The Tribunal's decision dated 6 January 2021 is subject to appeal to the High Court (Administrative Court) by the Respondent. The Order remains in force pending the High Court's decision on the appeal.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12118-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

PETER COLLINS MAKU-KEMI Respondent

Before:

Mr B Forde (in the chair)
Mr P S L Housego
Mrs L McMahon-Hathway

Date of Hearing: 30 November – 1 December 2020

Appearances

Benjamin Tankel, counsel, of 39 Essex Chambers, 81 Chancery Lane, London WC2A 1DD, for the Applicant.

Herbert Anyiam, counsel, of Clerksroom Chambers, 160 Fleet Street, EC4A 2DQ, for the Respondent.

JUDGMENT

Allegations

1. The allegations against the Respondent, Peter Collins Maku-Kemi (SRA ID: 467191), made by the SRA are that, while in practice as a Solicitor at Jesuis Solicitors ("the Firm"):

Client 1 (DH)

1.1 [WITHDRAWN]

1.1.1 [WITHDRAWN]

1.1.2 [WITHDRAWN]

Client 2 (AA)

1.2 In February and March 2014, in relation to Client 2, he submitted or allowed to be submitted to the First Tier Tribunal and Upper Tribunal, in grounds of appeal and/or a skeleton argument, that a certain provision under the Penal Code Act of Uganda had been enacted into Ugandan Law when he knew that it had not been, or had no adequate reason to believe that it had been; and he thereby breached Principles 1, 2, 4 and 6 of the 2011 Principles.

Client 3 (COE)

1.3 In relation to Client 3's appeal against a Home Office refusal decision dated 27 June 2014, on or about 1 September 2014 and 3 October 2014 he misled the First Tier Tribunal when he represented or allowed it to be represented to the Tribunal that Client 3 had only received the Home Office Notice on 12 July 2014, when Client 3 had received the Home Office Notice by 8 July 2014; and he thereby breached Principles 1, 2 and 6 of the 2011 Principles.

2. In addition, each of the allegations and sub-allegations at 1.1 are advanced on the basis that the Respondent's conduct was dishonest or, alternatively, reckless. Dishonesty or recklessness are alleged as aggravating features of the Respondent's misconduct but are not an essential ingredient in proving the allegations.

Documents

- Applicant's (Amended) Rule 12 Statement dated 17 August 2020 and Exhibit JHTC1.
- Respondent's Answer to the Rule 12 Statement dated 2 October 2020.
- Witness statement of KL dated 18 September 2020.
- Respondent's witness statement dated 11 November 2020.
- Character references from SU, GO and SJK.
- Medical evidence in respect of the Respondent and his father.
- Respondent's "Personal Financial Statement" dated 12 November 2020.

Preliminary Matters

Applicant's Application to withdraw Allegation 1.1, 1.1.1 and 1.1.2

3. At the close of the Applicant's case Mr Tankel applied for Allegation 1.1 to be withdrawn in its entirety. The application was predicated on the submission that, as a consequence of questions posed by the Tribunal, Allegation 1.1 "looked quite different" because if pursued, it appeared that the Respondent "sought dishonestly to do something that was open for him to do in a legitimate way".

4. Mr Tankel submitted that having due regard to proportionality, in light of the fact that Allegations 1.2 and 1.3 included the alleged aggravating feature of dishonesty, a pragmatic view had been taken not to pursue Allegation 1.1.

Respondent's Position

5. Mr Anyiam supported the application and further averred that it did not "go far enough as the same position applie[d] to Allegations 1.2 and 1.3".

The Tribunal's Decision

6. The Solicitors (Disciplinary Proceedings) Rules 2019 r.24 provides:

> "…No allegation made in an application may be amended or withdrawn without leave of the Tribunal…"

7. Rule 24 conferred a wide discretion to the Tribunal in consideration of an application to withdraw an allegation. The Tribunal approached the exercise of its discretion with the fundamental tenets of open justice, fairness and proportionality at the fore.

8. The Tribunal determined that the application was properly made, that the Respondent should not be required to answer an allegation predicated on dishonest conduct when the underlying conduct was legitimate. The Tribunal was concerned at the lateness of the application and the fact that the Applicant only addressed its mind to the validity of Allegation 1.1 upon enquiry by the Tribunal. However, the fact remained that the Applicant no longer wished to pursue the same and the Respondent plainly did not object. The Tribunal made no findings in relation to Allegations 1.2 and 1.3 despite the observations of Mr Anyiam in that regard, which were general and not developed.

9. Weighing all of the attendant circumstances in the balance, the Tribunal granted the application to withdraw Allegation 1.1 in its entirety.

Factual Background

10. The Respondent was admitted to the Roll in February 2013. He was an employee solicitor at the Firm from 2 February 2013. He became a consultant with the Firm from 30 September 2015 until the Firm closed on 15 December 2017.

11. The Respondent held a practising certificate subject to conditions which were imposed on 12 July 2018 namely:

(1) [The Respondent] is not to act as a manager or owner of an authorised body;

(2) Subject to the condition above, [the Respondent] may act as a solicitor, only as an employee where the role has first been approved by the SRA.

12. Allegations 1.2 and 1.3 related to issues arising from Respondent's handling of two clients' immigration matters. The allegations concerned misleading or seeking to mislead the Home Office and/or the First-Tier and Upper Tribunals (Asylum and Immigration Chamber).

13. The Respondent's conduct in relation to Client 2 came to the attention of the Applicant following receipt of a complaint about the Respondent from Client 2, dated 23 April 2014.

14. The Respondent's conduct in relation to Client 3 was identified by the Applicant's Investigating Officer while investigating the matters referred to above.

15. The Respondent accepted the factual matrix of Allegations 1.2 and 1.3, the breaches of Principles and the aggravating feature of recklessness. The Respondent denied that his conduct was dishonest.

Witnesses

16. The Respondent was the only witness to provide oral evidence to the Tribunal.

Legal Framework

17. When required to do so, the Tribunal applied the following legal tests/principles promulgated by the Supreme Court, the Court of Appeal and the High Court:

Integrity

18. When the Tribunal was required to consider whether the Respondent had lacked integrity it applied the test promulgated in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366 by Jackson LJ at [100] namely:

> "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 arbiter 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."

Dishonesty

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

> "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."

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

- First, 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 the conduct, based upon the Respondent's knowledge or belief as to the facts, was dishonest by the standards of ordinary decent people.

Recklessness

21. In Brett v SRA [2014] EWHC 2974 (Admin), Mr Justice Wilkie held that the settled criminal test for recklessness applied equally to professional regulatory matters namely:

> "…with respect to (i) a circumstance when he is aware of a risk that it exists or will exist and (ii) a result when he is aware that a risk will occur and it is, in circumstances known to him, unreasonable for him to take the risk…"

Findings of Fact and Law

22. The Applicant was required to prove the allegations on a balance of probabilities. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

23 The written and oral evidence of the Respondent is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to the facts 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 submissions made by the parties. 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.

24. **Allegation 1.2 - In February and March 2014, in relation to Client 2, he submitted or allowed to be submitted to the First Tier Tribunal and Upper Tribunal, in grounds of appeal and/or a skeleton argument, that a certain provision under the Penal Code Act of Uganda had been enacted into Ugandan Law when he knew it**

had not been, or had no adequate reason to believe that it had been; and he thereby breached Principles 1, 2, 4 and 6 of the 2011 Principles.

Allegation 2 - In addition, the Respondent's conduct was dishonest or, alternatively, reckless. Dishonesty or recklessness are alleged as aggravating features of the Respondent's misconduct but are not an essential ingredient in proving the allegations.

24.1 Client 2 came to the United Kingdom ("UK") on a visitor's visa dated 29 August 2013 with an expiration date of 28 February 2014. Her husband supported her in the visa application process and was interviewed by a Home Office employee on 6 September 2013. During the course of that interview, Client 2's husband endeavoured to give helpful answers to assist the Home Office in issuing a visitor's visa to his wife.

24.2 Upon arrival to the UK, on 3 October 2013, Client 2 subsequently claimed asylum at the Home Office asylum office in Croydon, on 21 January 2014, on the grounds that she was homosexual and, if returned to Uganda, would be persecuted and/or tortured as a consequence of her sexuality. She was served as an illegal entrant verbal deceptive on 30 January 2014 and held in an immigration detention centre in Bedford.

24.3 Client 2 sent her sister to the Firm for representation in relation to her asylum claim. On 3 February 2014, Client 2's sister provided instructions to the Respondent, as evidence by a handwritten attendance note created by the Respondent which stated:

> "…gave instructions to us to represent her [Client 2] with regards bail and the asylum claim which she had claimed at point of entry on the grounds being a lesbian in Uganda and fleeing torture and persecution…"

24.4 The Respondent spoke to Client 2 on the telephone on the same date and in the presence of her sister. Client 2 confirmed her instructions to the Respondent. The Respondent sent a client care letter to Client 2 also dated 3 February 2014 which stated:

> "…your parents forced you to marry to cure you of lesbianism. … your husband caught you in the act and raised an alarm. you *(sic)* were beaten and almost killed but for the intervention of the police. Through your friend [L] YOU exhibited newspaper cuttings reporting your experience when you were outed as a lesbian. You did not want to return to Uganda as you might be killed for being a disgrace and embarrassment and you might be killed…"

24.5 Mr Tankel submitted that no mention was made in the instructions given by either Client 2 and/or her sister and/or her friend L that the husband supported her visa application because he "wanted to get rid of her" (from Uganda). Mr Tankel further submitted that there was no mention in any of the instructions given of the proposed Penal Code of Uganda which rendered the failure to report homosexuality a criminal offence ("the reporting offence").

24.6 On 5 February 2014, Client D's husband emailed the Respondent which stated that:

> "…I wanted you to know that as much as I supported you to travel to your so called friend in London, I had *(sic)* been stomaching a lot of embarrassment from you. I just wanted to get rid of you…"

24.7 Mr Tankel reiterated that, whilst the content of the email was cruel in nature, it made no mention of fear of a new offence of not reporting gay people to the authorities. Mr Tankel referred the Tribunal to a letter dated 5 February 2014 from the Firm to the Immigration Removal Centre in which various representations were made, none of which referred to the failure to report offence or Client 2's husband supporting her visitor's visa application.

24.8 On 6 February 2014, Client 2 was interviewed by a Home Office employee at the Immigration Removal Centre. In summary, Client 2 reiterated that her sexuality had caused shame on her family, her mother disowned her and her husband "wanted rid" of her. Again, no mention was made of the offence of failing to report.

24.9 On 10 February 2014, the Secretary of State refused Client 2's application for asylum, the main reason given was:

> "[26]…
>
> - The main aspect of your claim is that your husband [GS] discovered you were in a relationship with a woman called [J] first in January 2012 and then again on 10 June 2013. Your own evidence is that initially he forgave you but then, after discovering you for a second time he wanted nothing more to do with you 'he screamed and told [her] that he had finished with [her] and he would never again, because he had given [her] another chance, that [she] had not taken up…his family told [her] not to get back into their family and threatened to kill [her].'
>
> Yet it is clear from the visa application process, where your husband [GS] was telephoned on 6 September 2013 by visa officials to discuss his sponsorship of your visa application, that he not only financed your application but he was fully supportive of it. Your evidence in this respect is considered to be highly inconsistent and casts very significant doubt on your claim of persecution by your husband and your wider family members. This inconsistency was put to you in the asylum interview, to which you stated that your husband did this because 'he only did it to be rid of me. Saying [she] had embarrassed him'. You went onto say that 'when the child was older he did not want the child to turn around and blame him. He did it for the child's sake and to be rid of me'… This explanation is not considered to be reasonable and is completely at odds with the evidence you presented here…
>
> - You have produced an email dated 5 February 2014 …, which you claim is from GS. It is noted that at best this document is self-serving and does not in any way prove that your relationship with GS has broken down. In fact it could be seen as an attempt by GS to support your asylum claim…"

24.10 Client 2 appealed against the Secretary of State's refusal to the First-tier Tribunal (Immigration and Asylum Chamber) and her witness statement in support of that appeal was dated 19 February 2014. In that statement Client 2 made no mention of the reporting offence.

24.11 The reporting offence was raised for the first time in the skeleton argument lodged on behalf of Client 2 in the First-tier Tribunal appeal. It was raised in the following terms:

> "[4] …it is respectfully submitted that it is a criminal offence under the provisions of the Penal Code Act of Uganda if a relative and/or anybody in *(sic)* who knows that a person is a lesbian or a homosexual and fails to report them to the authorities. This is a criminal offence punishable with imprisonment. Therefore GS wanted the appellant out of Uganda so as to avoid committing and being punished for a criminal offence."
>
> [12] This is often called the **"Kill the Gays bill"** in the media due to the originally proposed death penalty clauses was passed by the Parliament of Uganda on 20 December 2013 with the death penalty proposal dropped in favour of life in prison.
>
> [13] The legislative proposal would broaden the criminalization *(sic)* of same-sex relations in Uganda domestically, and further includes provisions for Ugandans who engage in same-sex relations outside of Uganda, asserting that they may be extradited for punishment back to Uganda…
>
> [15] The appellant's parents contend that her refusal to obey their wishes and command is abominable and professing and practising Lesbianism is a **TABOO** because it is against the whole Cultural *(sic)* setting and being of their family, clan and indeed the Law of the Republic of Uganda given that Parliament has enacted a law prohibiting Homosexuality *(sic)* and Lesbianism *(sic)*. This law, **The Uganda Anti-Homosexuality Bill 2013** in effect legitimises the edicts and/or Orders of banishment as contained in the hereto attached letters of the Local Council dated 2 September 2013…"

24.12 The Respondent represented the appellant and the First Tier Tribunal appeal hearing on 20 February 2014. He adopted and endorsed the skeleton argument.

24.13 The Respondent made a positive submission to the First Tier Tribunal that GS supported Client 2's visa application as a consequence of the reporting offence becoming law. He couched that submission in the following terms:

> "[21(iv)] It was credible that the husband wanted to be rid of the Appellant and agreed to the solution when it presented itself. This was why he supported her visa application. People who did not report such sexual deviancy were themselves at risk of prosecution and he wanted to avoid that…"

24.14 Mr Tankel submitted that it was not clear where that contention emanated from as it there were no instructions from Client 2 to that effect. In any event, that positive submission of the Respondent was rejected by the First-tier Tribunal.

24.15 The appeal was dismissed predominantly on the ground that Client 2's claim was not credible, in particular:

> "[27] The visa application was fully supported by the Appellant's husband. He provided a lot of supporting evidence and co-operated with the officials when they telephoned him. The Appellant's case is that he was persuaded to do so by her matron and the best man, and so it is strange that he should not remember their names. These people must have spoken to him shortly before the visa officer called him and so I do not find it credible that he did not remember their names. This suggests to me that there was no third party involved in procuring the supporting documents. That in turn means that the Appellant must have spoken to her husband and obtained these documents, and their relationship is not as she claims. The e-mail from him telling her about custody of their daughter seems to have arrived quite unprompted just at the time she was preparing for her interview. I find that this evidence has been manufactured to support a case for asylum.
>
> [28] The Appellant has provided letters from the local council. She says she got these from Vincent. She says the same about the newspaper article. She says her brother-In-law got these in Uganda, so it would seem that he spent a lot of time there. He also told her about the article in January 2014. The Appellant did not bring the letters with her from Uganda, nor did she ask her friend to obtain them. I do not find it credible that the people who have helped her include her husband's best man, her husband's brother, and her husband. The latter strongly disapproves of the Appellant yet he and his brother and friend have assisted her. All three must have placed themselves at risk of arrest by the authorities in assisting her and not reporting her sexuality...
>
> [31] I am not impressed by the newspaper article the Appellant has produced, I have gone onto the newspaper website (as I stated I would at the hearing) and found this to be a very user friendly site. If one enters a name into their search facility, the site readily discloses all articles containing that name. I tried several times to obtain confirmation that this paper had published on the Internet the article at AB55. I inserted not only the Appellant's name but also the names of her village and the village chairman. I also checked by publishing date. This article did not appear. I was able to access several articles going back to at least 2010. No subsequent article was published about the issue of an arrest warrant; since the paper reported the expulsion, they may have been interested in a follow up story. No articles with the Appellant's name in them have been published. I do not find this article emanates from the paper…"

24.16 The Respondent sought to appeal that decision to the Upper Tier Tribunal. The skeleton argument lodged in that regard, which the Respondent adopted and endorsed at the appeal hearing on 6 March 2014, stated:

> "[8] For example, at paragraph 28 of the determination, the learned judge further erred in law when she manifestly exhibited and demonstrated a closed mind and clear manifestation of bias by stating that thus 'I do not find it credible that the people who have helped her include her husband's brother, and her husband'. The latter strongly disproves of the Appellant yet he and his brother and friend have assisted her. All three must have placed themselves at risk of arrest by the authorities in assisting her and not reporting her sexuality. However, the leamed judge has erred in that she closed her self to consideration of the plausible explanation as set out in paragraphs 4, 5, 6 and 7 of the skeleton argument and the evidence as submitted which set out thus;
>
> [9] Further at paragraph 26 at point 2 the defendant asserts that the appellant's husband GS whom she accused with his family of persecuting her was the same person who financed her application for a visa to the United Kingdom and was fully supportive of it. However, it is respectfully submitted that it is a criminal offence under the provisions of the Penal Code Act of Uganda if a relative and/or anybody in who knows that a person is a lesbian or a homosexual and fails to report them to the authorities. This criminal offence is punishable with imprisonment. Therefore Godfrey wanted the appellant out of Uganda so as to avoid committing and being punished for a criminal offence.
>
> [10] This same explanation applies to the best man and the matron as alluded to by the Respondent at paragraph 26 at point 4.
>
> [11] The defendant contends that the there is a gap between the time when the offence was committed and when the police issued an arrest warrant for the appellant. However, it is submitted that it was not in the husband's interest nor in the interest of any other person to report as they be committing a criminal offence as they would have been held to have failed to report someone they knew was a lesbian to authorities contrary to the provisions of the penal code act of Uganda.
>
> [12] At paragraph 26 the last point the defendant asserts that the Uganda Police have burst a racket of people who were forging seals, stamps and documents. The Country report details a list of organizations *(sic)* whose seals, stamps and documents are alleged to have been stolen or forged. However, if I submitted that the appellant's documentary evidence from the Local Council is not on the list provided by the country report…"

24.17 The Respondent relied upon newspaper articles, two of which were found on the matter file, in advancing Client 2's appeal namely:

- 24 December 2013; CNN. "Uganda's gays fear mounting violence in wake of the anti-gay bill's passage".

- 16 February 2014; New Vision "Museveni "to sign anti-gay bill into law".

24.18 The Secretary of State for the Home Department produced an article dated 24 February 2014 from BBC News entitled "Ugandan President Yoweri Museveni signs anti-gay bill … Uganda's leader has signed into law a bill toughening penalties for gay people but without a clause criminalising those who do not report them…"

24.19 The appeal was dismissed and the Judge stated:

> "[48] I expressed my concern to [the Respondent] that in such circumstances, the wording of the grounds was misleading, as it suggested that this provision had already been enacted into law at the material time. He explained to me that Ugandan friends upon whom he relied had at the time of the hearing before the First Tier Judge, informed him that such a provision was now within the Ugandan Penal Code and he had pursued that claim in reliance on that assurance. He maintained however, that in the course of his submissions before the First Tier Judge he made it clear that the provision was part of a proposed Bill that had yet to be enacted.
>
> [49] I pointed out to [the Respondent], that that begged the question as to why therefore in the grounds in support of the application for permission to appeal, which obviously post-dated the hearing before the First Tier Judge, the claim that this was a provision enacted into Ugandan law was still maintained. He informed me that he had not been the author of the grounds of application which had been done by a colleague. I expressed serious concern to him about this matter, not least as I reminded him that as a solicitor [the Respondent] was an officer of the court. I must say that I find it surprising that he would not have checked the grounds before they were submitted or sought to correct the error before or by the time of the hearing before me…
>
> "[50] Notwithstanding those reservations, my focus is of course on whether the ground contended discloses an error of law on the part of the First Tier Judge. It is considered that the argument contended depends upon the Appellant's husband and relatives concealing the fact that the Appellant was gay in order to get her out of the country. It does not explain why they did not report the matter to the police, if in fact they wanted the Appellant out of their lives. This is not an error of law by the Judge. At the highest it is a failure to set out a detailed response to an unimpressive submission, one in relation to which it is now clear was predicated upon an inaccurate description of the provisions of the Ugandan Penal Code…"

24.20 The appeal to the Upper Tier Tribunal was dismissed.

24.21 Mr Tankel submitted that all of the press coverage regarding the Bill came to the fore after Client 2 entered the UK. He further submitted that the Respondent misled both the First and the Upper Tier Tribunals by representing that the reporting offence had been enacted in law when in fact it had not. Furthermore, Client 2 had not instructed the

Respondent that the reporting offence motivated her husband to support her visa application.

Dishonesty

24.22 Mr Tankel therefore submitted that by advancing a position to the First and Upper Tier Tribunals which the Respondent did not believe was true, underpinned and substantiated the allegation of dishonesty levelled against him as the Respondent subjectively knew that; (a) there had been no material change in Ugandan criminal law at the time Client 2's husband sponsored her visa, (b) there had been no material change in Ugandan criminal law at the time of any of the hearings in question (c) alternatively, that he had not taken appropriate steps to ascertain for himself whether there had been a material change in Ugandan criminal law and (d) he had not withdrawn the submission about Ugandan criminal law he had made before the First Tier Tribunal. Mr Tankel contended that ordinary decent people would expect a solicitor in any court, let alone one seeking asylum on behalf of a client seeking protection from persecution, to ensure that the submissions they make are true. By falling short of that standard the Respondent acted dishonestly.

Recklessness

24.23 In the event that the Tribunal did not find that the Respondent acted dishonestly, Mr Tankel averred that the Respondent's conduct was reckless. Mr Tankel's primary submission was that the Respondent actually knew that the legal position in Uganda was not as he stated it to be. To the extent, however, that the Respondent did not actually know that the Ugandan law was not as he stated it, he was nevertheless reckless in making the submission. At most, on his case, the submission was based on information from third parties. The Respondent did not suggest that he sought to ascertain the position for himself. He must therefore have known that there was a risk that the position was not as stated. As referred to above, the Respondent's submissions to the First-tier and Upper Tier Tribunals had the clear potential to undermine Client 2's case. In those circumstances, Mr Tankel submitted, it was unreasonable for the Respondent to run the known risk.

Breaches of Principles

24.24 Mr Tankel submitted that the Respondent, as an officer of the court, breached **Principle 1**, which required him to uphold the rule of law and the proper administration of justice. The First-tier Tribunal and Upper Tier Tribunal was required to make decisions of vital significance to (a) the integrity of the UK's borders; and (b) the lives (in every sense of that word) of very vulnerable individuals. The Respondent undermined the sound operation of that system by misleading the Tribunal by:

- Repeatedly making misleading submissions about the state of Ugandan law which were incorrect. Either he knew that the submissions were incorrect, or he was reckless in pursuing them.

- Misleadingly submitting in the Upper Tribunal that he had withdrawn a submission in the First-tier Tribunal, when he had not.

- Even if the Respondent was not reckless or dishonest in advancing these submissions (as to which see further below), in the context of an asylum appeal it is vital that professional advisors make submissions which are properly founded. The Respondent did not take proper steps to ascertain for himself the state of Ugandan law in this regard.

24.25 Mr Tankel contended that the Respondent's conduct was contrary to **Principle 2** which required him to act with integrity namely the adherence to the ethical standards of the profession; Wingate. A solicitor acting with integrity would not, he submitted, mislead the court in any way by relying on ill-founded submissions.

24.26 Mr Tankel averred that the Respondent breached **Principle 4**, the duty to act in the best interests of the client by virtue of his poor quality of service which essentially undermined Client 2's application for asylum. That was evidenced by the fact that Client 2, having instructed new representation on 12 May 2014, was successful in a subsequent appeal.

24.27 Mr Tankel submitted that the Respondent's conduct breached **Principle 6** as it undermined public trust in him and in the profession. Mr Tankel contended that the public would be alarmed by a solicitor who (a) does not tell the truth, especially in Court; and/or (b) advises his client not to tell the truth; and/or (c) makes submissions which are not properly ground in fact; and/or (d) takes advantage of vulnerable clients.

The Respondent's Position

24.28 In his first response to the allegations (his reply to the Applicant's "Explanation with Warning letter") dated 12 December 2018, the Respondent denied the factual matrix of Allegation 1.2, the breaches of principle as well as the aggravating features of dishonesty and recklessness alleged in that:

> "…During the period of the upper Tribunal proceedings, heard on 6 March 2014, it was in the news that the Ugandan government was about to promulgate a law that punishes homosexuals with imprisonment. At this time, there was a Ugandan Barrister, PM, who was working at Jesuis solicitors as a consultant. Apart from being a qualified barrister, he was also a Ugandan politician and legal practitioner in Uganda. Also, I was aware that he travelled regularly to Uganda for politics and at some point he had sought to be elected into political office in Uganda. Thus I consulted him on the state of the law in Uganda as it affected lesbians and homosexuals vis-a-vis [Client 2's] case. It was he, a Ugandan, a qualified barrister and legal practitioner in Uganda, a Ugandan politician and our in- house consultant, who informed me that a provision had been enacted into Ugandan law to punish homosexuals and their associates and I believed him because of his description above. I relied on his authority as a barrister, a Ugandan legal practitioner and politician. It was my honest belief that it was in the client's best interest to seek informed advice from someone who I believed was an authority on Ugandan law. One of [Client C's] named associates, V of the Ugandan, LGBT organisation, SMUG, also confirmed this to me when I checked with him.

> There is the evidence that the law was passed in 2013 (which was known to most Ugandans) and also took effect as an Act of 24 February 2014, so I was not entirely out of place to rely on the fact that the proposed bill had been passed by the Ugandan Parliament, and even signed into law before the hearing. I could rely on this at a hearing, considering that this was an asylum claim where the Appellant was also concerned as to the future return to his country and this kind of law was also going to affect him, which was my point majorly at the hearing…"

24.29 In his Answer to the Rule 12 Statement dated 2 October 2020, the Respondent admitted the factual matrix of Allegation 1.2, the breaches of principle and the aggravating feature of recklessness but denied that he had acted dishonestly. He stated:

> "…I accept that in February and March 2014, in relation to Client 2, I allowed to be submitted to the First Tier Tribunal and Upper Tribunal, in grounds of appeal and/or a skeleton argument, that a certain provision under the Penal Code Act of Uganda had been enacted into Ugandan Law. However, I did so with no intention to breach any relevant provisions of the SRA Principles 2011. This is because I have no knowledge or training in Ugandan law and I have never held out myself as an expert in Ugandan law. Rather, I relied on the Skeleton Argument and Grounds of Appeal in question which were drafted by a colleague and a lawyer in my firm at the time, PM, who held out himself in the firm and also told me (and I believed him) that he is a qualified lawyer in Uganda and that he was also called to the English Bar at Lincoln's Inn.
>
> Therefore, I accept that I may have been reckless for relying on the information/opinion of PM. With hindsight, I should have sought independent expert opinion on the position of the relevant Ugandan law. I apologise for the above omission, which occurred while I was still a relatively inexperienced solicitor. I am now more experienced and wiser. I undertake to ensure that such omission does not occur again…"

24.30 In his witness statement dated 11 November 2020 the Respondent maintained the admissions made to the factual matrix of Allegation 1.2, the breaches of principle and the aggravating feature of recklessness. Dishonesty was denied.

24.31 In his evidence in chief before the Tribunal the Respondent maintained the admissions made to the factual matrix of Allegation 1.2, the breaches of principle and the aggravating feature of recklessness.

24.32 Dishonesty was denied and the Respondent was asked by his Counsel Mr Anyiam to explain why his admitted misconduct was not dishonest. The Respondent asserted that he never conducted Client 2's case with a dishonest mind-set, he was working within his understanding of the instructions Client 2 had given and that he had no premeditated intention to undermine the Rules.

24.33 Mr Tankel cross examined the Respondent who confirmed that he originally received instructions regarding Client 2 via her friend then subsequently in a telephone conversation with Client 2. The Respondent denied having taken any further instructions from Client 2 "at the door of the court". The Respondent maintained that

he delegated 90% of the work in relation to Client 2 to PM who was a consultant barrister qualified in the UK and Uganda and whom the Respondent believed was more experienced than he. The Respondent maintained that he relied on the documents drafted by PM when he advocated on behalf of Client 2 before the First and Upper Tier Tribunals.

24.34 Mr Tankel asked the Respondent how the CNN article ended up on Client 2's file. The Respondent stated that PM produced it in support of his skeleton arguments, the Respondent placed it on the matter file and relied upon it. The Respondent accepted that he should have checked its veracity before deploying the CNN and the New Vision articles before the First and Upper Tier Tribunals. The Respondent stated that he had not "read [the articles and the skeleton argument] in the way [he] ought to have in hindsight … [he] had no reason to mistrust [PM's] judgement [he] should have scrutinised [the articles] and [he] accepted recklessness…"

24.35 Mr Tankel put to the Respondent that he must have known that the reporting offence was contained within a Bill as opposed to an Act and was therefore not enforceable at the material time. The Respondent stated that "at the time [he] was led to believe rightly or wrongly that the Bill had been signed into law … [he] never made out to be an expert in Ugandan law … [he] relied and trusted PM … [he] should've been more careful and more thorough…"

24.36 The Respondent maintained that he did not appreciate the difference between a Bill and an Act and asserted that he "misunderstood it and gave a wrong interpretation of the law" to the First and Upper Tribunal.

24.37 Mr Tankel asked the Respondent whether Client 2 had ever instructed him that her husband was in fear of the reporting offence. The Respondent stated that Client 2's instructions were essentially that her claim was predicated on avoidance of societal persecution in Uganda as a consequence of her sexuality. Mr Tankel pressed the Respondent repeatedly and asked whether Client 2 ever instructed him that her husband was in fear of the reporting offence. The Respondent consistently replied "…look at the asylum interview. She mentioned torture and persecution. Her husband paid for her travel because he wanted rid of her. It was clear he didn't want anything to do with her…"

24.38 Mr Tankel put to the Respondent, and he accepted, that Client 2 entered the UK on 3 October 2013 and that the articles relied upon in the skeleton arguments post-dated her entry therefore could not have been applicable to Client 2's claim for asylum. The Respondent reiterated that 90% of the work on Client 2's case was undertaken by PM and that he was merely her advocate. Mr Tankel put to the Respondent that PM never told him the date on which the Bill had been enacted in law. The Respondent replied "if you know a colleague is better informed than you, you pass it over to them … [he] didn't feel confident enough to scrutinise or criticise PM's judgement…"

24.39 Mr Tankel put to the Respondent that Client 2's date of entry to the UK was a fact as opposed to a judgment made by PM. The Respondent replied that Client 2 gave initial instructions then PM "took over" the case. The Respondent accepted that every article and even the skeleton arguments referred to a Bill not an Act, that he was reckless in

not recognising the difference and that he had read all of the documents but with "insufficient understanding".

24.40 Mr Tankel took the Respondent to his initial response to the Applicant (his reply to the "Explanation with Warning letter"), his Answer and his witness statement. Mr Tankel put to the Respondent that his position had evolved over time and that he was seeking to place blame on PM. The Respondent did not accept that contention and asserted that the "took full responsibility for the conduct of the case but overly relied upon PM".

24.41 Mr Tankel took the Respondent to the judgment handed down by the Upper Tier Tribunal which demonstrated that he maintained his submission that the reporting offence was enacted in law before the First and Upper Tier Tribunals when in fact it had not been so enacted. The Respondent maintained that he had withdrawn that submission before the First-tier Tribunal. Mr Tankel challenged the Respondent on that assertion and asked the Respondent that if the submission had been withdrawn why it was cited in the particulars of the appeal to the Upper Tier Tribunal. The Respondent stated that was a "mistake ... blunder…part of [his] recklessness in not paying attention to detail…"

24.42 Mr Tankel asked the Respondent whether he had enquired of PM after the First-tier Tribunal decision whether the reporting offence was part of the Bill or enacted in law. The Respondent stated that he couldn't remember. He could recall that he had a conference with PM, told him the appeal had been refused by the First-tier Tribunal and that he left the documents with PM to draft the appeal to the Upper Tier Tribunal. The Respondent stated that was now clear that PM relied on the same facts advanced before the First-tier Tribunal. The Respondent did not correct him due to his inexperience, the fact that he was newly qualified and his over reliance on PM.

24.43 Mr Tankel put to the Respondent that he was Client 2's advocate in the Upper Tier Tribunal and that he, having read the grounds of appeal and skeleton argument in support, advanced the same erroneous submissions for the second time. The Respondent stated that he "was always confused at the difference between a Bill and an Act" and that he simply "relied on the skeleton argument and followed it blindly". Mr Tankel put to the Respondent that his reliance on erroneous submissions were deliberate. The Respondent did not accept that suggestion and reiterated that it was a misunderstanding borne out of his over reliance on PM.

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

24.44 The Tribunal considered the admissions made by the Respondent to the factual matrix of Allegation 1.2 and the breaches of principle alleged. The Tribunal determined that the admissions were properly made and accepted them. The Tribunal therefore found Allegation 1.2, breach of Principles 1, 2, 4 and 6 proved on the balance of probabilities on the evidence before it and the admissions made.

24.45 The contentious issue that fell to be determined by the Tribunal was whether the Respondent's conduct was dishonest or reckless. The Tribunal noted the Respondent's admission that his conduct was reckless but as both aggravating features were alleged in the alternative, the Tribunal was required to make findings as to dishonesty.

24.46 In so doing, the Tribunal applied the Ivey test and firstly considered what the Respondent's state of mind as to the facts was at the material time. Having carefully considered the submissions advanced and the Respondent's evidence, the Tribunal made the following findings:

- The Respondent knew that Client 2 entered the UK on 3 October 2013.
- The press coverage of the reporting offence post-dated 3 October 2013 therefore could not have been advanced by Client 2.
- The Respondent knew that he had not received direct instructions from Client 2 as to her husband being in fear of the reporting offence.
- There was no evidence on Client 2's file to substantiate that her husband was in fear of the reporting offence.
- The Respondent knew that the reporting offence was part of a proposed Bill as opposed to an Act enshrined in law.
- The Tribunal rejected the Respondent's evidence that, as a qualified solicitor of the Supreme Court, he did not appreciate the distinction between a Bill and an Act.
- The Tribunal did not accept the Respondent's evidence that he "blindly followed" PM's skeleton arguments without questioning their content. The Tribunal found that the Respondent essentially put forward a case to the First and Upper Tier Tribunal's which he knew not to be that advanced by the appellant.
- The Tribunal rejected the Respondent's evidence that he had withdrawn the submission on the reporting offence before the First Tier Tribunal. Had he done so the Judge would not have commented on it nor would she have sought to ascertain the provenance of the newspaper articles relied upon by the Respondent if that submission had in fact been withdrawn.
- The Respondent was no better placed had the Tribunal accepted that he had withdrawn the submission when appearing before the First-tier Tribunal, for he made the submission again before the Upper Tribunal, which would plainly have been highly inappropriate unprofessional conduct, which the ordinary person would consider dishonest: repeating a submission before an appeal Tribunal having accepted that it was erroneous before the lower Tribunal.
- The Respondent must have known that the reporting offence had not made its way into law prior to his reliance on the same before the Upper Tier Tribunal. (The reporting offence was removed before the Bill became and Act, and the Act was then later struck down by the Ugandan Supreme Court, all after the submission was made to the First-tier Tribunal.)

24.47 Applying the objective element of the Ivey test to the facts deemed known to the Respondent at the material time, the Tribunal concluded that individually and collectively they were dishonest according to the standards of a reasonable ordinary man.

24.48 The Tribunal therefore found Allegation 1.2 and the aggravating feature of dishonesty proved on a balance of probabilities.

25. **Allegation 1.3 - In relation to Client 3's appeal against a Home Office refusal decision dated 27 June 2014, on or about 1 September 2014 and 3 October 2014 he misled the First Tier Tribunal when he represented or allowed it to be represented to the Tribunal that Client 3 had only received the Home Office Notice on 12 July 2014, when Client 3 had received the Home Office Notice by 8 July 2014; and he thereby breached Principles 1, 2 and 6 of the Principles.**

Allegation 2 - In addition, the Respondent's conduct was dishonest or, alternatively, reckless. Dishonesty or recklessness are alleged as aggravating features of the Respondent's misconduct but are not an essential ingredient in proving the allegations.

25.1 Client 3 made a human rights claim in order to remain in the UK. The Secretary of State refused that claim and notified Client 3 of that fact in a "Notice of Immigration Decision" dated 27 June 2014 and deemed served on 2 July 2014. Client 3 had a statutory right of appeal against that decision which had to be filed by 16 July 2014.

25.2 Mr Tankel referred the Tribunal to various documents, taken from the matter file, which evidenced when Client 3 instructed the Respondent. They were:

- An invoice sent to Client 3 dated 8 July 2014 in the sum of £800.00.
- A "Confirmation of instructions and letter of authority to act" form dated 8 July 2014.
- Client 3's ledger card showing a payment made by him to the Firm on 8 July 2014 in the sum of £400.00.
- A handwritten receipt for the payment of £400.00 by Client 3 to the Firm dated 8 July 2014.
- A handwritten attendance note dated 8 July 2014 which stated:

  "Conference with [Client 3] … He have me the Home Office refusal to see. He instructed that an appeal should be filed against the decision…"

- The client care letter to Client 3 dated 8 July 2014 which stated:

  "…You attended our offices on 08 July 2014 during which you informed us that you had applied for further leave to remain and that this application was refused with a fight of appeal. You showed us the refusal letter from the Home Office and instructed us to pursue this appeal on your behalf. You said you believed the Home Office was wrong in their decision especially in failing to thoroughly consider your daughter's circumstances within Article 8. You informed us that you hailed from Nigeria and came to the UK with your daughter. That your daughter has done most of her schooling here since arriving at the age of five

thus residing here for over 7 years. You wanted us to file an appeal and pursue the same on your behalf so you can have your day in court…"

25.3 Mr Tankel submitted that it was tolerably clear from the contemporaneous documentary evidence that Client 3 instructed the Respondent on 8 July 2014.

- A pro forma appeal cover sheet exercising Client 3's statutory right of appeal dated 13 July 2014 (three days pre deadline and five days post instruction).

- An excerpt from the Firm's post book which showed that the appeal form was sent on 15 July 2014.

- An "Out of Time Appeal" letter sent to Client 3 dated 26 August 2014.

- A handwritten attendance note dated 1 September 2014 which stated:

  "Client [3] attended office to discuss evidence for late appeal requested by HMCTS (Her Majesty's Courts and Tribunals Service) Client wrote a statement of explanation."

- Letter from the Firm to the First Tier Tribunal dated 1 September 2014 which stated:

  "…Our client informed us that he only received the Home Office refusal letters on the 12th July 2014 from his previous representative. Our client therefore believes that the due date for his appeal was 16th July 2014. The appeal was sent to you by post on 15th July 2014 to reach the Tribunal the following day…"

25.4 Mr Tankel submitted that the Respondent appeared to be suggesting in that letter that Client 3 instructed him on 12 July 2014 as opposed to 8 July 2014. Mr Tankel submitted that the Respondent was "laying the ground" for the late receipt of the refusal letter despite the fact that he accepted the deadline was 16 July 2014.

- HMCTS replied on 27 September 2014 which requested a statement from Client 3 which proved that his former representative "did not forward the decision until 12/7/14 and the date they were served with decision".

- A handwritten attendance note dated 3 October 2014 which stated:

  "…[Client 3] attended our office to be assisted with his statement explaining/supporting out of time appeal. Statement was taken and signed by client…"

- Client 3's statement set out that:

  "[2] That the said Home Office decision was given to me well after the allowed deadline date to appeal. This was after the solicitor called me to come down to his office many days after they received it. He explained that he was away when the decision arrived…

> [4] My new solicitors [the Respondent] informed me that the appeal deadline was passed and asked why.
>
> [5] I explained to them that my previous solicitor failed to inform me of the Home Office decision on time. Hence I instructed them to lodge the appeal immediately which they did…"

25.5 Mr Tankel submitted that even on its own terms, Client 3's statement was incorrect. His assertion that he did not receive the Home Office refusal letter until after the 16 July 2014 deadline was untenable in light of the contemporaneous documentary evidence which demonstrated that the Respondent was instructed on 8 July 2014. Upon instruction, the Respondent was given the Home Office refusal letter as shown by his handwritten attendance notes and the client care letter sent to Client 3.

25.6 On 13 November 2014, the First-tier Tribunal allowed Client 3's appeal to proceed out of time, by reason of the Respondent's submissions and the statement from the appellant which had been lodged with the First-tier Tribunal.

Dishonesty

25.7 Mr Tankel submitted that the Respondent knew that he had seen the refusal notice on 8 July 2014 and that Client 3 could not therefore have received it any later than that. Alternatively, he was wilfully blind to the fact that he had seen it on that date. Against that background, he misled the Tribunal or allowed the Tribunal to be misled as to the date on which Client 3 received his refusal notice. That had the important consequence of obtaining a statutory right of appeal for which Client 3 would otherwise have been out of time.

25.8 Mr Tankel submitted that ordinary decent people would expect a solicitor in any court, let alone one seeking leave to remain on human rights grounds on behalf of a client, to ensure that the submissions they make are true. By falling short of that standard the Respondent acted dishonestly.

Recklessness

25.9 Mr Tankel contended that the Respondent was reckless, within the Brett definition, as to the risk that Client 3's instructions were false. He ought to have carried out more thorough checks; or preferred the evidence of his own attendance note over his client's instructions; or have explained the disparity in the submission to the Tribunal. He did neither and, having recognised the risk of the First Tier Tribunal being misled, proceeded to take that risk in any event.

Breaches of Principles

25.10 Mr Tankel averred that the Respondent undermined the sound administration of justice by misleading the First-tier Tribunal or by allowing it to be misled, and by securing his client a statutory appeal for which he would have otherwise been out of time, contrary to **Principle 1**.

25.11 Mr Tankel submitted that the Respondent breached **Principle 2** as a solicitor of integrity would not mislead the Court and or remain wilfully blind to the fact that the Court was being misled.

25.12 Mr Tankel further submitted that the public would be alarmed about an officer of the Court who deliberately misled or who turned a blind eye to the Court being misled. Consequently, the Respondent's conduct undermined the trust vested in him and in the profession by the public contrary to **Principle 6**.

The Respondent's Position

25.13 In his first response to the allegations (his reply to the Applicant's "Explanation with Warning letter") dated 12 December 2018, the Respondent denied the factual matrix of Allegation 1.3 and the breaches of principles alleged in that:

> "…I did not mislead the court and I did not have the intention of doing so. The client gave me the date he received the refusal notice and I trusted and believed him. Client 3 informed us that his previous representative's address was in Ilford. His previous representative shared the same IG1 area code as Jesuis solicitors. According to the client, the Home Office refusal notice was delivered to his previous representative's address which was not far away from Jesuis solicitors. From experience this kind of error by postmen do happen. Many times we have had other persons or companies mails delivered to us in a mix up. Thus I have no reason to doubt the client's instructions that his previous representative received the said refusal notice and failed to inform him on time until 12/7/14 contrary to our initial meeting on 8/7/14. The appeal was dated 13/7/14 and posted on 15/7/14. Hence the client provided a hand written letter dated 1/9/14 and a signed witness statement dated 3/10/14 to support his instruction to the first tier tribunal. We believed the client that there may be a postal error, hence when completing the appeal form, we made it evident of the date he instructed. We did not therefore mislead the court on this matter except to represent the client's instructions. This is a situation where a solicitor's duty of non- accountability conflicted with our duty to the court. However, due to the benefit of doubt we accepted the client's version of events in view of the fact that the argument was about the appeal being out of time and the client being vulnerable at the time. In accepting his instruction, we demanded a signed statement from him to support his position on dates vis-a-vis the contradiction. We did not mislead the court but this was a situation where we faced a vulnerable client that might lose his appeal right if we do not represent his instructions to the court hence we gave him the benefit of the doubt. This appeared embarrassing but it was a situation between a vulnerable client and our duty to the court not withstanding that we had seen the refusal letter on 8/7/14 which the client vigorously disputed. He gave us a different instruction which we challenged with proof. He insisted he met with us on 12/7/14 instead of 8/7/14. There was inconsistent instruction regarding date of receipt of refusal. However in view of the fact that there was an issue of his appeal being out of time, we asked him for an explanation of the inconsistent date. His explanation was first through his hand written statement which we did not find sufficient then he now gave a signed statement to support his assertion before the first tier tribunal. We do not represent ourselves but the client's interest according to his

> instruction. In a case where there was a doubt about the date he received his refusal notice, we reluctantly accepted the client's version hence the appeal form was dated 13/7/14 and it was posted on 15/7/14. In our honest belief of the client's instructions we wrote to the first tier tribunal on 01/09/14 conveying the client's instructions. The client's signed witness statement can only be explained by him as it appeared confusing in the manner he conveyed information regarding the dates in question. This may be a human error on the client's part which probably affected our judgement and execution of his instructions. We did not mislead the court as regarding the date 12/7/14 when he said he received the refusal letter. We believed him and relied on his statements. There may have been human error in the calculation of the dates but that did not take away the point that was being made supported by the client's own statement. The [First Tier Tribunal] had the statements and the form to guide her in making the decision whether or not to accept his appeal out of time and we did not mislead them. If the client had not supported his instruction regarding 12/7/14 with his statements then of course our chances of disbelieving him would have been high such that we would have advised him to simply apply for extension of time. On hindsight we should have been more careful in calculating the dates and not take the client's instructions at face value. The Tribunal probably got their own dates right hence the appeal was accepted out of time there was no intention to mislead…"

25.14 In his Answer to the Rule 12 Statement dated 2 October 2020, the Respondent admitted the factual matrix of Allegation 1.3, the breaches of principle and the aggravating feature of recklessness but denied that he had acted dishonestly. He stated:

> "…I accept that in relation to Client 3's appeal against the Home Office refusal decision dated 27/06/2014, on or about 01/09/2014 and 03/10/2014 | allowed inaccurate information to be given to the First Tier Tribunal that Client 3 had only received the Home Office Notice on 12/07/2014. The representation to the First Tier Tribunal was based on an error of judgement on my part due to conflicting instructions given to me by the client at the time. As the solicitor with overall conduct of the case, I take full responsibility for any omission in relation to the case of Client 3. Therefore, the information given to the Tribunal was in good faith, with no intention to mislead the Tribunal and certainly no intention to breach any relevant provisions of the SRA Principles 2011. In light of the facts provided by the Applicant in support of this allegation, I accept that that information was inaccurate. I also accept that I should have been more careful in relying on the information provided by the client. I sincerely apologise for the above omission, which occurred while I was still a relatively inexperienced solicitor. I am now more experienced and wiser. I undertake to ensure that such omission does not occur again…"

25.15 In his witness statement dated 11 November 2020 the Respondent maintained the admissions made to the factual matrix of Allegation 1.3, the breaches of principle and the aggravating feature of recklessness.

25.16 Dishonesty was denied and the Respondent was asked by Mr Anyiam to explain why his admitted misconduct was not dishonest. The Respondent accepted that he had full conduct of Client 3's case but that his assistant took the witness statement from Client 3

directed by the Home Office. The Respondent asserted that he was in the room when the statement was taken but had no input. The Respondent accepted that there were errors in Client 3's statement and that he accepted all responsibility the oversights and errors. He said that he had to "balance" his client's instructions (which he knew not to be the truth) with his duty to the Court.

25.17 Mr Tankel took the Respondent to the following documents from Client 3's file all dated 8 July 2014; (a) invoice, (b) letter of authority, (c) ledger, (d) receipt, (e) attendance note and (f) client care letter. The Respondent accepted that the receipt and attendance note were both created by him; it was his handwriting on them. The Respondent asserted that the other documents were either computer generated or created by his assistant.

25.18 The Respondent accepted that the attendance note created by him stated that Client 3 attended the Firm on 3 July 2014 and "gave [him] the Home Office Refusal letter". Mr Tankel asked the Respondent how he could reconcile that fact with Client 3's instructions that he received the Home Office Refusal letter on 12 July 2014. The Respondent stated that there was a page missing from the Home Office Refusal letter which Client 3 brought into the Firm on 12 July 2014. Mr Tankel put to the Respondent that he had never raised that point before to which he replied "I think I said it in my initial reply to the SRA". Mr Tankel took the Respondent to his initial reply and submitted that there was no mention of a missing page therein, in his Answer to the Rule 12 Statement or in his witness statement. The Respondent stated that was an oversight on his part.

25.19 Mr Tankel asked the Respondent to explain the delay between initial instructions (8 July 2014), completion of the appeal forms (13 July 2014) and posting the appeal documents (15 July 2014). The Respondent stated that post was left in the Firm's post tray and that it was for the Principal of the Firm to determine when post goes to the post office.

25.20 Mr Tankel took the Respondent to his letter dated 1 September 2014 to the First-tier Tribunal in which he stated:

> "…Our client has informed us that he only received the Home Office refusal letter on 12th July 2014 from his previous legal representative…"

25.21 Mr Tankel put to the Respondent that that content was false. The Respondent accepted that he had a conference with Client 3 on 1 September 2014, that he created the brief attendance note in that regard, that he dictated the letter and must have instructed his assistant to send it but denied that his conduct was dishonest.

25.22 Mr Tankel asked the Respondent to reconcile the disparity between the 12 and 8 July 2014. The Respondent stated that Client 3 insisted they had met on 12 July, that he knew that they had in fact met on 8 July but that he gave Client 3 the "benefit of the doubt" and followed his instructions in that regard. Mr Tankel asked the Respondent for his view in relation to sending a letter to the First-tier Tribunal which contained the wrong date. The Respondent asserted that Client 3 was "dealt with" by his assistant and that he simply followed the instructions given. The Respondent further stated that his assistant took Client 3's statement and that he did not read it. The first time he saw

Client 3's statement was when the Applicant commenced the investigation into his conduct at which stage he realised that the "phraseology" of the statement was wrong.

25.23 Mr Tankel put to the Respondent that he was raising these matters for the first time in his oral evidence and that he was making it up. The Respondent rejected that suggestion and asserted that he had no reason to lie, he was only one year qualified at the material time, he was still looking up to others to learn and that he was guided by his Principal.

25.24 The Tribunal asked the Respondent to clarify his position; was his evidence that the missing page was brought to him on 12 July and the deadline to submit the appeal was 16 July. The Respondent stated that he could not remember saying the 12 July, he relied on Client 3's instructions that he came into the Firm on 12 July but that he must have had the missing page before the 16 July. The discrepancy was, the Respondent said, confusing for him and that if he had noticed it at the material time then he would have corrected it. Mr Tankel put to the Respondent that he was making up his evidence, that he missed the deadline for Client 3 and that he directed Client 3 as to the content of his witness statement. The Respondent rejected those contentions and asserted that he did not have any dishonest intention to mislead the First-tier Tribunal. He further asserted that Client 3's file was produced by him to the Applicant voluntarily and that he had thought that he had done anything wrong he would not have exposed himself in that manner.

25.25 Mr Tankel questioned the Respondent about his initial response to the Applicant's Explanation with Warning letter. The Respondent stated that he took the Applicant's letter to his Principal for guidance. Mr Tankel asked how that was the case when the Firm closed in late 2017 and the Applicant's letters were addressed to Ferndale Road (which was not the Firm's address) and were dated 11 April 2017, 25 August 2017 and 20 December 2017. The Respondent maintained his position even when his previous evidence, that he left the Firm on bad terms, contradicted his position. The Respondent denied having said to the Tribunal that he left the Firm on bad terms with the Principal and asserted that "what [he] meant to say was that they had not parted on bad terms". The Respondent asserted that the Explanation with Warning letter was sent to the Firm, not his personal address, and that was why he sought the guidance of his Principal. Mr Tankel took the Respondent to the relevant correspondence which was sent to his residential address. The Respondent maintained that the Applicant did not write to him personally until after the Firm closed.

25.26 Mr Tankel put to the Respondent that he was essentially making up his evidence with regards to his Principal. The Respondent rejected that suggestion and asserted that "the Tribunal is aware that the SRA writes [to Respondents] through their Firm".

25.27 In re-examination and in response to questions posed by Mr Anyiam, the Respondent stated that his intention was to serve Client 3's best interests according to his instructions and that he had "no intention to cover up or mislead the court".

25.28 The Tribunal pressed the Respondent on that assertion which contradicted his position set out in the response to the Explanation with Warning letter. The Respondent stated that he had admitted his conduct was reckless but reiterated that he had no intention to mislead the court despite the fact that the court was ultimately misled, which he accepted had been the result.

25.29 The Tribunal asked the Respondent where the attendance note was regarding his meeting with Client 3 on 12 July 2014. The Respondent replied that there was not one.

25.30 The Tribunal asked the Respondent how he resolved the conflict between his duty to the court and his duty to Client 3. The Respondent stated that "at the time [he] understood his duty to the court was to present honest and truthfully [submissions] to the best of [his] ability, to represent the client's interests and to balance them". The Respondent accepted that there was a conflict of interest between his client's instructions and his duty to the Court. He was asked if he felt he had resolved that, as conflicts of interest could not be "balanced". The Respondent accepted that he had fallen short in that regard.

The Tribunal's Findings

25.31 The Tribunal considered the admissions made by the Respondent to the factual matrix of Allegation 1.3 and the breaches of principle alleged. The Tribunal determined that the admissions were properly made and accepted them. The Tribunal therefore found Allegation 1.3, breach of Principles 1, 2 and 6 proved on a balance of probabilities on the evidence before it and the admissions made.

25.32 The contentious issue that fell to be determined by the Tribunal was whether the Respondent's conduct was dishonest or reckless. The Tribunal noted the Respondent's admission that his conduct was reckless but as both aggravating features were alleged in the alternative, the Tribunal was required to make findings as to dishonesty.

25.33 In so doing, the Tribunal applied the Ivey test and firstly considered what the Respondent's state of mind as to the facts was at the material time. Having carefully considered the submissions advanced and the Respondent's evidence, the Tribunal made the following findings:

- The contemporaneous documentary evidence made plain that Client 3 attended the Firm on 8 July 2014 with his Home Office Refusal letter.

- The Respondent was well aware that the deadline to submit the appeal was 16 July 2014.

- The Tribunal rejected the Respondent's evidence that Client 3 returned to the Firm on 12 July 2014 with a "missing page" to the Home Office Refusal letter. That assertion was not borne out by the contemporaneous documentary evidence, there was no attendance note for 12 July 2014, it was not mentioned in the client care letter dated 8 July 2014 and the "missing page" explanation was raised by the Respondent for the first time in his oral evidence before the Tribunal.

- The Respondent wrote to the First-tier Tribunal in terms that he knew were incorrect; namely that Client 3 received the Home Office Refusal letter on 12 July 2014.

- The Respondent caused or permitted Client 3 to provide a witness statement which contained inaccurate information. The Tribunal rejected the Respondent's

assertions that his assistant drafted the statement and that he did not read it before it was sent.

25.34 The Tribunal noted that the Respondent accepted in his oral evidence that the Tribunal was misled by his communications with them. In his response and in his witness statement he accepted that there was a conflict of interest between his professional duty and his client's instructions. He said that he "balanced" these contradictory matters, by submitting what was in the client's instructions, in the client's words. However, when asked in oral evidence how that resolved the conflict of interest (of which he accepted he had always been aware) as he was obliged to do, he accepted that he had not done so. It therefore follows inevitably that the Respondent knowingly misled the Tribunal by submitting the letter knowing it not to be a true account. That was not an honest thing to do, because he knew that what he was submitting to the Tribunal was not true, and it misled the Tribunal, as was its objective (time was extended on a false premise). It was dishonest for the Respondent to be complicit in (and facilitate) the client's misrepresentation to the First-tier Tribunal.

25.35 Applying the objective element of the Ivey test to the facts deemed known to the Respondent at the material time, the Tribunal concluded that individually and collectively this was dishonest according to the standards of a reasonable ordinary man.

25.36 The Tribunal therefore found Allegation 1.3 and the aggravating feature of dishonesty proved on a balance of probabilities.

Previous Disciplinary Matters

26. None.

Mitigation

27. Mr Anyiam urged the Tribunal to consider the mitigating features of the case when determining sanction namely that the Respondent (a) admitted the allegations save for dishonesty, (b) had no previous disciplinary history, (c) the infractions occurred as a result of his inexperience at the material time and (d) demonstrated genuine remorse and insight for his actions such that repetition was unlikely.

28. Mr Anyiam accepted that the starting point for findings of dishonesty against a Respondent was a Strike Off Order. Mr Anyiam submitted that there existed exceptional circumstances that justified a departure from that standard approach namely that (a) the breaches occurred as a result of the Respondent's inexperience at the material time, and reliance on a colleague who he considered expert in Ugandan law, (b) the Respondent was the main bread winner for his family, (c) the Respondent had been under enormous strain and stress during the investigation and the proceedings (d) the Respondent was in a poor state of health and (e) the Respondent had demonstrated insight into his failings.

29. Mr Anyiam therefore invited the Tribunal to sanction the Respondent to a financial penalty or a reprimand.

Sanction

30. The Tribunal referred to its Guidance Note on Sanctions (Seventh Edition) when considering sanction. Having found that the Respondent had dishonestly misled the First Tier and the Upper Tier Tribunals on three occasions in the most egregious manner, the Tribunal determined that no order, a reprimand, financial penalty, restrictions on practice and suspension were neither appropriate nor proportionate to the misconduct found proved.

31. The starting point for the Tribunal was a striking off order which could only be avoided if exceptional circumstances were found. The Tribunal applied the principles promulgated in Solicitors Regulation Authority v James, MacGregor and Naylor [2018] EWHC 3058 (Admin) namely:

> "[100] …the most significant factor carrying the most weight and which must therefore be the primary focus in the evaluation of exceptional circumstances is the nature, extent and degree of culpability of the dishonesty, in other words the exceptional circumstances must relate in some way to the dishonesty. This evaluation can and would include matters of personal mitigation including mental health issues and workplace pressures…"

32. The Tribunal did not accept Mr Anyiam's submission that the Respondent's inexperience at the material time amounted to an exceptional circumstance. The dishonesty found proved related to the Respondent having breached a fundamental tenet of the profession in that he misled the court on three occasions. Inexperience did not mitigate against that fact. A Solicitor is an Officer of the Court and it is a fundamental precept that the Court can trust its Officers.

33. The Tribunal noted that the Respondent was the main breadwinner for his family but did not find that unusual or exceptional. The same could be said for many Respondents appearing before the Tribunal.

34. The Tribunal recognised the strain and stress that the proceedings must have had on the Respondent. However, it did not find that to be unusual or exceptional. The same could be said for all Respondents appearing before the Tribunal.

35. The Tribunal considered the submissions made (no medical reports were relied upon) in relation to the Respondent's ill health. Whilst it was regrettable that the Respondent had been diagnosed with two illnesses, neither were acute in that no invasive treatment was required and both matters appeared to be manageable by the Respondent with little or no impact on his day to day activities.

36. The Tribunal rejected the suggestion that the Respondent had demonstrated insight into his misconduct. The Tribunal noted the inconsistent accounts given by the Respondent in his written responses to the Applicant and the Tribunal. The Tribunal noted the efforts made by the Respondent to attribute blame to PM and his assistant for his misconduct. The Tribunal had the benefit of receiving oral evidence from the Respondent and found him to be a thoroughly unimpressive witness. His evidence changed from question to question and he only resiled from the disingenuous accounts

given when confronted which contemporaneous documentary evidence which vitiated his position.

37. The Tribunal therefore concluded that there were no exceptional circumstances present to militate against a striking off order.

Costs

The Applicant's Application

38. Mr Tankel applied for the costs incurred by the Applicant in the sum of £42,600.00 comprising of the Applicant's costs of investigation, which he submitted were minimal, and the costs incurred by Capsticks who were instructed by the Applicant to progress the matter to a substantive hearing on a fixed fee basis.

39. Mr Tankel accepted that only reasonable costs were recoverable and submitted that, notwithstanding the withdrawal of Allegation 1.1 and the fact that the hearing concluded in two as opposed to three days, the costs claimed were reasonable and proportionate.

The Respondent's Position

40. Mr Anyiam acknowledged that costs were payable by the Respondent in principle but disputed the reasonableness and/or proportionality of the quantum claimed. Mr Anyiam submitted that the Applicant's costs should be reduced to reflect (a) the withdrawal of Allegation 1.1, (b) the reduced time it had taken to conclude the proceedings, (c) the Respondent's statement of means.

41. Mr Anyiam submitted that the quantum claimed should be reduced by a third to reflect the attendant circumstances.

42. The Tribunal received oral evidence from the Respondent in relation to his income. The Respondent confirmed that he was not practising as a solicitor, he was self-employed doing "bits and bobs … buying and selling … work on the side for people such as Church registration, tenancy agreements and eviction letters…"

The Tribunal's Decision

43. The Tribunal scrutinised the schedule of costs relied upon by the Applicant dated 23 November 2020.

44. The Tribunal took no issue with the investigation costs incurred by the Applicant in the sum of £1,200.00 and awarded the same in full.

45. The Tribunal noted that the commercial fixed fee arrangement between Capsticks and the Applicant amounted to £34,500 plus VAT. The Tribunal found that to be wholly disproportionate to what was a very straightforward case. There was an inordinate number of fee earners at Capsticks (two partners, six lawyers and six paralegals/trainees) who, in total, spent over 280 hours on progressing the case to a substantive hearing. That level of input was disproportionate, unreasonable and

inevitably resulted in duplication of work. The Tribunal was further concerned that, despite the certificate of readiness stated 9 November 2020 indicating that in house counsel at Capsticks was cited as the advocate for the substantive hearing, Mr Tankel (external counsel) had been instructed at great expense which should not be borne by the Respondent.

46. The Tribunal further considered that the costs claimed by the Applicant should be reduced to reflect (a) the withdrawal of Allegation 1.1 and (b) the fact that the hearing concluded in two days.

47. Weighing all of those factors in the balance, the Tribunal approached the quantum of Capsticks costs payable in the following manner:

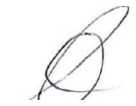
(a) The deduction of Mr Tankel's brief fee and refresher fee.
(b) Division of the remaining fixed fee payable by three to reflect each of the allegations.
(c) Multiplication of (b) by two to reflect the allegations that fell to be determined.
(d) Addition of £1,200.00 to (c).

48. The Tribunal therefore awarded costs to the Applicant in the sum of £15,000.00.

Statement of Full Order

49. The Tribunal Ordered that the Respondent, PETER COLLINS MAKU-KEMI, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £15,000.00.

Dated this 6th day of January 2021
On behalf of the Tribunal



B Forde
Chair