the Tribunal that Mr Hammad was a very experienced immigration caseworker and that his trust in him was implicit. He had no reason to doubt him. The Respondent was the supervising solicitor, he had reviewed the papers and to the best of his knowledge and belief at the time, the pre-action protocol had been complied with and that he had seen the protocol letter. Mr Mulchrone put to the Respondent that the papers did not include a pre-action protocol letter. The Respondent stated that this was not the case and he told the Tribunal that at the time he believed that it was included. The Respondent pointed out that he had requested an oral hearing and he would have been "found out" if he had sought to mislead. Mr Mulchrone put to the Respondent that he had not seen the pre-action protocol letter because it was never sent. The Respondent stated that he had seen it. The Respondent denied that the statement on the form that the pre-action protocol letter had been complied with, was false or misleading. The Respondent told the Tribunal that he had signed confirming what he perceived to be the truth and he had no reason to disbelieve Mr Hammad. The Respondent also pointed out on numerous occasions that the client has ultimately been successful in the judicial review on the same grounds.

38.3 Mr Mulchrone took the Respondent to the letter that he had sent to the court dated 20 December 2018 following the notice to show cause. Mr Mulchrone put to the Respondent that this letter was silent about the pre-action protocol matter. The Respondent agreed with this but stated that the reason behind the letter was that he was in the process of going through a "divorce" from Haven Green solicitors and so Mr Hammad had instructed counsel who had drafted the letter with his approval and which he had signed off. He did not think that this was an issue. Mr Mulchrone put to the Respondent that the judge had raised the issue of the pre-action protocol as a specific issue in the notice to show cause, but that the letter failed to address the point. The Respondent gave an extended answer to this question which went beyond the scope of the question, but he concluded by telling the Tribunal that he stood by his decision and he did not believe that he had done anything wrong. Mr Mulchrone put to the Respondent that the reason he had not dealt with the pre-action protocol point was that he had no good answer for it. The Respondent denied this. Mr Mulchrone reminded the Respondent that, in his Answer in these proceedings he had stated that he admitted the allegation but wanted to put forward mitigation. The Respondent referred to the fact that he was on different medication at the time and clarified that his points were not mitigation and that the allegation was denied. Mr Mulchrone put to the Respondent that his representations that he had complied with the pre-action protocol were lies. The Respondent denied this. He also denied lacking integrity.

38.4 The Respondent told the Tribunal that the grounds for the judicial review had been drafted by Mr Hammad. The Respondent agreed that the grounds gave no further details after 2015 about how the application by Client Z had proceeded. Mr Mulchrone put to the Respondent that it was clear from reading the document that the obvious conclusion was that the disproportionate delay complained about was a delay since 2015. The Respondent denied this, describing the case as a "mess" and a "time-bomb". He pointed

out that he had enclosed the 2017 decision in the papers. The Respondent denied that the documents were misleading. Mr Mulchrone put to the Respondent that the grounds omitted reference to the 2017 decision and they omitted reference to the request to reconsider that decision and, as such the grounds were inconsistent with the documents. The Respondent stated that he had already answered that question and that the decision in 2015 had been wrong. Mr Mulchrone suggested that in relation to the letter dated 17 October 2017 which was included in the papers, there were two possibilities; either the Respondent knew about that letter and chose not to refer to it or he had not read the papers. The Respondent did not directly address the question but stated that the grounds were true to the best of his knowledge and belief and he would do the same again as he was very pleased that the client achieved a successful outcome to his case. The Respondent told the Tribunal that he never intended to mislead the court and had not done so and he denied acting recklessly. The Respondent denied breaching principle 1, principle 6 or failing to achieve Outcome 5.1. He told the Tribunal that the case had many complexities, which he listed.

38.5 The Respondent denied failing to act in the client's best interests by not dealing with a document that was fatal to his claim.

38.6 Mr Mulchrone put to the Respondent that even if the Grounds had been drafted by Mr Hammad, the Respondent was the one who had signed the statement of truth and accepted responsibility for its contents. The Respondent agreed.

38.7 The Respondent denied breaching Principles 1, 2, 4 or 6 or failing to achieve Outcomes 1.2 or 1.5. The Respondent accepted that, in hindsight he had not supervised competently, but explained he did not have the complete file available.

38.8 In re-examination, the Respondent confirmed that the application was drafted by Mr Hammad and he denied intending to mislead the court. He maintained that he had acted in the client's best interests. The Respondent told the Tribunal that his role in Sky Solicitors involved, firstly, being a fee earner in relation to certain clients of his and secondly being an overall supervisor.

Client M

38.9 The Respondent denied that CLS was his vehicle or entity. He told the Tribunal that Mr A had taken over CLS. He accepted that the business card exhibited described him as a director. The Respondent agreed that CLS was not authorised by the SRA and told the Tribunal that it did not carry out any reserved legal activity. He confirmed that it did not have a client account. Mr Mulchrone asked the Respondent why he had accepted money in the sum of £200 from Dr Murad. The Respondent stated that there was nothing wrong with this and it was a simple receipt just to make him feel comfortable. The Respondent told the Tribunal that he was the solicitor with conduct of the matter and that Mr Hammad was a paralegal. He was responsible for supervising Mr Hammad and the Respondent stated that he did not seek to disclaim responsibility for Mr Hammad's actions. Mr Mulchrone reminded the Respondent of the evidence from the Home Office to the effect that they had not received Dr Murad's application. The Respondent told the Tribunal that the Home Office often lost documents and queried what his motive was in not sending the application. The Respondent told the Tribunal that he was very keen to conclude the matter as he found Dr Murad to be a demanding

client. Mr Mulchrone put to the Respondent that Mr Zackaria had given evidence that the Respondent had admitted to him that Mr Hammad had lost Dr Murad's documents. The Respondent denied that he would admit liability in this way and pointed out that Mr Zackaria and Dr Murad had been flatmates. Mr Mulchrone put to the Respondent that it was inherently improbable that the letters in August and the following February were lost in the post. The Respondent referred to Brexit, the implication being that the Home Office was inundated with applications for citizenship. He reiterated that his motive was to achieve a successful outcome to satisfy Dr Murad who he told the Tribunal had been calling him constantly.

38.10 Mr Mulchrone asked the Respondent about the correspondence with the office of Stephen Pound MP. Mr Mulchrone put to the Respondent that not only had the Home Office not received anything but neither had the MP. The Respondent denied that this was fair. Mr Mulchrone put to the Respondent that by taking money from Dr Murad and failing to carry out his instructions he had lacked integrity. The Respondent denied this and stated that he had been on a 60% commission and that there was no way he would risk his career in this way. The Respondent also denied breaching Principles 4 or 6 or failing to achieve Outcomes 1.2 or 1.5. Mr Mulchrone put to the Respondent that by telling Dr Murad that he had made an application to the Home Office when he had not, that the Respondent had lied and acted dishonestly. The Respondent denied this and denied that he had demonstrated manifest incompetence.

38.11 In re-examination the Respondent told the Tribunal that the responsibility for the post was not ultimately his responsibility although he was the supervisor for the matter. It was dealt with by secretaries or people on work experience. This was in relation to the first set of documents sent to the Home Office. In relation to the second set, the Respondent told the Tribunal that he had taken the post himself because Dr Murad had been very rude, had insulted him and he wished to make sure it was sent. The Respondent told the Tribunal that he had "no respect for him as a human being". The Respondent stated that he believed that Dr Murad and Mr Zackaria had "contaminated" their evidence.

Clients A and C

38.12 The Respondent was asked about figures that he had received for and on behalf of clients. The Respondent stated that he was not a signatory at CLS and that he was working part-time. He stated that the payment was not to him. Mr Mulchrone reminded the Respondent that CLS was not a recognised body and did not have a client account. The Respondent agreed with this but stated that Mr A was responsible. The Respondent was asked why clients were asked to make payments into an entity that was not a law firm. The Respondent told the Tribunal that Mr Najjar had asked the client to deposit it, not him. Mr Mulchrone pointed out that the logo of CLS was on the email confirming receipt of the funds. The Respondent reiterated that he was not a signatory to the account.

38.13 Mr Mulchrone took the Respondent to the witness statement of Mr Charaf made in his proceedings. He put to the Respondent that he had been acting as a solicitor for Mr Charaf. The Respondent stated that he was a solicitor in England and Wales but not in Sri Lanka. He denied that he was acting as a solicitor and denied that he had provided

legal advice. The Respondent denied taking a witness statement for the client and stated that he had merely witnessed it.

38.14 Mr Mulchrone asked the Respondent whether he had instructed the lawyer in Sri Lanka or whether he had liaised with that lawyer. The Respondent stated that he was "a million percent" sure that he had liaised with him and had not instructed him. The Respondent was taken to two instances where he had referred to instructing the solicitor in Sri Lanka. The Respondent denied that he had instructed. Mr Mulchrone took the Respondent to examples in correspondence where he had used the word 'client'. The Respondent stated that this was a figure of speech. It was put to the Respondent that he had sent client care letters to Mr Alhawa and Mr Charaf. The Respondent stated that Mr Charaf had insisted on those documents to establish a relationship with Mr Alhawa and CLS. This was to protect their rights as consumers not clients. In so far as it set out the legal steps to be taken, this was based on the advice of the Sri Lankan lawyer, Mr Lakshan. Mr Mulchrone put to the Respondent that Mr Charaf regarded him as his solicitor. The Respondent denied this. The Respondent made a reference to the fact that he had "legalised" the papers. Mr Mulchrone asked the Respondent what this term meant and he stated that it involved sending them to the foreign office to get stamped.

38.15 Mr Mulchrone put to the Respondent that CLS was a fake law firm that had received money to prosecute a claim in Sri Lanka. The Respondent denied this.

38.16 The Respondent agreed that there was nothing wrong with the clients wanting to know what was going on with their case. He stated, however, that he was not the lawyer for Mr Alhawa or Mr Charaf and it was CLS who had taken the money, not him. Mr Mulchrone asked the Respondent whether he had sent Mr Charaf a copy of the complaint procedure. He stated that he had not done so as it was not a law firm. The Respondent denied lacking integrity or breaching Principles 4 or 6. Mr Mulchrone put to him that by telling Mr Charaf that he had not received £2,000 from him when this was untrue, the Respondent had acted dishonestly as he was being deliberately misleading. The Respondent denied this and stated that he had never received the funds directly. The Respondent denied trying to artificially drive a wedge between himself and CLS.

38.17 In re-examination the Respondent identified wage slips showing payments made to him by CLS which he told the Tribunal showed that Mr A had taken over the company. In relation to legalising documents, the Respondent told the Tribunal that he was registered with the foreign office as a solicitor who could carry out the certification of a document. He explained that the expedited service was £75 per page and the normal service was £35 per page.

Notary Public allegations

38.18 The Respondent confirmed that he was not a Notary Public of any kind in any jurisdiction and he never had been. Mr Mulchrone put to the Respondent that each example where he was described as a Notary Public was misleading. The Respondent asked Mr Mulchrone who had been misled. The Respondent confirmed that he was aware that solicitors and Notary Publics were two separate professions. The Respondent denied that he had intended to deceive anybody but told the Tribunal that he apologised

for having described himself as such. The Respondent denied lacking integrity, breaching Principle 6, failing to achieve Outcome 8.1 or acting dishonestly.

38.19 In re-examination, the Respondent explained that that he had spoken to somebody who worked in international property who had referred to the Respondent as a notary public in an email signature which had ended up on his business card. He told the Tribunal that he had never made a penny out of this reference to him being a notary and he never intended to.

39. Bashir Hammad

39.1 Mr Hammad confirmed that his witness statements were true to the best of his knowledge and belief.

39.2 Mr Hammad told the Tribunal that he had drafted the grounds for the judicial review in respect of Client Z. Mr Mulchrone asked him what he had meant by the pre-action protocol. He explained that this related to the grounds and not the letter before claim. Mr Hammad told the Tribunal that this had been sent by the previous solicitors.

39.3 Mr Hammad also confirmed that he had filled out the claim form. Mr Hammad stated that he had ticked yes on the questionnaire in relation to the compliance with the pre-action protocol based on the immigration history of the case and the fact that the pre-action protocol letter had been submitted by the previous solicitor. That applied to this judicial review and the previous one. Mr Hammad confirmed that he was referring to the letter that generated the response dated 31 May 2017.

39.4 In relation to Dr Murad, Mr Hammad confirmed that Dr Murad had wanted evidence that his applications had been lodged with Home Office. Mr Mulchrone put to him that it had not been lodged, which Mr Hammad denied.

39.5 In re-examination Mr Hammad was asked why he had stated that the pre-action protocol had been complied with. He stated that there had been a hearing with the previous solicitors on the same grounds with the same reasons and this was an ongoing case. Mr Hammad told the Tribunal that he had met client Z and Dr Murad through the community. Mr Hammad confirmed that he had been the case worker on Dr Murad's case and that the Respondent had been the supervisor. Mr Hammad denied losing Dr Murad's documents and stated that everything that he gave to them was sent to the Home Office. Mr Hammad denied that Dr Murad had lost his opportunity to apply for indefinite leave to remain because of the failure to send out the documents as he denied any such failure.

40. Ghassan Najjar

40.1 Mr Najjar confirmed that his witness statement was true to the best of his knowledge and belief.

40.2 Mr Najjar told the Tribunal that he believed CLS to have been a consultancy offering legal services. He told the Tribunal that the Respondent had not been working there in his capacity as a solicitor. Mr Najjar confirmed that he had transferred £2,000 to CLS on behalf of Mr Charaf. He told the Tribunal that Mr Charaf wanted to pursue his case

in Sri Lanka through CLS. Mr Najjar agreed with Mr Mulchrone's suggestion that he had very little involvement in the case. In relation to commission payments, Mr Najjar told the Tribunal that he was relying on what the Respondent had told him in this regard.

40.3 In re-examination, Mr Najjar told the Tribunal that he had met Mr Charaf through Trinity Solicitors, where Mr Najjar was working as an immigration adviser. When he introduced Mr Charaf to CLS, the intention was that the Respondent was going to use his influence to get someone in Sri Lanka to act on Mr Charaf's behalf. The Respondent would be the middle-man. Neither the Respondent nor CLS were acting as Mr Charaf's solicitor.

Findings of Fact and Law

41. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the standard applicable in civil proceedings (on the balance of probabilities). The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

42. The Tribunal considered carefully all the documents, witness statements and oral evidence presented. In addition, it had regard to the oral and written submissions of both parties, which are briefly summarised below.

43. **Allegation 1**

Applicant's Submissions

43.1 The Applicant's case was that the application filed by the Respondent would lead anyone reading it to believe that the Home Office had not done anything between 2015 and 2018. The Respondent did not mention that the Home Office had in fact made a decision in 2017. The Respondent had later said that he intended to refer to the delay being after 2017, but this made no sense, as it was accepted that the last action was that of Client Z refusing to attend a language test. The Respondent did include a document from 2017 referring to the Home Office's decision, but the Applicant submitted that the Respondent may not have noticed the document.

43.2 Mr Mulchrone submitted that the Respondent's actions amounted to a failure to act with integrity in breach of Principle 2. The Tribunal was referred to Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366. The Respondent had failed to act with integrity in that:

- he told the Court that he had complied with the pre-action protocol;
- he attempted to lead the Court to believe that the Home Office had delayed matters since 2015, to the extent that the judge reported the Respondent's conduct to the SRA.

43.3 It was further submitted that the conduct amounted to a breach by the Respondent of the requirement to behave in a way which maintained the trust placed by the public in them and in the provision of legal services. The public would expect solicitors to include all relevant facts in applications and not submit a document which had the hallmarks of misleading the Court, or to mislead the Court as to the steps taken to deal with the case. Such conduct was in breach of Principle 6. In addition it was submitted that the Respondent did not achieve Outcome 5.1 as the application was misleading. It was submitted that the Respondent was at the very least reckless in dealing with the earlier rejection, as the Respondent did not deal with the details behind it. He was either aware of them, by reason of the October 2017 letter he enclosed with the application, or he did not notice the contents of the letter.

43.4 Mr Mulchrone submitted that the Respondent had acted dishonestly. He relied on the test in Ivey v Genting Casinos [2017] UKSC 67, namely that the person had acted dishonestly by the ordinary standards of reasonable and honest people. Mr Mulchrone submitted that at the time that the Respondent completed Client Z's application, he knew that he had not completed the pre-action protocol, while telling the Court, in completing the form, that he had. This was an untrue statement and the Respondent had therefore been dishonest by the standards of ordinary decent people.

Respondent's Submissions

General submissions

43.5 Mr Okoh made a number of overarching submissions, which are summarised here for ease of reference. The Tribunal had regard to them when considering each of the Allegations faced by the Respondent.

43.6 Mr Okoh set out the procedural history of the matter as well as the personal circumstances of the Respondent, including the Respondent's ill-health.

43.7 Mr Okoh reiterated his submissions relating to the granting of access to the hearing bundle to some of the Applicant's witnesses. These submissions are not set out here as they largely reiterated submissions made during the applications to stay the proceedings, which are dealt with above. The Tribunal had regard to those submissions when assessing the weight to be attached to the evidence of the relevant witnesses. Mr Okoh also set out a number of what he submitted were deficiencies in the investigation.

43.8 Mr Okoh set out the details of the Respondent's work history, specifically the circumstances surrounding his departure from Trinity Solicitors and his association with Sky Solicitors and Haven Green Solicitors.

Allegation 1.1.1

43.9 Mr Okoh set out in detail the background and chronology to Client Z's application for asylum. This application had included a request by the Home Office that Client Z attend a language test and the delay in providing a revised date for that test. Mr Okoh submitted that Client Z had instructed DCK Solicitors, where Mr Hammad worked, to issue a pre-action protocol letter to the Home Office for failing to deal with the asylum

application of 2015. Mr Okoh submitted that this was in the context of what has been referred to as the "hostile environment" policy of the Home Office at the time.

43.10 On 1 September 2017, the Home Office had rejected further submissions to the 2007 asylum application. At this point, the 2015 asylum application had not been dealt with. The Home Office had unilaterally treated the 2015 application as further submissions to the 2007 application. In February 2018, Client Z's 2017 application for Judicial Review for the delay in dealing with the 2015 request was heard. Mr Okoh submitted that this hearing had been treated as a technicality as the complaint of Client Z seemed to have been answered by the 1 September 2017 letter. It was submitted that this should have been resisted by those instructed at the time by Client Z.

43.11 The matter was subsequently referred to Sky Solicitors, where Mr Hammad and the Respondent worked. It was clear that at the time DCK Solicitors wrote the pre-action protocol letter in 2017, it was solely on the basis of the 2015 application without reference to the 2007 application. Mr Okoh submitted that the Home Secretary had not dealt with the 2015 application and Sky Solicitors were therefore right to represent that the 2017 pre-action protocol letter could be used as a basis for the second Judicial Review application as the central complaint relating to the failure to give a revised appointment for a language test still remained. Mr Okoh submitted that at the very worst, this was a matter of opinion and was not reckless. Mr Okoh rejected the suggestion that the grounds of the application were intentionally reckless or misleading. He reminded the Tribunal that Mr Justice Lane made no complaints relating to the Court being misled in relation to the pre-action protocol.

Allegation 1.1.3

43.12 Mr Okoh submitted that a proper reading of the grounds would show that Client Z's main complaint was that he had been waiting since 2015 for a language test further to his 2015 application for asylum. The 2015 application had still not been dealt with. Mr Okoh noted that Client Z had made further submissions on the basis of the 2015 application, which on Mr Hammad's evidence, had been successful in that Client Z had successfully been granted asylum in the United Kingdom.

The Tribunal's Findings

General matters

43.13 The Respondent had adduced sections of his medical records which set out in detail his health at the time of the events in question and subsequently. The Tribunal had observed that the Respondent was in poor health and on that basis had made reasonable adjustments during the proceedings. There was, however, no medical report before the Tribunal prepared for these proceedings and the material that was before the Tribunal did not address the detailed circumstances of the alleged misconduct. The Chair had specifically asked Mr Okoh if he was relying on the medical evidence as part of the Respondent's defence to the Allegations and had confirmed that he was not and that the purpose of submitting the medical evidence was in relation to the logistical difficulties in presenting the Respondent's case in these proceedings, which the Tribunal had addressed by way of reasonable adjustments.

Allegation 1.1.1

43.14 The Tribunal reviewed the form and the relevant question was "Have you complied with the pre-action protocol", to which there was a 'Yes 'or 'No 'option. The evidence before the Tribunal was that Mr Hammad had ticked 'Yes 'and that the Respondent had signed the form, which contained a statement of truth.

43.15 The Home Office, in its response, had stated that there was no record of a pre-action protocol letter having been served. The Tribunal noted that if such a letter had existed and been sent, then it could have been provided at that stage in order to rebut the Home Office's submission. The Respondent had not put forward a defence that such a letter had existed. The closest he had come to arguing this was the suggestion that the pre-action protocol letter in an earlier application for judicial review would be sufficient. The Tribunal rejected such an argument and found, on the balance of probabilities, that the pre-action protocol had not been complied with, notwithstanding the Respondent signing a statement of truth to the effect that it had. The Tribunal found that the failure to accurately answer this question on the form had the potential to mislead the court, in that the court may conclude that the pre-action protocol had been complied with when it had not.

43.16 The Tribunal found the factual basis of Allegation 1.1.1 proved on the balance of probabilities.

Outcome 5.1 – Dishonesty and Recklessness

43.17 Outcome 5.1 stated that "you must not attempt to deceive or knowingly or recklessly mislead the Court". The Tribunal was therefore required to consider the allegation of dishonesty at this stage as that would be the inevitable conclusion if the Tribunal found that the Respondent had attempted to deceive or had knowingly misled the Court. If the Tribunal did not find dishonesty proved it would then consider whether the Respondent had been reckless.

43.18 The test for considering the question of dishonesty was that set out in Ivey at [74] as follows:

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

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

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

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

43.20 In assessing the Respondent's state of knowledge, the Tribunal accepted the Respondent's evidence that he did not have expertise in immigration work and appeared to have limited experience of litigation generally. The Tribunal further accepted that the Respondent had heavily relied on Mr Hammad, who did have experience in immigration work. Mr Hammad had told the Tribunal that he had ticked the 'yes 'box on the basis that he was relying on the earlier judicial review application. Mr Hammad having ticked the box, the Respondent then put his name to it.

43.21 There was an apparent contradiction in the Respondent's evidence on his state of knowledge as to the existence, or otherwise, of the pre-action protocol letter. On the one hand the Respondent had emphasised that he had relied on Mr Hammad and trusted that he had complied. On the other at other times in his evidence the Respondent had told the Tribunal that he had looked at the file and seen a pre-action protocol letter. In both cases, the Respondent had maintained that he had a genuine belief that what he was signing was a truthful declaration. The Tribunal found that it was entirely possible that the Respondent had looked at the file and seen a pre-action protocol letter but not realised it did not relate to this application, based on Mr Hammad's experience. The two, apparently contradictory, accounts could therefore be reconciled. The Tribunal noted that the Respondent's belief did not have to be correct or reasonable, but it did have to be genuinely held. The Respondent had undoubtedly not checked the file adequately and this demonstrated clear incompetence. However as a result of that incompetence the Respondent appeared to have formed a mistaken but firmly held view of the situation.

43.22 The Tribunal accepted the point made by the Respondent that there would have been no point in falsely claiming that the protocol had been complied with as it would inevitably have come to light that it had not, which is indeed precisely what happened.

43.23 The Tribunal was not satisfied on the balance of probabilities that the Respondent knew that by signing the form there was a potential for the Court to be misled.

43.24 The Tribunal did not find that the Respondent's conduct would therefore be considered dishonest by the standards of ordinary decent people and it therefore found the allegation of dishonesty not proved.

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

> "A person acts recklessly…with respect to (i) a circumstance when he is aware of a risk that it exists or will exist; (ii) a result when he is aware of a risk that it

will occur and it is, in the circumstances known to him, unreasonable to take that risk."

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

43.27 The Tribunal considered whether the Respondent perceived that there was a risk that the application had the potential to mislead the Court. The Respondent's state of knowledge is analysed above in relation to dishonesty. The Respondent had read the file and, albeit erroneously, concluded that the pre-action protocol had been complied with. The Tribunal was not satisfied on the balance of probabilities that the Respondent perceived that there was a risk that he was wrong about this. The Tribunal therefore did not need to consider the second limb of the test and found recklessness not proved.

43.28 *Principle 1*

43.28.1 The Tribunal found that signing a statement of truth on a document to be submitted to the court confirming that something is true when it was not, was a serious matter and incompatible with upholding the rule of law. It also failed to maintain the proper administration of justice. The Tribunal found both elements of Principle 1 to have been breached on the balance of probabilities.

43.29 *Principle 2*

43.29.1 In considering whether the Respondent had lacked integrity, the Tribunal applied the test set out in Wingate and Evans and Malins at [100] Jackson LJ had stated:

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

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

43.29.3 The Respondent had clearly not checked the file properly. If he had done so, he would have seen that the pre-action protocol letter did not relate to the current application and that the protocol had therefore not been complied with. It was of paramount importance that solicitors signing statements of truth on documents to be submitted to the court were completely accurate in all respects. While the Respondent may have believed his statement of truth was correct, the reality was that he only reached that conclusion due to his own incompetence. The Respondent had a duty to take great care in what he was signing and he had not done so. The Respondent had made repeated references

to having conducted the work 'pro bono 'and while the Tribunal accepted this, it made no difference to the Respondent's duties. The Tribunal was satisfied on the balance of probabilities that the Respondent's failure to ensure scrupulous accuracy lacked integrity and found the breach of Principle 2 proved.

43.30 *Principle 6*

43.30.1 It followed from the Tribunal's findings in respect of Principles 1 and 2 that the trust the public placed in the Respondent and in the provision of legal services was undermined in circumstances where a solicitor was so incompetent that there was a potential for the court to be misled on a judicial review application. The Tribunal found the breach of Principe 6 proved on the balance of probabilities.

Allegation 1.1.3

43.31 The Tribunal reviewed the grounds of the application, which were very poorly drafted and which the Respondent had fairly described in his evidence as being "a mess". The grounds had been drafted by Mr Hammad, but the Respondent had, rightly, taken responsibility for them when giving his evidence. On the issue of delay, the Tribunal noted the following parts of the grounds:

Under the heading "Details of the matter being challenged:":

> "The inherent delay in dealing with the claimant's asylum application…"

Under the heading "The issue:":

> "Accordingly, the delay in reaching a decision in the claimant's matter for such a protracted period of time an indefinite period *[sic]* is capable of being a detriment in circumstances where it could be said to be interference with the right to respect for private life of the claimant with unjustified [sic]...".
> "It is submitted that the defendants delay [sic] in considering the claimant's asylum includes in general requirement [sic] of public law fairness that may apply in the context of immigration decision making".

43.32 The reference to delay was made throughout the grounds and it was variously described as "inordinate", "disproportionate", "unjustified" and "unreasonable". It was therefore clear that delay was the central basis of the application for judicial review and that the delay complained of was very serious. It therefore followed that the grounds ought to have made clear the circumstances and precisely how long the delay had been. The Tribunal noted that the grounds gave a detailed chronology that began in 2003. The chronology continued up until November 2015. The grounds then go on to allege a failure on the part of the Home Office to consider the Client Z's case for a "protracted period of time".

43.33 The Tribunal was entirely satisfied that the grounds strongly implied that there had been a delay since 2015.

43.34 The Tribunal also reviewed the letter from the Home Office dated 1 September 2017 to Client Z. That letter was headed "FURTHER SUBMISSIONS DECISION". It began as follows:

> "Thank you for your letter of 04 September 2015 in which you have asked for your representations to be considered as a fresh claim for asylum and/or human rights. I have considered your claim on behalf of the Home Office.
> **Decision**
> Your further submissions have been fully considered and I have concluded that you do not qualify for leave on any basis".

43.35 The Tribunal noted the argument made by Mr Hammad and the Respondent that this was not, in fact, a decision in relation to the application referred to in the judicial review. The Tribunal expressed no view on that argument, but it noted that it was open to the Respondent to have sought to make that argument in the grounds. He had not done so. The grounds did not argue that a purported decision had been made on 1 September 2017 but that it was not a valid decision, rather the grounds made no reference at all to the existence of this letter. The Tribunal was satisfied on the balance of probabilities that there was a potential for the court to be misled into believing that the Home Office had not dealt with the application at all since 2015 when in fact it had, at the very least, purported to do so in 2017. This was of fundamental relevance to the basis of the judicial review. The Tribunal accepted that the letter had been included in the papers, but this did not change the fact that there was no reference in the grounds to what was one of the most important documents in the case. The Tribunal found the factual basis of Allegation 1.1.3 proved on the balance of probabilities.

Outcome 5.1 - Recklessness

43.36 In his opening, Mr Mulchrone had clarified that the Applicant did not pursue an allegation of dishonesty in relation to Allegation 1.1.3 and so the only element of Outcome 5.1 that fell to be determined was recklessness.

43.37 The Tribunal considered whether the Respondent perceived that there was a risk that the grounds had the potential to mislead the court. The Tribunal was not satisfied on the balance of probabilities that the Respondent perceived such a risk. As in Allegation 1.1.1, the Respondent had relied heavily on Mr Hammad and had not properly reviewed the grounds or the background to them. This was a further example of incompetence on the part of the Respondent and it was this that had led him to believe, wrongly, that the grounds were accurate.

43.38 The Tribunal therefore found recklessness not proved.

43.39 *Principle 1*

43.39.1 The Tribunal was satisfied on the balance of probabilities that that the Respondent's incompetence resulted in a failure to uphold the administration of justice. In relation to upholding the rule of law, the Tribunal recognised that there was some distinction between this and Allegation 1.1.1, namely that the earlier Allegation was based on a very clear question relating to the pre-action protocol process which was clear and which only required a yes or no answer.

The position with the grounds was very slightly more nuanced in that grounds were generally subjective argument rather than answers to specific questions. The Tribunal found the breach of Principle 1 proved on the balance of probabilities to the extent that the Respondent had not upheld the proper administration of justice.

43.40 *Principle 2*

43.40.1 The Tribunal found on the balance of probabilities that the Respondent had lacked integrity as he was under a duty to ensure that the grounds did not have the potential to mislead the court. The same reasoning applied here as it did in relation to Allegation 1.1.1.

43.41 *Principle 6*

43.41.1 The Tribunal found the breach of Principle 6 proved on the balance of probabilities on the basis of the factual findings in this matter and on the same basis as in relation to Allegation 1.1.1.

44. **Allegation 2**

Applicant's Submissions

Client Z

44.1 Mr Mulchrone submitted that in applying for the judicial review, the Respondent did not deal with the rejection of Client Z's application in 2017. It was submitted that either the Respondent did not read the letter of October 2017 properly, so that he did not deal with the matter, or he deliberately decided not to address the matter. In either instance the Respondent had acted incompetently. The Respondent should have read a document he was submitting to Court, or he should have dealt with a document that, in itself, was undermining to Client Z's application. Mr Mulchrone submitted that the Respondent appeared to be trying to gloss over the 2017 decision, which was unethical and meant that the Respondent had breached Principle 2.

44.2 Mr Mulchrone further submitted that the Respondent had failed to act in Client Z's best interests. There was no evidence that the Respondent advised that Client Z's application was hopeless. In making the application in the way that he did, the Respondent breached Principle 4. By representing his client so inadequately, the Respondent had undermined that trust the public placed in the profession, in breach of Principle 6. It was further submitted that the Respondent had failed to achieve outcomes 1.2 or 1.5 in that dealing with an application so badly that the Court reported the Respondent's conduct to the SRA demonstrated incompetence, which was not in the client's best interests.

Client M

44.3 Mr Mulchrone relied on the evidence of Dr Murad.

44.4 Mr Mulchrone submitted that the result of the Respondent's conduct of Client M's case was that Client M was too late to lodge an application without special permission. The

Respondent had failed to act competently on the client's behalf and in so doing did not hold to the higher ethical standards of the profession. The Respondent should have made the application, on behalf of a client in a vulnerable position, and should have ensured that the Home Office was dealing with it. The Respondent did not make the application or pursue it, putting his client at risk of deportation. The Respondent therefore breached Principle 2.

44.5 In not dealing with Client M's application properly, the Respondent did not act in his best interests. The Respondent therefore breached Principle 4. As with Client Z, the poor quality of representation was so serious that it amounted to a breach of Principle 6. The Respondent again failed to achieve Outcomes 1.2 or 1.5.

Clients C and A

44.6 Mr Mulchrone relied on the evidence of Mr Alhawa and Mr Charaf.

44.7 Mr Mulchrone submitted that the Respondent took money from Clients C and A for work to be done in Sri Lanka. The Respondent denied that he had taken money from Client C, and there was no evidence that he had done any work for Client A.

44.8 Both clients had unsuccessfully asked for a return of their money and the Respondent had not done so. The Respondent had failed to act competently on the clients' behalf and in so doing, did not hold to the higher ethical standards of the profession. The Respondent should have properly accounted to his clients for the money, and should have dealt with their queries. The Respondent had therefore taken thousands of pounds from the two clients with no results or any record of work done. The Respondent therefore breached Principle 2.

44.9 It was further submitted that in not dealing with either claim application properly, the Respondent did not act in the clients 'best interests and so had breached Principle 4. Again, the level of incompetence was such that that the Respondent had breached Principle 6.

44.10 In addition to the submissions above, it was the Applicant's case that the Respondent had been manifestly incompetent.

Respondent's Submissions

Allegation 2.1

44.11 Mr Okoh noted that this Allegation was based on two alternative suggestions – either that the Respondent did not see the 1 September 2017 letter which demonstrated incompetence, or he did see the letter and failed to deal with it, thus not acting in the client's best interests. Mr Okoh submitted that the grounds for Judicial Review would have still been relevant and the letter would not have altered the manner in which the grounds were submitted. He submitted that the Respondent did act in Client Z's best interests by making an application for Judicial Review for failure to deal with his nationality under the 2015 application. This fact was supported by Client Z's subsequent successful application.

Allegation 2.2

44.12 Mr Okoh took the Tribunal through the history of Client M's application.

44.13 Client M had been referred to Mr Hammad, who he met together with the Respondent. At the first meeting, it had been made clear to Client M that the basis of his application in February 2018 was unsustainable, but that he had a number of options open to him. He could reapply for discretionary leave to remain under the protection route, he could apply for asylum or he could ask for a reconsideration of his application, based on his special circumstances and qualifications as a doctor.

44.14 In cross-examination Client M had accepted that he had met Mr Hammad on three occasions without the Respondent. He met primarily with Mr Hammad but also with the Respondent to finalise his application. On 21 August 2018, Client M had been sent a copy of his application and after a review of the documents on 22 August 2018, Client M thanked the Respondent for his efforts.

44.15 Mr Okoh submitted that this Allegation was "fundamentally flawed". The original complaint by Client M made clear that he was bringing a complaint against the Respondent and the firm where the Respondent worked. Client M gave details of the Respondent's firm being Haven Green Solicitors but there was no evidence that the Applicant had made any enquiries with that firm about his application. Mr Okoh submitted that if such enquiries had been made it would have become evident that the issues complained of primarily concerned supervisory deficiencies as opposed to the individual conduct of a caseworker/fee earner.

44.16 Mr Okoh told the Tribunal that the Respondent's case was that the completed application was put in an envelope and placed in the firm's outpost tray. This evidence was supported by Mr Hammad. Mr Okoh submitted that the Applicant had not put forward any positive evidence that the application was not sent out and had invited the Tribunal to speculate on circumstantial evidence. It was submitted that the evidence did not support the Applicant's case. Mr Okoh submitted that it was improbable that, having done so much work on the application, that the Respondent would not have sent it.

44.17 Mr Okoh submitted that it was "inconceivable" that an individual fee earner should be held responsible for the postage of documents as this was usually done by administrative staff. If the application was not sent out, which was not accepted, this was due to the failing of the firm and not the Respondent. Mr Okoh reminded the Tribunal of the evidence of Ms Warner, who could not comment on the suggestion that documents going missing was a common occurrence at the Home Office.

Allegation 2.3

44.18 Mr Okoh submitted that Client C's account that he contacted the Respondent in August 2017 to assist him with a recovery of his monies and that he had asked a friend of his to transfer the sum of £2,000 to the Respondent's own bank account was contradicted by the contemporaneous evidence. On 30 August 2017, Mr Najjar had instructed that £2,000 should be sent, presumably to CLS and that Client C should send across all relevant correspondence. Mr Okoh submitted that although Client C claimed to have

been in contact with the Respondent prior to 30 August 2017, there was no documented evidence of this. The first documented text message from Client C to the Respondent was dated 22 September 2017. Mr Okoh submitted that, following cross-examination, the incontrovertible evidence was that Client C had not met, or spoken with or had any direct communications with the Respondent before the 30 August. The person that Client C had spoken to on the matter was Mr Najjar, all correspondence was sent to him and the funds were paid directly to his account with a request that the company's name be put as the payment reference.

44.19 Mr Okoh reminded the Tribunal that when it had been put to Client C that his reason for contacting Mr Najjar in the first place was to request assistance with the recovery of money, Client C had responded;" I ask him if he know a friend or if he know a solicitor in Colombo cause I am sure he is not going to be able to help here in order to recover in UK from Sri Lanka so I was asking for connection or recommendation."

44.20 Client C therefore knew that Mr Najjar would not be able to help recover the money from the United Kingdom, but he may have been able to recommend a solicitor or a friend in Sri Lanka to assist with the recovery of the money there.

44.21 Mr Okoh submitted that Client C became disillusioned with the process of trying to recover the monies as it was clear to him that a significant sum of money would have to be expended to bring a civil action. Mr Okoh submitted that Client C;" turned on the Respondent and chose to bring an unfounded complaint against him". Mr Okoh further submitted that none of the matters complained of could be substantiated or were matters which related to the Respondent's conduct.

Allegation 2.4

44.22 Mr Okoh told the Tribunal that Client A contacted the Respondent and had introduced himself as a friend of Client C's. There had been no significant communication between Client A and the Respondent until 24 March 2018. Under cross examination, Client A had confirmed that he had spoken to Mr Najjar, who had told him that the case would take a maximum of 3 months. Client A had confirmed that he was under the impression that both the Respondent and Mr Najjar were assisting with the matter.

44.23 Mr Okoh submitted that the sequence of correspondence exhibited demonstrated that at the time CLS was engaged by Client A, Mr Najjar had negotiated the fees, payment on account and payment terms with Client A.

44.24 Mr Okoh submitted that the terms of engagement between CLS and Client A were clear that the Respondent would be responsible for liaising and working with the lawyer in Sri Lanka, Mr Dias, in order that criminal and civil actions may be brought against SAS. The Respondent had told the Tribunal that he did not receive Client A's complaint and Client A had not raised a complaint directly with CLS. Mr Okoh submitted that it was;" without a doubt that Client A's complaint was contrived by Client C". Mr Okoh submitted that the Respondent and CLS had assisted Client A to the best of their abilities.

The Tribunal's Findings

Allegation 2.1

44.25 The factual basis of Allegation 2.1 was the same as Allegation 1.1.3, but related to the Respondent's duties to the client rather than the Court. The Tribunal had, by reason of its findings in relation to Allegation 1.1.3, found the factual basis of Allegation 2.1 proved on the balance of probabilities. This Allegation made specific reference to incompetence, which the Tribunal had found to have been the basis of the failings. The Tribunal found that it could never be in the client's best interests for an application for judicial review to be submitted that was accompanied by grounds that were incompetently drafted as this would inevitably diminish the prospects of success.

44.26 The Tribunal therefore found the factual basis of Allegation 2.1 proved on the balance of probabilities, together with the failures to achieve Outcomes 1.2 and 1.5 and the breach of Principle 4.

44.27 *Principle 1*

44.27.1 The Tribunal found the breach of this Principle proved on the same factual matrix in relation to Allegation 1.1.3. This Principle related squarely to the Respondent's duties to the Court and it was not clear to the Tribunal how it could relate to the Respondent's failure to act in Client Z's best interests. The pleading of this Principle appeared to be duplicitous on the facts and the Tribunal therefore dismissed this element of the Allegation.

44.28 *Principle 2*

44.28.1 In Bolton v Law Society [1994] WLR 512 Sir Thomas Bingham MR noted that solicitors should be "trusted to the ends of the earth". Client Z was entitled to expect that the Respondent, as his solicitor, would not submit an incompetently drafted application for judicial review on a matter of vital importance to the client. The Tribunal had found in relation to Allegation 1 that the Respondent's incompetence was such as to amount to a lack of integrity in relation to his duties to the court and the same applied in relation to his duties to the client. The Tribunal found the breach of Principle 2 proved on the balance of probabilities.

44.29 *Principle 6*

44.29.1 It followed from the Tribunal's factual findings and the breaches of Principles 2 and 4 that the trust the public placed in the Respondent and the profession was diminished. The Tribunal found the breach of Principle 6 proved on the balance of probabilities.

Allegation 2.2

44.30 This Allegation related to Client M. The Tribunal found that the Respondent had accepted instructions from Client M to file an application for leave to remain. The

Tribunal accepted that the Respondent had carried out the work on the matter by way of preparing the application.

44.31 There had been a large amount of evidence given about which firm the Respondent was working for, but having regard to the wording of the Allegations as pleaded, there did not appear to be an obvious relevance to that aspect of the evidence. The Tribunal was focussed on the Respondent's duties, which were the same regardless of where he was working. The Tribunal therefore made no findings in relation to that matter and has not rehearsed that evidence or those submissions in any detail.

44.32 The focus of this Allegation was whether or not the Respondent had ensured that the application for leave to remain had been filed. The Tribunal adopted a common-sense approach to the term "ensured" and considered whether the Respondent had taken all reasonable steps to ensure that the application was filed. In this regard, the Tribunal was not greatly assisted by Client M's evidence as he could not speak to that issue.

44.33 The Tribunal noted that the Home Office had no record of the application having been received. However this was not conclusive as to the question of whether the Respondent had taken reasonable steps to ensure it was filed. The Tribunal accepted the Respondent's evidence and submission that he had done a considerable amount of work for a nominal fee of £200. On Client M's evidence the Respondent and Mr Hammad had met Client M on at least two occasions to prepare the application, a copy of which he had seen. The Respondent had told the Tribunal that Client M had been actively engaged in the preparation of the detail of the Application. The Tribunal found it implausible that the Respondent would undertake this amount of work and would then not file the application. The Respondent had clearly found Client M to be a difficult client and it was his case that he would want to protract his dealings with him by not sending an application Client M had been so actively involved in.

44.34 The Respondent had given evidence that he had put the application in the post-tray, something confirmed as being the appropriate procedure by Mr Hammad. The Tribunal accepted that the Respondent had done so and was satisfied that this amounted to the taking of a reasonable step to ensure the application was filed. The Tribunal was not required to make a finding as to whether the application had subsequently been lost in the post or lost by the Home Office.

44.35 The Tribunal had treated Client M's evidence with a degree of caution, having regard to the issues that had been aired as part of the abuse of process submissions. The Tribunal was concerned that Client M had not obeyed directions not to refer to other documents and it noted that he had spent considerable time perusing the bundle, having been given access inadvertently. Even if the Tribunal had given full weight to Client M's evidence however, it would not have found this Allegation proved on the balance of probabilities as it accepted the Respondent's evidence on the question of steps he had taken to ensure the application was filed.

44.36 The Tribunal noted that Mr Zackaria had given evidence to the effect that the Respondent had told him that Mr Hammad had lost the documents. This evidence was contradicted by that of the Respondent and Mr Hammad. The Tribunal accepted the Respondent's evidence and that of Mr Hammad on this point as there was no evidence to contradict their account, beyond an inference that the Tribunal would have had to

draw from the fact that the Home Office had no record of having received it. This was not sufficient to discharge the burden of proof and the Tribunal therefore found the factual basis of Allegation 2.2 not proved.

Allegation 2.3

44.37 The Tribunal reviewed the correspondence in this matter, with reference to the date pleaded in the Rule 12 Statement, August 2017.

44.38 The Tribunal noted that funds were transferred to CLS on 30 August 2017. The Tribunal rejected the submission that the fact that the funds did not go into the Respondent's personal bank account meant that this was effectively an end of the matter. The funds went to CLS and the Respondent was working with CLS as an in-house lawyer at the material time. In cross-examination Client C had confirmed that it was not the Respondent who had directly asked him for the monies, but Mr Najjar.

44.39 However the Allegation was not confined to receipt of funds, but also alleged an acceptance of instructions in August 2017. On Client C's own evidence, the first time he met the Respondent was 18 October 2017 and the first text message was 22 September 2017. There was no evidence to corroborate Client C's assertion that there had been "many" telephone calls prior to that. There was no reference to these telephone calls in subsequent correspondence and the weight of evidence was that Client C had been dealing exclusively with Mr Najjar until at least September 2017.

44.40 The Tribunal was therefore not satisfied on the balance of probabilities that the Respondent had accepted instructions from Client C in August 2017. The Tribunal found the factual basis of Allegation 2.3 not proved.

Allegation 2.4

44.41 The relevant date in relation to this Allegation was March 2018. Again, the monies were paid to CLS and not the Respondent, something the Tribunal had already determined was a distinction [without a difference]. This had taken place on 24 March 2018.

44.42 In relation to the instructions, the evidential position was different to that of Client C. Client A had initially contacted the Respondent by email on 27 October 2017. The Tribunal recognised that instructions were not received at that point, but there was evidence of direct contact between Client A and the Respondent prior to March 2018.

44.43 On 14 March 2018 the Respondent had issued a client care letter. The Tribunal noted the Respondent's evidence that it was more akin to a letter to a consumer by way of reassurance, but found that it was in fact a client care letter. The letter set out the basis on which the client had engaged the Respondent in his capacity as a solicitor. The following sections of the letter were relevant:

> "Thank you for instructing us as a consultancy in relation to the above retainer. We are writing you this letter to explain the basis on which we will carry out all the work necessary in your matter."

"Mr Alberto Khadra-Pozo is a qualified solicitor in England and Wales under number 317054. He has conduct of your case and is also ultimately responsible for your matter liaising working and instructing with the following:"

"We will take and follow up all the steps necessary and report to you from time to time"

"You may terminate your instructions to us in writing at any time"
"In some circumstances, we may consider we ought to stop acting for you, for example if you cannot give clear or proper instructions no how we are to proceed, or if it is clear that you have lost confidence in how we are carrying out your work"

44.44 The Tribunal noted the various references to "instructions" and was satisfied on the balance of probabilities that this letter was a confirmation of acceptance of instructions by the Respondent in his capacity as a solicitor at CLS.

44.45 In his witness statement, Client A had said he had sent the Respondent some details about the case on 27 March 2018 and on 30 March 2018 the Respondent had sent him a draft statement and asked for further documents. The Respondent had accepted having regular contact with Client A during that month, though he denied he was acting as a solicitor for him. The Tribunal rejected this submission on the basis of the client care letter.

44.46 The Tribunal was satisfied on the balance of probabilities that the Respondent had accepted money and instructions from Client A in order to bring a claim against a defendant in Sri Lanka.

44.47 On 1 February 2019 Client A had asked for the return of his money. He did so again on 8 February 2019. In his email of 1 February 2019, Client A had explained that he had found out in September that the matter against the defendants was not a criminal case and no legal action had been taken in Sri Lanka. The Respondent did not dispute that these emails were not replied to. His explanation was that the emails had gone into his 'spam 'email folder and he had not seen them, which was the same reason he gave for not replying to the letter from the SRA. The Tribunal had no evidential basis on which to disbelieve the Respondent and it accepted that it was entirely possible that the email had gone to the 'spam 'folder and that the Respondent had not checked it or seen the email. The Respondent was nevertheless under a duty to ensure that he had an effective way of communicating with his clients. The factual basis of Allegation 2.4 was therefore proved on the balance of probabilities.

44.48 *Principle 2*

44.48.1 The Tribunal considered the question of integrity in the context of its finding in relation to the circumstances by which the Respondent did not reply to the email from Client A asking for his money back. While the Respondent ought to have had a system in place to ensure he received his client's emails, the Tribunal was not satisfied that his failure to do so amounted to a lack of integrity, having regard to the test in Wingate, Evans and Malins. The Tribunal

noted that not every error or shortcoming by a solicitor amounted to a lack of integrity. The Tribunal therefore found the breach of Principle 2 not proved.

44.49 *Principle 4*

44.49.1 The Tribunal was satisfied that, as a result of the Respondent's failures to ensure that he received emails, the best interests of Client A had not been served as he had not received either his money back or an explanation from the Respondent. The Tribunal found the breach of Principle 4 proved on the balance of probabilities.

44.50 *Principle 6*

44.50.1 The public would expect to be able to trust solicitors to ensure that they received emails from their clients, so as to be able to respond to queries and provide a proper standard of service. The Tribunal found the breach of Principle 6 proved on the balance of probabilities.

45. **Allegation 3**

Applicant's Submissions

Client M

45.1 Mr Mulchrone again relied on the evidence of Dr Murad.

45.2 In addition to the submission made in relation to Allegation 2, it was submitted that there was a strong inference that the Respondent did not make the application. Even if he had done so, he had not chased up the Home Office as to the lack of action. The Applicant's case however was that the failure to chase up the application was evidence that he had not sent it. The Respondent therefore misled Client M into believing that he had lodged the application.

Client C

45.3 Mr Mulchrone again relied on the evidence of Mr Charaf.

45.4 The Respondent had sent a text receipt to Client C confirming that he had received £2,000. When Client C had asked for the return of the balance of his money, the Respondent denied having received it. The Applicant's case was that either the Respondent received the £2,000, in which case he was wrong to deny having done so, or he had not received it in which case the text receipt was wrong. The Applicant's case was that given that the Respondent needed to deal with Mr Lakshan, whom he needed to pay, and given that there was no reason for Client C to expect services without payment in advance, it is more likely that Client C did pay the £2,000 to the Respondent.

45.5 In respect of Clients M and C, it was submitted that the Respondent's actions amounted to a failure to act with integrity. The Respondent had misled his clients over the status of their applications and their money. It was also a breach of Principle 6.

45.6 It was further submitted that the Respondent's conduct was dishonest. The Respondent had sent Client M a copy of an application which the Home Office did not have. It was submitted that ordinary decent people would see this as an attempt to show Client M that the Respondent had done work which he had not done. In relation to Client C, the Respondent had told him that he had not received this money, when the evidence suggested otherwise. Ordinary decent people would not expect the Respondent to mislead Client C in this way.

Respondent's Submissions

Allegation 3.1

45.7 Mr Okoh's submissions about the Allegations relating to Client M are summarised above in relation to Allegation 2.2. Mr Okoh submitted that there was no evidence that the application had not been sent to the Home Office and therefore the basis of Allegation 3.1 was not made out. The Respondent denied telling Client M anything that was untrue.

Allegation 3.2

45.8 Mr Okoh submitted that by Client C's own admission, he had asked £2,000 to be sent to an account, the details of which were given to him by Mr Najjar. At the time the sum was sent, Client C had not spoken to the Respondent about the matter. Mr. Najjar had confirmed that he received the money and he sent the money to the account of CLS. The Respondent had no access to the bank account of CLS and he was only paid a salary by CLS. The Respondent's statement that he had never received any money from Client C was therefore accurate. Client C himself had never sent the funds and no funds were sent to the Respondent's own bank account. Mr Okoh referred the Tribunal to the Respondent's pay slips covering the period in question and to his bank statements, which showed that the funds were never paid into his account. Mr Okoh submitted that the Applicant had failed to demonstrate that the Respondent was ultimately behind CLS. He therefore submitted that the statement that the Respondent did not receive £2,000 was neither misleading nor dishonest.

The Tribunal's Decision

Allegation 3.1

45.9 This Allegation was intrinsically linked to Allegation 2.2 in that the basis of this Allegation was that when the Respondent had told Client M that he had made an application to the Home Office, this was untrue. The Tribunal, when considering Allegation 2.2, had been satisfied that the Respondent had taken reasonable steps to ensure the application was filed. The Tribunal was therefore not satisfied on the balance of probabilities that what the Respondent had told Client M was untrue. The factual basis of Allegation 3.1 was therefore not proved on the balance of probabilities.

Allegation 3.2

45.10 This Allegation focussed exclusively on the receipt of monies from Client C, unlike Allegation 2.3 which also addressed the issue of receipt of instructions. The Tribunal

had found that the monies had been received and had rejected the submission that because it was not paid into the Respondent's own bank account that this made a difference to the position. The monies had been paid on 30 August 2017. On 17 April 2018 the Respondent had sent an email to Client C which included the following:

> "In terms of clients for all the work, calls, certifications, legalisation CLS has received the following;
> £2000 from yourself"

45.11 The Tribunal reviewed the exchange of emails that began on 19 December 2018. Client C had asked for the return of his monies and in his first response the Respondent did not engage with that point. Client C had emailed him again, repeating the query and the Respondent replied and stated:

> "There are no copies apart from your emails and kindly clarify what balance you are referring to?? Kindly furnish me with what payment you refer to."

45.12 Client C then emailed to explain that he was referring to the £2,000 and asked the Respondent if he was denying the payment had been made. The Respondent replied and the email concluded as follows:

> "I believe your email is ridiculous and no monies received to my consultancy from you. So refrain from contacting me".

45.13 The Tribunal was satisfied on the balance of probabilities that the Respondent had told Client C that no monies had been received from him, including by CLS as evidenced by reference to the "consultancy". This was plainly untrue as the monies had been paid in August 2017 and acknowledged in April 2018. The Respondent's assertions in December 2018 flatly contradicted his email of 17 April 2018. The Tribunal found the factual basis of Allegation 3.2 proved on the balance of probabilities.

Dishonesty

45.14 The Tribunal again applied the test in Ivey and considered the Respondent's state of knowledge at the time he was telling Client C that no monies had been received.

45.15 The Respondent's state of knowledge as at 17 April 2018 was that the monies had been received as he had confirmed this in writing. The question for the Tribunal was therefore whether he had forgotten this by the time he was asked about it repeatedly in December 2018, some 7 months later or whether he was still aware that the monies had been paid.

45.16 The Respondent had not argued that he had forgotten about the monies and he had not adduced any evidence to suggest that he would have done so for medical reasons. The focus of the Respondent's defence had been on the fact that the monies had not been paid into his personal bank account. The Tribunal found that this was an attempt to draw and artificial distinction between himself and CLS and rejected it. However the email of December 2018 specifically referred to the "consultancy" and so even if the distinction was relevant, the assertion in the email was still untrue. The Respondent's defence did not, therefore, meet the Allegation or the evidence underpinning it. The

Tribunal was satisfied on the balance of probabilities that the way in which the Respondent had purported to address the Allegation, taken together with the email of 17 April 2018 and the fact that Client C had been specific about the sum paid and had asked the question on more than one occasion, demonstrated that the Respondent was aware that the monies had been received and that his email to Client C was untrue.

45.17 The Tribunal was satisfied on the balance of probabilities that telling Client C something that was not true and which the Respondent knew not to be true would be considered dishonest by the standards of ordinary decent people. The Tribunal therefore found the allegation of dishonesty proved.

45.18 *Principles 2 and 6*

45.18.1 The Tribunal found the breaches of both Principles proved on the balance of probabilities on the basis of its findings in relation to dishonesty. It clearly lacked integrity to make an untrue statement to a client and as a matter of logic this would undermine the trust of the public.

46. **Allegation 5**

Applicant's Submissions

46.1 Mr Mulchrone submitted that the Respondent misled others by asserting he was a notary when he was not. He submitted that this demonstrated a lack of integrity. The Respondent had therefore breached Principles 2 and 6 and failed to achieve Outcome 8.1.

46.2 Mr Mulchrone further submitted that the Respondent's conduct was dishonest as anyone reading the Respondent's emails would conclude that he was a notary. The Respondent knew the difference between a solicitor and a notary. The Respondent's conduct would be considered dishonest as he was claiming to be something he was not.

Respondent's Submissions

46.3 Mr Okoh told the Tribunal that the Respondent had admitted this allegation to the extent that he is not a Notary Public and should not have described himself as such. The Respondent had told the Tribunal that his error was corrected well before the Applicant had raised his concern about the description of his qualification. The Respondent had explained that this description had been done on the advice of a friend in Spain who explained that the type of work the Respondent did was done by Notary Publics in Spain. The Respondent had never conducted any business as a Notary Public. He had never gained any financial advantage nor did he represent expressly to anyone that he was a Notary Public or that he could perform Notarial services. Mr Okoh submitted that the Respondent's actions were clearly unwise but not designed to give him any advantage and there had been no intent to deceive or mislead anyone.

The Tribunal's Findings

46.4 The Respondent had admitted the factual basis of this Allegation and the Tribunal found that admission to be properly made based on the evidence. The Tribunal found the factual basis of this Allegation including the failure to achieve Outcome 8.1 proved.

Dishonesty

46.5 The Tribunal considered the Respondent's state of knowledge on the occasions when he was describing himself as a Notary Public.

46.6 The Respondent knew that he was not, and never had been, a Notary Public. The Respondent had told the Tribunal that he was considering moving to Spain and that this was the context in which he had been discussing the status of a Notary Public. However the Respondent was practising in England and Wales and he knowingly had the title on his business cards and emails. The Tribunal found that a solicitor would not forget to change their email signature or business card and would be aware of the jurisdiction in which they were operating. The Respondent was an experienced solicitor, which was a separate profession to that of Notaries Public. The Tribunal accepted the Respondent's evidence that he had made no money from this description of himself as a Notary Public, but this did not change the fact that it was an untrue representation. The Tribunal reminded itself that no medical defence had been advanced that was relevant to the Respondent's state of knowledge. The Tribunal was satisfied on the balance of probabilities that the Respondent was aware of what was written on his email signatures and on his business cards and that he was aware that it was untrue.

46.7 The Tribunal was satisfied on the balance of probabilities that a solicitor describing themselves as something they were not in their emails and on business cards would be considered dishonest by the standards of ordinary decent people.

46.8 The Tribunal therefore found the allegation of dishonesty proved.

46.9 *Principles 2 and 6*

46.9.1 The Tribunal found the breaches of both Principles proved on the balance of probabilities on the basis of its findings in relation to dishonesty. The Respondent was under a duty to be completely accurate in his marketing materials and the failure to do so would inevitably undermine public trust in him.

Previous Disciplinary Matters

47. There was one previous finding against the Respondent. On 9 April 2009, the Tribunal had ordered that the Respondent pay a fine of £1,000.00, such penalty to be forfeit to Her Majesty the Queen, and it had further ordered that he do pay one quarter of the costs of and incidental to the application and enquiry fixed in the sum of £2,250.00 inclusive.

48. The remaining three quarters of the costs were to be paid by a second Respondent who appeared at the same hearing.

49. The Allegations which were found proved against the Respondent (and his co-Respondent) were as follows:

> "(iii) That they provided costs information to clients in conveyancing cases which was inaccurate and misleading contrary to Rules 3 and 4 of the Solicitors

Costs Information and Client Care Code 1999, Rule 1 of the Solicitors Practice Rules 1990.

(iv) That they failed to keep clients properly informed about costs, details of and changes to fee earners and the partner with overall responsibility for the matter in breach of Rules 6 and 7 of the Solicitors Costs Information and Client Care Code 1999.

(v) That they failed to ensure that an office of their firm at Southall was supervised and managed in accordance with Rule 13 of the Solicitors Practice Rules 1990.

(vi) That they had a referral arrangement in place with a mortgage advisor without there being any written agreement in place in breach of Section 2(9) of the Solicitors Introduction and Referral Code 1990.

(vii) That they failed to provide a client, in respect of whose case a referral had been made, with all relevant information concerning the referral in breach of Section 2a Solicitors Introduction and Referral Code 1990.

(viii) That they failed to carry out client account reconciliations in accordance with Rule 32(7) of the Solicitors Accounts Rules 1998 as there was no clear demonstration that a three way check had been carried out between the bank statements, cash book and total of client ledgers.

(ix) That they failed to keep client ledgers properly written up in breach of Rule 32 of the Solicitors Accounts Rules.

(x) That they operated a suspense account other than in accordance with the provisions of Rule 32 (16) of the Solicitors Accounts Rules."

Mitigation

50. Mr Okoh addressed the Tribunal as to the Respondent's ill-health. This part of the hearing took place in private and so the details of the nature of the Respondent's ill-health are not set out in this Judgment. Mr Okoh referred the Tribunal to the medical documents that had been served in the proceedings and to further such documentation that had been served following the announcement of the Tribunal's findings. Mr Okoh told the Tribunal that the Respondent's health had deteriorated around 2018 and this had contributed to the situation in which the Respondent now found himself.

51. Mr Okoh told the Tribunal that the Respondent understood that he had failed in his duty as a solicitor. This had not occurred due to any personal motive or with a view to make a financial gain.

52. In relation to Client Z, the matter had been conducted by someone who, at some point, had supervised him in immigration matters and had greater experience. Ultimately the responsibility was the Respondent's as he was the supervising fee earner. The Respondent had tried to assist Z as best he could, including covering the costs of disbursements himself where he could. The Respondent had taken pity on Client Z as

he was in a similar personal position to him. Mr Okoh told the Tribunal that the Respondent was extremely apologetic for any harm caused to reputation of the profession.

53. In relation to Clients A and C, Mr Okoh asked that the Tribunal take into account the modest sums charged to the clients. The primary motivation was to assist the clients and was not financial. Despite difficult circumstances, the Respondent had continued to assist as best he could with finding legal representation in Sri Lanka. The Respondent accepted that matters should have been dealt with in a better way. He did not follow up matters as he should have done due to his health issues.

54. In relation to Client C, Mr Okoh told the Tribunal that the Respondent accepted that the way in which he had communicated with Client C as regards funds that were paid "was not the best". The Respondent accepted that Client C had made a financial outlay and he had attempted to resolve matters with him, but had been unable to as Client C had refused to engage with him. However, the Respondent accepted that the manner in which he had communicated was not professional and not in keeping with standards of profession for which he deeply apologised.

55. In relation to the allegation concerning the Notary Public status, the Respondent had accepted this allegation from the outset and admitted that it was a very stupid thing to do. The Respondent had remedied the situation and had made no financial gain but he accepted it had been wrong and he was deeply sorry.

56. Mr Okoh told the Tribunal that he had reason to be personally grateful to the Respondent, who had supported Mr Okoh financially when he had first come to the United Kingdom. Mr Okoh told the Tribunal that this altruism was exhibited more widely than just towards him and had meant that the Respondent had turned down more lucrative employment in order to maintain his commitment to help the community.

57. Mr Okoh addressed the Tribunal as to what he submitted were exceptional circumstances of this case, such that the Respondent should not be struck-off despite the findings of dishonesty.

58. In relation to Client C, Mr Okoh told the Tribunal that the email had been sent in a "moment of madness" at around, when the Respondent was suffering from ill-health. It was a one-off incident and was not a sustained dishonesty. The Respondent fully accepted the finding of the Tribunal and had sought to explain his thinking during the hearing.

59. In relation to the Notary Public material, this had continued over a period of time. Mr Okoh asked the Tribunal to take into account that most people do not read their email signature once it has been put into their email account. The same applied to a business card. The creation of the signature was done on one occasion and the business card was taken from the Respondent's email signature by the printers. This was also a moment of madness.

60. Mr Okoh reminded the Tribunal that this was the first time the Respondent had been found to have been dishonest in 17 years as a solicitor. The Respondent had not benefited financially from these actions and Mr Okoh invited the Tribunal to balance

the seriousness of the findings with the help that the Respondent rendered to the community. The Respondent accepted that any punishment had to be severe, but Mr Okoh submitted that the Respondent could be rehabilitated and that he still had a lot to offer the community and the profession. The Respondent needed time away from the profession to recover his health and he would also need significant retraining and supervision before he returned. In all the circumstances Mr Okoh invited the Tribunal to impose an indefinite suspension.

Sanction

61. The Tribunal had regard to the Guidance Note on Sanctions (December 2020). The Tribunal assessed the seriousness of the misconduct by considering the Respondent's culpability, the level of harm caused, together with any aggravating or mitigating factors.

62. In assessing culpability, the Tribunal identified the following factors as being relevant:

- The Respondent's motivation was not financial or malicious. He had a humanitarian ethos and had been trying to assist people as the personal references attested. However that altruism had extended to misleading the court. As regards the Notary Public allegation, the Respondent's motivation was to exaggerate his status to give himself an importance which he did not have.

- The Respondent's actions were not generally thought-out. He had tended to do things in a reactive way, although there was some planning required in the preparation of his marketing materials. The Tribunal noted that the email to Client C was sent at 1am.

- The Respondent had breached his duty to the Court and to his clients, who had trusted him and been let down.

- The Respondent had direct control and responsibility for his actions. He had put himself in a position where others were doing work for him and they in turn needed him to front the work up, including doing so when he was unwell.

- The Respondent was relatively experienced but he was dealing with matters where he did not have experience and he ought not to have done so, specifically immigration work and judicial review work.

63. In assessing the level of harm caused, the Tribunal identified the following factors as being relevant:

- Harm to reputation of the profession by the Respondent's actions, which included dishonesty, lack of integrity and failure to uphold the law and the proper administration of justice.

- Clients were potentially vastly prejudiced as he did not act in their best interests.

- The harm caused was reasonably foreseeable given that the Respondent had involved himself in areas of law where he lacked experience.

64. The Tribunal identified the following aggravating factors:

- Dishonesty. The matters were aggravated by the Respondent's dishonesty. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:

  > "34. there is harm to the public every time a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be "trusted to the ends of the earth"."

- The misconduct was repeated but was not deliberate or calculated.

- Some of the misconduct continued over a period of time, such as the Notary Public matter, but this was a one-time mistake that had continued until corrected.

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

- The Tribunal noted the previous finding of the Tribunal but did not consider it particularly relevant to these matters. He had received a fine and the costs had been apportioned at 25%, likely a reflection of his level of culpability and his level of experience at the time by comparison with his then co respondent. The Tribunal also noted that the findings were many years before these matters.

65. The Tribunal identified the following mitigating factors:

- Although the loss was not made good by the Respondent in respect of Client C, he had not been in a position to do so. He had rectified the Notary Public issue before the SRA became involved.

- Although not a single episode, the misconduct was largely over a matter of months in 2018. Although the Respondent did not have an unblemished career, as noted above the previous matters were largely irrelevant to the matters at hand.

- The Respondent had made admissions to the Notary Public allegations and had demonstrated some genuine insight into that matter.

- The Respondent had co-operated with the SRA and with the Tribunal proceedings despite his ongoing poor health.

66. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the Respondent. The Tribunal noted that the usual sanction where misconduct included dishonesty would be a strike-off and the Tribunal had regard to Sharma. The circumstances in which such a sanction was not imposed were exceptional, described in Sharma as "a small residual category where striking off will be a disproportionate sentence in all the circumstances ...".

67. In Solicitors Regulation Authority v James [2018] EWHC 3058 (Admin) at [101], Flaux LJ set out the basis of which question of exceptional circumstances was assessed:

> "First, although it is well-established that what may amount to exceptional circumstances is in no sense prescribed and depends upon the various factors and circumstances of each individual case, it is clear from the decisions in Sharma, Imran and Shaw, that the most significant factor carrying most weight and which must therefore be the primary focus in the evaluation is the nature and extent of the dishonesty, in other words the exceptional circumstances must relate in some way to the dishonesty."

68. The Tribunal considered whether the circumstances in this case were exceptional, having regard to James. The Tribunal considered the nature and extent of the dishonesty. It noted that it was short-lived in the case of Client C and that the Notary Public matter arose from a one-off decision.

69. The Tribunal further accepted that there had been no financial gain, intended or actual, on the part of the Respondent. The adverse effect on others was limited. The Tribunal noted the medical evidence served in the proceedings, which had not been challenged and it demonstrated that the Respondent had been suffering from severe health issues at the material time which had undoubtedly impaired judgment at the time of the dishonest conduct.

70. The Tribunal had also noted for itself the Respondent's ill-health during the hearing. He had nevertheless continued to engage, with the assistance of reasonable adjustments.

71. Mr Okoh had submitted that the Respondent could be rehabilitated and it was the Tribunal's hope that the Respondent may recover from his ill-health.

72. The Tribunal took into account each factor individually but also cumulatively. There was a unique combination of circumstances in this case including, but not limited to, the Respondent's health. Those factors, taken together, were such that the Tribunal considered it would be unjust to strike the Respondent from the Roll. The appropriate sanction in this particular case was an indefinite suspension.

Costs

Applicant's Submissions

73. Mr Mulchrone sought an order that the Respondent pay the Applicant's costs in the sum of £47,653.

74. In response to a query from the Tribunal, Mr Mulchrone confirmed that the statement of costs had been updated to include the totality of the proceedings, including the additional sitting days. Mr Mulchrone submitted that it was difficult to separate out any particular Case Management Hearing or individual allegation, but he was instructed that it the statement of costs had been prepared "conservatively" and there was some time that had not been claimed. The statement of costs included the unsuccessful abuse of process submission.

Respondent's Submissions

75. Mr Okoh agreed that the costs were entirely reasonable in terms of time spent and rates charged, but in terms of allegations proven and the matters amended by the Applicant and those that were withdrawn, the overall costs should be reduced by at least 50%.

76. The Respondent had incurred costs in defending the withdrawn allegations, albeit they were minimal. Mr Okoh invited the Tribunal to take this into account but did not make an application for the Respondent's costs.

77. Mr Okoh referred the Tribunal to the Respondent's statement of means which showed that he was currently reliant on state benefits. The documents demonstrated that the Respondent had an income of around £1,000 a month and debts of over £20,000 and had not been in employment since the early part of 2019. If a costs order was made against the Respondent, it would either remain over him for an extended period of time with no ability to meet it, or it would have the effect of exposing him to bankruptcy.

78. The Tribunal, sitting at a Case Management Hearing on 17 June 2020, had directed that the Applicant pay the Respondent's costs of that hearing. However the Tribunal was told by Mr Okoh that he had conducted that hearing on a 'pro bono 'basis and so the costs of that hearing were assessed as nil and so no order was required in respect of that Case Management Hearing.

The Tribunal's Decision

79. The starting point was that the Applicant was entitled to an order for costs as it had been successful in proving a number of serious Allegations against the Respondent. Mr Okoh had not taken issue with the hourly rate or the amount of time spent by the Applicant and the Tribunal agreed with this assessment.

80. The Applicant had not been successful on all matters however, notably those which were based on Client M's case. Client M's evidence had taken a considerable amount of time during the hearing. The Tribunal considered that it was appropriate to reduce the total claim by 25% to reflect the Allegations that had not been proved. This took the costs to £35,739.75.

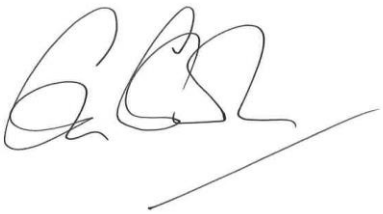
81. The Tribunal then considered the Respondent's means, having regard to SRA v Davis and McGlinchey [2011] EWHC (Admin). The Respondent was in receipt of benefits, had no assets and considerable debts. He did not have the ability to pay any significant amount by way of costs. The Tribunal felt that he should pay a small contribution to them but one that was manageable and realistic. The Tribunal determined that the appropriate sum was £750.00.

82. The Tribunal was aware that the Applicant took a proportionate view to enforcement and was therefore not minded to defer the enforcement of costs pending further leave from the Tribunal.

Statement of Full Order

83. The Tribunal Ordered that the Respondent, ALBERTO KHADRA-POZO, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 24th day of June 2021 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £750.00.

Dated this 5th day of July 2021
On behalf of the Tribunal



J C Chesterton
Chair