SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12093-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

QURAT UL AIN AKBAR Respondent

Before:

Mr B Forde (in the chair)
Mr J Evans
Mrs C Valentine

Date of Hearing:
27-29 September 2021

Appearances

Nimi Bruce, barrister of Capsticks LLP 1 St George's Rd, London SW19 4DR for the Applicant.

Zeeshan Mian, barrister of 5 Tan Chambers, 233 Bethnal Green Road, London, E2 6AB, for the Respondent.

JUDGMENT

Allegations

1 The Allegations against the Respondent, were that, while in practice as a partner at Southall Solicitors (t/a Malik Law Solicitors) ("the Firm"):

1.1 On 3 May 2018, the Respondent made statements (both orally and in writing) to the SRA's forensic investigation officers ("FIOs") to the effect that the Firm held no practice papers, which statements were false and misleading. In so acting, the Respondent breached Principles 2, 6 and 7 of the SRA Principles 2011.

1.2 The Respondent failed to comply with s44B Notices served on her on 3 and 4 May 2018 requiring production of the Firm's practice papers. In so acting, the Respondent breached Principles 2, 6 and 7 of the SRA Principles 2011.

1.3 On 3 and 7 May 2018, the Respondent made statements (both orally and in writing) to the SRA's FIOs to the effect that the Firm had no clients, which statements were false and misleading. In so acting, the Respondent breached Principles 2, 6 and 7 of the SRA Principles 2011.

1.4 At a 3 May 2018 interview and in 7 May and 9 May 2018 emails, the Respondent made statements to the SRA:

i) to the effect that the re-commencement of the Firm's activities at that time was a course she had specifically agreed with Mr Faraque, following telephone conversations between them, and;
ii) providing various email addresses for Mr Faraque; all of which statements were false and misleading. In so acting, the Respondent breached Principles 2, 6 and 7 of the SRA Principles 2011.

1.5 In a 14 June 2018 application notice and a 19 June 2018 email, the Respondent made false and misleading statements to the High Court and the Firm's Intervention Agent to the effect that Mr Faraque was engaged with and supportive of her application to set aside the Second Order (as defined below) and relevant interventions (as well as the adjournment of a hearing from 20 to 25 June 2018). In so acting, the Respondent breached Principles 1, 2, 6 and 7 of the SRA Principles 2011 and Outcome 5.1 of the SRA Code of Conduct 2011.

1.6 The Respondent had failed at any time to swear and serve the affidavit required by paragraph 18 of the Second Order (as defined below), notwithstanding numerous warnings and reminders. In so acting, the Respondent breached Principles 1, 2, 6 and 7 of the SRA Principles 2011.

2. Dishonesty was alleged with respect to each of the Allegations, but dishonesty was not an essential ingredient to prove any of them. Recklessness was alleged in the alternative to dishonesty with respect to each of the Allegations, but was also not an essential ingredient to prove any of them.

Preliminary Matters

3. The Respondent's absence

3.1 The Respondent did not attend the hearing but was represented by Mr Mian.

3.2 In response to a request for clarification from the chair, Mr Mian told the Tribunal that the Respondent was content for the hearing to go ahead in her absence and he further confirmed that she was aware of Rule 33 of the Solicitors Disciplinary Proceedings Rules (SDPR) which states as follows;

> "Adverse inferences
> 33. Where a Respondent fails to— (a) send or serve an Answer in accordance with a direction under rule 20(2)(b); or (b) give evidence at a substantive hearing or submit themselves to cross-examination; and regardless of the service by the Respondent of a witness statement in the proceedings, the Tribunal is entitled to take into account the position that the Respondent has chosen to adopt and to draw such adverse inferences from the Respondent's failure as the Tribunal considers appropriate."

3.3 The Tribunal noted that the Respondent was represented, and in light of the confirmations provided to it by Mr Mian, the Tribunal was content to proceed.

4. Application for anonymity on respect of Mr Faraque

Parties' Submissions

4.1 Ms Bruce applied for an anonymity order in respect of Mr Faraque so that his identity was not revealed. Ms Bruce told the Tribunal that he was no longer a professional person, having retired, and the proceedings were stressful for him. Ms Bruce submitted that there was no prejudice to the Respondent in Mr Faraque being anonymised. Ms Bruce accepted that he had filed an affidavit in the High Court proceedings in which he had not been anonymised.

4.2 Mr Mian opposed the application and submitted that it was in the public interest that Mr Faraque be named. He was a named partner in the previous firm and if the name of the firm was to be referred to in the proceedings then Mr Faraque's name was public knowledge anyway.

The Tribunal's Decision

4.3 The Tribunal considered its Guidance Note on Vulnerable Witnesses (2017) and the principles set out in Rule 35 of the SDPR, namely that hearings should take place in public unless there would be exceptional hardship or exceptional prejudice caused to an individual. The Tribunal acknowledged that Mr Faraque was in his old age and that he may well find the proceedings stressful. This did not, however, automatically lead to him being deemed vulnerable. The Tribunal noted that he had been a named partner in the firm and that had made a witness statement in civil proceedings. The Tribunal noted that the starting point was the principle of open justice, and the public had the right to know who was involved in a practice that was intervened into and who was giving live evidence in a public hearing. There was no evidence adduced in support of the application and the Tribunal was not satisfied that the threshold was met for taking

the step of anonymising the witness who was to give live evidence. The Tribunal therefore refused the application.

Factual Background

5. The Respondent had been a registered foreign lawyer ("RFL") since 12 December 2009. The Respondent was, an equity partner in and manager of the Firm (a recognised body) at all material times from 20 October 2010 to intervention on 8 June 2018, save for a period between March and November 2013. The other equity partner in the Firm, at all material times from 27 September 2010, was Mr Faraque. The Firm had previously traded as Kensington Law Chambers, but changed its name to Southall Solicitors on or about 12 April 2018. The Firm had become dormant at or about the end of 2016, and it had remained dormant until the events of April - June 2018 referred to below.

6. MLC was a firm which traded from about 1 September 2001 to 18 April 2018. Latterly, the equity partners in MLC were Dr M and Mr A. The Respondent was Dr M's daughter. On 18 April 2018, the SRA intervened into the practices of Dr M, Mr A and MLC.

7. On 30 April 2018, the Firm re-commenced practice, located at MLC's former Southall offices at 239 The Broadway, having been dormant since 2016. On 2 May 2018 the SRA commenced an investigation into the Firm. This included an interview with the Respondent on 3 May 2018 and the serving of a number of s44B Notices.

8. The FIOs prepared a Forensic Investigation Report ("FIR"), dated 17 May 2018, in respect of their investigation. On 30 May 2018, the Adjudication Panel resolved to intervene into the Respondent's practice, on the ground of "reason to suspect dishonesty". At the same time, the Adjudication Panel resolved to intervene into the practices of Mr Faraque and the Firm. The intervention took place on 8 June 2018.

9. This was supported by a further Search and Seizure Order, made on 6 June 2018. In addition to Search and Seizure provisions, the Second Order provided, at paragraph 18, in respect of the Respondent (as Second Defendant in the proceedings):

> "Within 72 hours of service of this Order (which may for purposes of this paragraph be effected in accordance with the Service Provisions), the Second Defendant must swear and serve upon the Claimant's solicitors an affidavit setting out to the best of her knowledge information and belief the following information: 18.1 The location of all the Listed Items, including any electronic records; 18.2 The identity of any person referred to in paragraph 17 of this Order; 18.3 Full details (including account number and sort code) of all bank accounts in which monies are held in connection with the Practices; 18,4 Such passwords as may be necessary to enable the Agent or members of the Agent's Team or the forensic computer specialist appointed by the Claimant under paragraph 14 of this Order to access any Computer."

10. The Second Order was served on the Respondent on 8 June 2018.

Allegation 1.1

11. On 2 May 2018, a s44B Notice dated 1 May 2018 was served on the Respondent. This s44B Notice sought all documents relating to the Firm's current clients, including client authorities from any ex-MLC clients. This was re-served on the Respondent in materially identical terms on 3 May 2018, when the FIOs met with her. In response, the Respondent made statements to the FIOs and the SRA to the effect that the Firm had no practice papers. During the meeting on 3 May 2018, the FIOs noted that the Respondent had said "... there were no files and that as she had said earlier, the firm had not given any legal advice and had no files yesterday. The files [the FIO] saw were empty files ready for opening when they began taking on clients. [The FIO] disagreed with [the Respondent], [the Respondent] said [the FIO] had been mistaken, they had only had client come in enquiring of their files and those were sent with details of Devonshires [the intervention agents]".

12. The FIOs recorded the further exchange as follows:

> "[FIO] About these files. I'm going to be clear now and give you an opportunity to reconsider any answers you've] given so far. I came here yesterday, in this room and saw client papers on this desk, client files on this desk, notes, letters for client matters, on that shelf I saw client documents, client papers. You told me there were no files here in this office yesterday, no client papers, just empty files. You have no clients, no files all you['ve] done so far is send 10-15 people back to Devonshires. Given no legal advice, to any client. Do you want to revise or revisit your answers? "Miss Akbar No."

13. The Respondent's 3 May 2018 written response to the s44B Notices stated "We don't have any documents in possession under the control of firm in connection with any practice".

Allegation 1.2

14. The Applicant's case was that by failing to provide the practice papers referred to in Allegation 1.1, the Respondent had failed to comply with the s44B notices.

Allegation 1.3

15. The s44B Notices sought a list of clients since 12 December 2017 to the point of service. In response, the Respondent told the FIOs "There is no list as we never acted for anyone or any business". On 7 May 2018 she emailed the FIOs stating "I can also confirm, and this goes to your section 44B notice of 1 May 2018, that neither I nor the firm has acted for any client since 12 December 2017. We have not taken up any clients as yet".

16. The Applicant's case was that this was untrue. On 2 May 2018, Mr G, who was employed by the Firm to perform administrative functions, and with whom the FIOs had a conversation when they first arrived at the Firm's offices, told the FIOs that the Firm had new client matters. The documents observed at the Firm by the FIOs on 2

May 2018 included a number of client authorities instructing the Firm. One of the FIOs, Mr Sangha, had taken photographs of a number of documents, which were exhibited before the Tribunal.

Allegation 1.4

17. At the material times, on the Applicant's case, Mr Faraque had long been retired from practice as a solicitor. It was the Applicant's case that Mr Faraque had been in Thailand from November 2017 to 10 May 2018. The Respondent provided the FIO with an email address, info@southallsolicitors.co.uk, which she claimed Mr Faraque "was using". She stated that Mr Faraque was aware that she was "starting the Firm back up" based on agreements made during the course of telephone calls.

18. In response to the s44B Notice served on 4 May 2018, the Respondent provided a different email address for Mr Faraque. The spelling of this address was corrected on 9 May 2018.

19. The Applicant's case was that Mr Faraque had no knowledge that the Firm proposed to re-commence trading, at any rate prior to mid-May 2018 and that the email addresses supplied were not his email addresses, and he did not have use of them. Mr Faraque had made a sworn affidavit in the High Court proceedings and gave evidence before the Tribunal.

Allegation 1.5

20. This Allegation was based on the facts underpinning Allegation 1.4, but related to the High Court and the intervention agents. Specifically it related to the application notice dated 14 June 2018 application notice and the email dated 19 June 2018 email, in which the Respondent had made statements to the High Court and the intervention agents to the effect that Mr Faraque was engaged with and supportive of the Respondent's application to set aside the Second Order and relevant interventions, as well as the adjournment of a hearing from 20 to 25 June 2018). The Applicant's case was that these statements were false and misleading.

Allegation 1.6

21. The Respondent failed at any time to swear and serve the affidavit required by paragraph 18 of the Second Order, notwithstanding numerous warnings and reminders. This Allegation was admitted in full, save for dishonesty and recklessness, which was denied.

Live Witnesses

22. The written and oral evidence of witnesses is quoted or summarised below and in the Findings of Fact and Law. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence of all witnesses. The absence of any reference to particular

evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence. The following witnesses gave oral evidence:

23. Stephen Middleton-Cassini (FIO)

23.1 Mr Middleton-Cassini told the Tribunal that his witness statement and report stood as his evidence in the case. In cross examination he was asked what documents he would have expected to see during his visit to the firm. Mr Middleton-Cassini told the Tribunal that the documents would have been set out in the letter advising the firm of the visit. He rejected the suggestion that there would be fewer documents in respect of an immigration case compared to that of a commercial transaction, indeed in some instances he would expect to see more documents.

23.2 Mr Middleton-Cassini confirmed that he had seen people in the reception area on the first date of his visit. These individuals did not identify themselves but the presumption, based on the fact that they were sitting in the waiting room with files and papers, was that there were clients. A member of the firm's staff had spoken to some of the people who came in and had turned them away.

23.3 There was extensive cross-examination of Mr Middleton-Cassini about the difference between 'client papers' and 'client files'. Mr. Mian took Mr Middleton-Cassini through a number of the photographs referred to above and asked him to tell the tribunal whether the material in those photographs was client papers or client files. The details of this cross examination are not set out here as this was not a line of questioning that assisted the Tribunal given that the allegation referred to "practice papers" and did not refer to client papers or files.

24. Hardeep Sangha (FIO)

24.1 Mr Sangha confirmed that his witness statement and report stood as his evidence in the case.

24.2 Mr Mian asked a small number of questions in cross-examination about the process by which the photographs had been taken and documents examined.

25. Omar Faruque

25.1 Mr Faruque confirmed that his witness statement in the High Court, his witness statement in the proceedings and his letter to the SRA dated 5 July 2018 were true and he relied on them as his evidence. He told the Tribunal that he had never met the Respondent and had nothing to do with Southall solicitors being re-established.

25.2 In cross examination it was put to him that he could not be sure when he had been out of the United Kingdom and when he had come back, contrary to what he had stated in his witness statement. Mr Faruque denied this and maintained that he was out of the country during the material times. Mr Mian put to Mr Faruque that Dr M would pay him on a regular basis and sometimes pay for his air tickets to Thailand. Mr Faruque did not deny this but stated that they were never paid from the company account. Mr Faruque was asked a number of questions about a time report from a meeting with the SRA in 2016 relating to his involvement with Kensington Law Chambers. Mr Mian

put to Mr Faruque that the time report contradicted his affidavit and his witness statement. Mr Faruque denied this. Mr Faruque was asked if he recalled sending three emails to the SRA in October and November 2016. Mr Faruque told the Tribunal that there had been no contact between himself and the SRA at this time and it was all done 'behind his back' by Dr M. Mr Faruque described the Respondent as "a simple housewife" and "possibly a victim of her father's greed".

25.3 Mr Mian asked Mr Faruque if he had reported to anyone that his name was being wrongly used. Mr Faruque stated that he had not done so as the SRA already knew that he was not involved. Mr Mian suggested to Mr Faraque that he had given authority to Dr M to set up the firm in his name. Mr Faruque stated that this was false. Mr Mian suggested that Mr Faruque was being paid cash for being a partner in the new firm. Mr Faruque described this as "absolute lies". Mr Mian put to Mr Faruque that Dr M had authority to take all actions necessary to manage the firm. Mr Faruque told the Tribunal that he knew nothing about this but he had not given the authority as it was not his firm. He denied allowing Dr M to deal with the investigation and the intervention.

Findings of Fact and Law

26. 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 their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

27. **Allegation 1.1**

27.1 The Applicant submitted that the Respondent knew that her said statements were false and misleading. The Respondent was a named partner and interviewed by the FIOs at the Firm's offices. The Applicant submitted that it was "inconceivable" that the Respondent was not aware that the Firm was in possession of practice papers.

Respondent's Submissions

27.2 In the course of his closing submissions, Mr Mian invited the Tribunal to "disregard" Section A on the CaseLines bundle. Section A consisted of the notice of application to the Tribunal and the Rule 12 Statement.

27.3 Mr Mian's submissions in relation to Allegation 1.1 were also applicable to Allegations 1.2 and 1.3 as they were interlinked.

27.4 Mr Mian referred the Tribunal to the Respondent's three witness statements as well as those from others who were present at the office at the time of investigation and that of Dr M. The Respondent had consistently maintained her position that the firm had no clients and no client papers. Mr Mian submitted that the Respondent could not prove a negative in those circumstances.

27.5 Mr Main referred the Tribunal to the following section of the Respondent's interview:

> "Miss Akbar explained that Malik Law was not advising any clients at present other than for clients to go to Devonshire Solicitors to retrieve their files and return back to Malik Law. Miss Akbar stressed that the Malik Law did not have any clients at present and approximately 15 people"

27.6 Mr Mian invited the Tribunal to note the chronology, specifically that only five weeks had elapsed between the firm resuming on 30 April 2018 and being intervened into on 8 June. Mr Mian reminded the Tribunal that it was not required to consider the role of Dr M or MLC. as this case was not concerned with Malik Law Chambers or Dr M.

27.7 Mr Main told the Tribunal that the Respondent understood that adverse inferences could be drawn from her absence, but invited the Tribunal to note that none of the Applicant's witnesses had questioned her credibility. He referred to the evidence of Mr Sangha and Mr Faraque in this regard, the latter having stated that he believed that Dr M was controlling the situation.

27.8 Mr Mian reminded the Tribunal of the evidence of the FIOs regarding the definition of client files and client papers. Mr Sangha had confirmed that he did not see what was inside the paper wallet or lever arch folders and had not taken copies of the file.

27.9 Mr Mian submitted that the Applicant had not provided any evidence that documents had been seized on intervention of the sort that would be expected if the firm had clients.

27.10 Mr Mian submitted that there was no documentary evidence that demonstrated that the firm had opened, retained or worked on a file. The Tribunal was therefore invited to dismiss Allegations 1.1-1.3.

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

27.11 The Tribunal dealt with the application to exclude section A of the CaseLines bundle as a preliminary point. The application was neither coherent nor intelligible. It was effectively a submission of no case to answer as the vast majority of the contents of Section A was the Rule 12 Statement. Insofar as such an application was being made, it was both late and wholly without merit. If it was a submission of no case to answer it was also late and equally lacking in merit. There was no proper submission as to why such an application or submission should be granted and it was therefore refused.

27.12 The Tribunal noted that neither the Respondent nor any of her witnesses had attended the Tribunal and so their evidence could not be tested.

27.13 The Respondent had accepted in her Answer that she had made statements to the FIOs to the effect that she did not hold practice papers and she maintained that position in these proceedings.

27.14 The Tribunal focussed on the term "practice papers" as that was what was pleaded in the Rule 12 Statement. The Rule 12 Statement did not limit the pleadings to "client files" or "client papers". The term "practice papers" clearly meant any papers relating to the practice of the firm. This would include, but would not be limited to, client files

and client papers. Therefore, even blank, pro-forma documents would fall under the category of "practice papers" as they were documents prepared with the intention of practising and undertaking work for clients.

27.15 The Tribunal, in any event, found the distinction between client "files" and "papers" to be artificial as well as irrelevant to the pleaded case. It was quite clear from the photographic evidence that files and papers relating to individual clients, as well as some pro-forma documents had been in the office. The fact that some papers from the files may have been separated out was irrelevant to the issue before the Tribunal.

27.16 The Tribunal noted the overall context in which these papers were found in the office, namely a number of people in the office reception area with papers. The FIOs had, correctly in the Tribunal's view, formed the presumption that they were clients. There was no other plausible reason for them to be at the office.

27.17 The Tribunal accepted the evidence of the FIOs and further noted that the Respondent had not attended to give evidence. The Tribunal drew the appropriate adverse inference from the Respondent's failure to provide an account of her actions that could be tested by way of cross-examination. As a result, it attached limited weigh to her witness statements.

27.18 The Tribunal was satisfied on the balance of probabilities that the statements made by the Respondent to the FIOs about the absence of practice papers was entirely false and misleading and found the factual basis of Allegation 1.1 proved.

Principle 2

27.19 In considering whether the Respondent had lacked integrity, the Tribunal applied the test set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366. At [100] Jackson LJ had stated:

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

27.20 The Tribunal found that a solicitor or RFL making false and misleading statements in any circumstances, including to their regulator during the course of an investigation, amounted to serious departure from the ethical standards of the profession and a clear lack of integrity. The Respondent was under a duty to fully co-operate with the investigation and to answer all questions fully and accurately.

27.21 The Tribunal found the breach of Principle 2 proved on the balance of probabilities.

Principle 6

27.22 The trust the public placed in the profession depended on there being confidence that solicitors were effectively regulated. In providing false and misleading information to the regulator, the Respondent had diminished that trust by attempting to frustrate the

investigation. The Tribunal found the breach of Principle 6 proved on the balance of probabilities.

Principle 7

27.23 It followed as a matter of logic from the findings above that the Respondent had failed to comply with her legal and regulatory obligations and so had breached Principle 7.

Dishonesty

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

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

27.25 The Tribunal applied the test in Ivey when considering each allegation of dishonesty, and in doing so 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.

27.26 In considering the Respondent's state of knowledge, the Tribunal noted that the Respondent was present at the offices and engaged with Mr Sangha in person during the investigation, as well as with both the FIOs in writing. The Respondent knew the purposes of the investigation and there was no suggestion that she had misunderstood the requests for information or been mistaken as to which documents were being sought. The Tribunal relied on the fact that the Respondent had been given an opportunity to clarify or correct the position the following day and so any doubt that may have existed would have been resolved at that stage.

27.27 The Respondent's denial that any practice papers existed had been rejected by the Tribunal above. In considering whether the Respondent might have wrongly believed that the documents were not practice papers, the Tribunal considered the evidence from the FIOs, the substance of which was not challenged by Mr Mian.

27.28 The Respondent's assertion in her Answer that her firm had no connection to MLC was contradicted by the photographs taken by Mr Sangha, which clearly showed papers relating to MLC. However, as noted above, the allegation was not limited to papers from MLC but to practice papers and the Respondent, being present at the office, could not possibly have believed there to be no such papers present. The Tribunal noted that the office had been cleared of papers between the visit 2 May 2018 and that of the following day. This was evidence that the Respondent knew that there were papers present and that she had not wanted to them to come into the possession of the FIOs.

27.29 The Tribunal was satisfied on the balance of probabilities that the Respondent knew that her statements to the FIOs were false and misleading. The Tribunal was further satisfied that her conduct in making those statements would be considered dishonest by the standards of ordinary decent people.

27.30 The Tribunal therefore found the allegation of dishonesty proved on the balance of probabilities.

28. **Allegation 1.2**

Applicant's Submissions

28.1 The Applicant again submitted that the Respondent knew at the time that the Firm held practice papers and that she had failed to provide these to the FIOs. The Respondent would have been aware of the importance of responding completely and accurately to s44B Notices. The Respondent's statements and failure to comply fully with the s44B Notices was therefore dishonest and breached the pleaded Principles.

Respondent's Submissions

28.2 These are set out above under Allegation 1.1

The Tribunal's Findings

28.3 The s44B notice dated 3 May 2018 required the Respondent to produce "all documents…in connection with any practice or former practice…". The s44B notice dated 4 May 2018 reiterated that requirement.

28.4 The Tribunal had found in relation to Allegation 1.1 that the Respondent's assertion that there were no practice papers was knowingly false and misleading. The basis of the Respondent's response to the s44B notices made the same false and misleading representation. The Tribunal noted that the FIOs had found MLC client files at Southall Solicitors that they had previously seen at MLC. The FIOs' evidence had not been challenged on this point.

28.5 The Tribunal found that the Respondent had failed to comply with the s44B notices and therefore found the factual basis of Allegation 1.2 proved on the balance of probabilities.

Principles 2, 6 and 7

28.6 The Respondent had, this time in response to a s44B notice, failed to comply with her obligations to the regulator. The Respondent's failure to comply had again been based on a false and misleading statement as to the existence of the firm's practice papers. The Tribunal's reasoning in relation to Allegation 1.1 was therefore applicable to the consideration of alleged breaches of the Principles in Allegation 1.2. The Tribunal was satisfied on the balance of probabilities that the Respondent had lacked integrity, diminished the trust the public placed in her and in the provision of legal services and failed to comply with her legal and regulatory obligations. The Tribunal found the breaches of Principles 2, 6 and 7 proved.

Dishonesty

28.7 The Tribunal had found, in relation to Allegation 1.1, that the Respondent knew that her assertion that no practice papers existed was false and misleading. It therefore followed that she also knew that her response to the s44B notice was false and misleading. The failure to respond was not limited to a complete failure to engage – rather it positively advanced a false reason for a purported inability to do so. This was not, therefore, misconduct by omission but was a deliberate action to try to justify a failure to comply with the s44B notices.

28.8 The Tribunal was satisfied on the balance of probabilities that failing to comply with a statutory notice by making false and misleading statements would be considered dishonest by the standards of ordinary, decent people. The Tribunal therefore found the allegation of dishonesty proved.

29. **Allegation 1.3**

Applicant's Submissions

29.1 The Applicant submitted that it was "inconceivable" that the Respondent was not aware that the Firm had accepted new clients. The Applicant submitted that the Respondent's statements were therefore dishonest and breached the pleaded Principles.

Respondent's Submissions

29.2 These are set out above under Allegation 1.1

The Tribunal's Findings

29.3 The Tribunal noted the evidence that there were a number of people in the waiting area who were in possession of client papers. There was no conceivable reason why these people would be there if they were not clients. This inference was supported by the evidence of the client authorities, some of which had been completed, which appeared in the photographs taken by Mr Sangha. The existence of clients in the building together with practice papers that existed for the purposes of representing clients meant the Tribunal was satisfied on the balance of probabilities that the firm had clients and that the Respondent's statement that it did not, was false and misleading.

29.4 The Tribunal therefore found the factual basis of Allegation 1.3 proved on the balance of probabilities.

Principles 2, 6 and 7

29.5 The Tribunal found these principles to have been breached on the same basis that it had found the false and misleading statements to be a breach in Allegation 1.1.

Dishonesty

29.6 In considering the Respondent's state of knowledge, the Tribunal noted that the Respondent was present at the office at the same time as the clients had been seen in the waiting area. The Tribunal had also already found that the Respondent was aware that the firm held practice papers, some of which related to specific clients. The Tribunal was therefore satisfied on the balance of probabilities the Respondent knew that her statements to the effect that the firm had no clients were false and misleading. The Tribunal further found that this conduct would be considered dishonest by the standards of ordinary decent people. The Tribunal therefore found the allegation of dishonesty proved.

30. **Allegation 1.4**

Applicant's Submissions

30.1 The Applicant invited the Tribunal to accept the evidence of Mr Faraque. The Respondent must have known that her statements about Mr Faraque's involvement and about his email addresses were false and misleading. As a result the Applicant submitted that she had acted dishonestly and in breach of the pleaded Principles.

Respondent's Submissions

30.2 Mr Mian's submissions in respect of Allegation 1.4 were also relevant to Allegation 1.5. Mr Mian invited the Tribunal to reject Mr Faraque's evidence, describing it as unreliable and contradictory.

30.3 Mr Mian invited the Tribunal to find that Mr Faraque was aware that he was named partner and the COLP and COFA. Mr Mian submitted that it had become clear, during cross examination that Mr Faraque had given actual and ostensible authority to Dr M to undertake all actions and take all necessary steps, in his absence. This would have included setting up email addresses for Mr Faraque, managing his MySRA profile and signing documents on behalf of the company. In the circumstances the Tribunal was invited to conclude that the Respondent's statements had not been false or misleading.

The Tribunal's Findings

30.4 The Tribunal considered the evidence of Mr Faraque, which was central to this Allegation. There were some areas on which his evidence had been rather vague, but the Tribunal was satisfied that he had done his best to assist and while it treated his evidence with care it was able to accept the key points relevant to this allegation. Mr Faraque had been clear and consistent, both in his evidence before the Tribunal and in his affidavit before the High Court, in that he had not agreed to the recommencement of the firm's activities with the Respondent or indeed with anyone else. In contrast, the Respondent had not given evidence and the Tribunal had not had the benefit of hearing her account tested in cross examination in the same way that it had in respect of Mr Faraque. Mr Faraque had also given clear and consistent evidence that the email addresses provided by the Respondent that purported to be his, where in fact not the email addresses that he was connected with. Taking the evidence as a whole, including the contemporaneous documents, the Tribunal preferred the evidence of Mr Faraque to the untested evidence of the Respondent**.**

30.5 The Tribunal was satisfied on the balance of probabilities the Respondent's statements to the SRA about Mr Faraque 's agreement to the firm resuming and about his email addresses, were false and misleading and it found the factual basis of Allegation 1.4 proved.

Principles 2, 6 and 7

30.6 The Tribunal found, again, that the making of false and misleading statements to the SRA breached each of these principles for the reasons set out above.

Dishonesty

30.7 The Tribunal was satisfied that the Respondent was aware that her statements were untrue as there was no evidential basis for her to have concluded that they were anything other than false and misleading. The Respondent would have known of Mr Faraque's correct email addresses and that she had not reached an agreement with Mr Faraque for the recommencement of the firm's activities. These were not the source of matters that could be the subject of an honest mistake. The Tribunal was satisfied on the balance of probabilities that the Respondent's actions would be considered dishonest by the standards of ordinary decent people and it therefore found the allegation of dishonesty proved.

31. **Allegation 1.5**

Applicant's Submissions

31.1 The Applicant again relied on the evidence of Mr Faraque and submitted that the Respondent knew the position regarding Mr Faraque's role, or lack of it. The Respondent knew that her statements made to the Court and intervention agent were false and misleading and she had therefore acted dishonestly and in breach of the pleaded Principles.

Respondent's Submissions

31.2 These are set out above under Allegation 1.5

The Tribunal's Findings

31.3 The Tribunal again accepted the evidence of Mr Faraque on this point and noted that the Respondent had not allowed her account to be tested. Mr Faraque had been consistent both in his evidence to the Tribunal and to the High Court. There was no evidence that Mr Faraque had engaged with or was supportive of the application to set aside the Second Order. It therefore followed that the Respondent's application notice and email were false and misleading. The Tribunal therefore found the factual basis of Allegation 1.5, together with the breach of Outcome 5.1, proved on the balance of probabilities.

Principle 1

31.4 The court expected and required solicitors/RFLs to be truthful and accurate in documentation put before it, whether it be applications or correspondence. Submitting documents which were false and misleading was a clear breach of Principle 1 and the Tribunal found this proved on the balance of probabilities.

Principle 2

31.5 It followed as a matter of logic that making a false and misleading statements to the court was a clear example of a lack of integrity and the Tribunal found the breach of principle 2 proved on the balance of probabilities.

Principle 6

31.6 The public trust in the Respondent and in the provision of legal services could only be diminished in circumstances where a solicitor/RFL misled the court. The Tribunal therefore found the breach of principle 6 proved on the balance of probabilities.

Principle 7

31.7 The Respondent had breached both her legal and her regulatory obligations by making false and misleading statements to the court as she was under a legal and regulatory duty to be completely honest and accurate in all her dealings with the court. The Tribunal therefore found the breach of principle 7 proved on the balance of probabilities.

Dishonesty

31.8 The Tribunal again considered the Respondent's state of knowledge. The Respondent would have known that Mr Faraque was in no way supportive of her application to set aside the Second Order and relevant interventions. As with allegation 1.4, this was not something that could be the subject of a genuine misunderstanding or an innocent mistake. The Tribunal was satisfied on the balance of probabilities that the Respondent was aware that her statements to the court were false and or misleading. The Tribunal

was further satisfied on the balance of probabilities that this would be considered dishonest by the standards of ordinary decent people and it therefore found the allegation of dishonesty proved.

32. **Allegation 1.6**

Applicant's Submissions

32.1 The Applicant reminded the Tribunal that there was no reason why the Respondent had failed to swear and serve the affidavit required by the Second Order, despite numerous warnings and reminders. The Second Order had been served in accordance with the "Service Provisions", and had come to the Respondent's notice very shortly thereafter. The Respondent had also failed to purge her contempt at any time subsequently. The Applicant submitted that the Respondent had acted dishonestly by deciding not to comply despite being aware of the terms of the Second Order. In the alternative, the Respondent acted recklessly in unreasonably running the risk that her conduct was in breach of paragraph 18 of the Second Order.

Respondent's Submissions

32.2 The Respondent denied acting dishonestly or recklessly. Mr Mian did not address this Allegation in his submissions. In the Respondent's witness statement she explained that she should have made the affidavit but was reliant on poor legal advice and was dealing with the effects of a family member's illness at the time.

The Tribunal's Findings

32.3 The Respondent had admitted this Allegation, save for dishonesty, or in the alternative recklessness, both of which were denied. The Tribunal was satisfied that the Respondent's admissions were properly made based on the evidence and found the factual basis of Allegation 1.6 as well as the breaches of Principles 1, 2, 6 and 7 proved on the balance of probabilities.

Dishonesty

32.4 The Tribunal considered that the circumstances of this Allegation were distinct to those in Allegation 1.2. In Allegation 1.2 the failure to comply with the s44B notice was compounded by a false representation which purported to give a reason why the Respondent could not comply. In this Allegation that was an omission to file and swear the affidavit as required by the Court but no reason had been advanced to the Court explaining why it could not be done. The Tribunal found it difficult to assess the Respondent's state of mind in the context of an omission - to do so would require speculation rather than reliance on the evidence. The Tribunal was therefore unable to determine whether the Respondent's actions would be considered dishonest by the standards of ordinary decent people and therefore found the allegation of dishonesty not proved.

Recklessness

32.5 In considering the alternative allegation of 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."

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

32.7 The Tribunal began by considering whether the Respondent would have perceived that there was a risk that in not filing the affidavit she was failing to comply with the Second Order. The Respondent's failure to comply extended over a period of time which included several reminders. The conclusion that the Tribunal reached from the evidence was that the Respondent had not simply forgotten to swear and file the affidavit but had taken the decision not to. The Respondent was aware of the terms of the Second Order and the Tribunal was therefore satisfied on the balance of probabilities that she would have perceived there to be a risk that she would not be complying with it.

32.8 In those circumstances, the Respondent's decision to continue to fail to comply was clearly an unreasonable one and amounted to recklessness. The Tribunal found the allegation of recklessness proved on the balance of probabilities.

Previous Disciplinary Matters

33. There were no previous findings before the Tribunal.

Mitigation

34. The Tribunal offered Mr Mian an opportunity to spend some time taking instructions from his client before mitigating, but he confirmed that he was ready to mitigate without requiring any additional time.

35. Mr Mian reminded the Tribunal of the Respondent's witness statements. He noted that the Respondent was a RFL and further noted that Mr Faraque had not been pursued by the SRA. Mr Mian reiterated points made that amounted to a defence, mainly in relation to Mr Faraque.

36. Mr Mian invited the Tribunal to take account of the fact that at the material time the Respondent was a mother with young children who had only come into the office on the day of the interview.

Sanction

37. 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.

38. In assessing culpability, the Tribunal identified the following factors:

- The Respondent's motivation had been to frustrate the SRA investigation and its attempts to regulate the practice as well as the intervention agents.
- The Respondent's actions had been entirely self-serving and ultimately economic.
- The pattern of behaviour, including the clearing of the office after the first visit indicated a clear degree of planning.
- The Respondent was clearly experienced, though a RFL did not need that level of experience to know that making false and misleading statements to the SRA and the Court amounted to serious professional misconduct.

39. In assessing the harm caused, the Tribunal identified the following factors:

- There had been no evidence of direct harm caused to clients. The Tribunal noted that the firm had been in existence for a short number of days before the investigation began. The potential for harm if that investigation had not commenced when it did was significant.
- The harm to the reputation of the profession was significant. The Tribunal considered it outrageous for the Respondent to have sought to deceive the regulator who was trying to protect the public.
- The Tribunal also noted that Mr Faraque had been lied about by the Respondent, causing him stress and anxiety in his retirement. As a result of the Respondent's actions he had been required to involve himself in High Court and Tribunal proceedings to give evidence as to his non-involvement in the firm.

40. The Tribunal identified the following aggravating factors:

- The main aggravating factor was 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 deliberate calculated and repeated.
- The misconduct continued over a period of time, most notably in Allegation 1.6.
- There had been a concealment of wrongdoing throughout.
- The Respondent had sought to deflect blame by alleging involvement on the part of Mr Faraque.

- The Respondent knew that she was in material breach of her obligations.

41. The Tribunal was unable to identify any mitigating factors, but it did take into account that she had no previous findings at the Tribunal.

42. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the Respondent. The misconduct was at the highest level and the only appropriate sanction was a strike-off. The protection of the public and of the reputation of the profession demanded nothing less, having regard to the fact that the dishonest conduct included frustrating the regulator and misleading the Court.

43. The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. The Tribunal noted that no such circumstances had been advanced in mitigation and none were apparent on the papers. The Tribunal found there to be nothing that would justify a lesser sanction. The only appropriate and proportionate sanction was that the Respondent be struck off the Roll.

Costs

44. Ms Bruce sought an order for the Applicant's costs in the sum of £53,719.36. Ms Bruce, in response to a query from the Tribunal, explained that a great deal of care had been taken in calculating costs in terms of attribution. There had been two files in this case, Dr M and this one. In the event, there were never any costs claimed against Dr M. From the outset all fee earners had been scrupulous about keeping the costs separate.

45. The fees for the legal work were claimed as a fixed fee. Ms Bruce told the Tribunal that the overall equivalent hourly rates were between £57-£64 and submitted that the costs were very low. Leading counsel had drafted the Rule 12 statement as he had been involved in the intervention proceedings. Counsel's fee was included within the fixed fee and there had been no double counting of the intervention costs.

46. Mr Mian submitted that most of the costs related to MLC and that the majority of the documents in the hearing bundle had been irrelevant to the allegations in this case. He urged the Tribunal to reduce the costs to reflect that.

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

47. The Tribunal considered the cost schedule and was satisfied with the assurances from Ms Bruce that there had been no duplication of costs, either in relation to Dr M or the intervention.

48. The Tribunal noted that there had been three live witnesses and a bundle that was just over 1000 pages, though it recognised that this was most likely the result of 'pruning' of the papers to avoid duplication. The hearing had concluded after two and a half days, having been listed for five days. It was right to make a modest reduction to reflect that. The Tribunal assessed the costs at £48,000.

49. The Tribunal then reviewed the Respondent's means. The Respondent did not appear to be in current paid employment and was reliant on her partner's low income and on benefits. She had two young children and was clearly of limited means. In the circumstances it was appropriate to reduce the costs by 50% to reflect those matters. The sum of £24,000 was still significant, but the Tribunal reminded itself that the Applicant took a proportionate approach to enforcement.

Statement of Full Order

50. The Tribunal Ordered that the Respondent, QURAT UL AIN AKBAR, Registered Foreign Lawyer, be STRUCK OFF the Register of Foreign Lawyers and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £24,000.00.

Dated this 29th day of October 2021
On behalf of the Tribunal

B Forde
Chair