SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No.12455-2023

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD — Applicant

and

MOHAMMED EKRAMUL HOQUE MAZUMDER — First Respondent

NASER KHAN — Second Respondent

SALAUDDIN KHAN (unadmitted) — Third Respondent

Before:

Mr R Nicholas (in the chair)
Mr A Ghosh
Mr G Gracey

Date of Hearing: 4 – 15 September 2023 & 29 January – 2 February 2024

Appearances

Michael Collis, counsel in the employ of Capsticks LLP, 1 St George's Road, Wimbledon, London SW19 4DR for the Applicant.

Owusu Abebrese, counsel of 3 Bolt Court Chambers, 30 Ely Place, London EC1N 6TD for the First Respondent.

Mansoor Fazli, barrister of 12 Old Square Chambers, 12 Old Square, London WC2A 3TX for the Second Respondent

The Third Respondent represented himself, with the assistance of an interpreter.

JUDGMENT

Allegations

1. The allegations made against the First Respondent, Mr Mazumder by the Solicitors Regulation Authority Limited ("SRA") were that whilst the owner and manager of Heans Solicitors Limited ("the Firm"), he:

1.1 Between approximately January 2018 and 30 July 2019, failed to ensure that:

1.1.1. The staff at the Firm were adequately supervised in relation to judicial review claims; and/or

1.1.2. The Firm had effective systems and controls in place in relation to judicial review claims,

and in doing so breached any or all of Principles 4, 5, 6 and 8 of the SRA Principles 2011 ("the 2011 Principles") and failed to achieve Outcomes 7.2 and/or 7.8 of the SRA Code of Conduct 2011 ("the 2011 Code").

1.2 On or around 16 May 2019, submitted a witness statement to the High Court, dated 16 May 2019, which contained the following assertions which were false and/or misleading:

1.2.1 "Mr Khan had done a number of applications to the Home Office but this is his first independently worked JR application";

1.2.2. "We rarely deal with Judicial review cases";

1.2.3 "This firm only deals with very few Judicial Review cases";

1.2.4 "Those Judicial Review applications that we have dealt with have been advised upon and drafted by counsels whom we instruct prior to submissions"; and

1.2.5 That the documents in the judicial review claim for Mr Mahfuz had been submitted without being reviewed by either the First or Second Respondent due to time pressures, or words to that affect.

and in doing so breached any or all of Principles 1, 2 and 6 of the 2011 Principles.

1.3 On or around 4 July 2019, submitted a witness statement to the High Court, dated 2 July 2019, which contained the following assertions which were false and/or misleading:

1.3.1 "At Heans Solicitors we rarely deal with Judicial Review cases";

1.3.2 "This firm only deals with very few Judicial Review cases"; and

1.3.3 That the documents in the judicial review claim for Mr Mahfuz had been submitted without being reviewed by either the First or Second Respondent due to time pressures, or words to that affect.

and in doing so breached any or all of Principles 1, 2 and 6 of the 2011 Principles.

2. In addition, Allegations 1.2 and 1.3 above were advanced on the basis that Mr Mazumder's conduct was dishonest. Dishonesty was alleged as an aggravating feature of his conduct but was not an essential ingredient in proving the allegations.

3. In the alternative to the dishonesty allegation above, Allegations 1.2 and 1.3 were advanced on the basis that Mr Mazumder's conduct was reckless. Recklessness was alleged as an aggravating feature of the conduct but was not an essential ingredient in proving the allegations.

4. The Allegations made against the Second Respondent, Mr Naser Khan, were that he:

4.1. On or around 1 March 2018, signed an employment contract or purported employment contract for a role with the Firm which entailed or purported to entail supervisory responsibilities, when such responsibilities were beyond his level of competence, and in doing so breached Principle 6 of the 2011 Principles.

4.2. On or around 6 September 2018, requested that Client A transfer money that was intended for the Firm to his own personal bank account, and in doing so breached any or all of Principles 2, 4 and 6 of the 2011 Principles.

4.3. On or around 3 October 2018, inappropriately retained £160.00 of the money he had received from Client A, and in doing so breached any or all of Principles 2, 4 and 6 of the 2011 Principles.

5. The Allegations made against the Third Respondent, Salauddin Khan, who is not a solicitor, are that he has been guilty of conduct of such a nature that in the opinion of the SRA it would be undesirable for him to be involved in a legal practice in that he, while employed by the Firm:

5.1. On or around 14 May 2019, signed a witness statement dated 14 May 2019 intended for the High Court which either:

5.1.1. Contained information that he believed to be false and/or misleading, or;

5.1.2. He had failed to read, and in doing so breached any or all of Principles 1, 2 and 6 of the 2011 Principles.

5.2. Between approximately 14 May 2019 and 30 July 2019, failed to take any steps to alert the High Court of the matters identified either in Allegations 5.1.1 or 5.1.2 above, and in doing do breached any or all of Principles 1, 2 and 6 of the 2011 Principles.

Dishonesty

6. In addition, Allegation 5.1 above was advanced on the basis that Mr S Khan's conduct was dishonest. Dishonesty was alleged as an aggravating feature of Mr S Khan's conduct but was not an essential ingredient in proving the allegations.

Executive Summary

7. Mr Mazumder admitted allegation 1.1. He denied all other allegations. The Tribunal found allegation 1.1 proved on the facts and evidence. The Tribunal found that Mr Mazumder's admission was properly made. The Tribunal found allegations 1.2.1, 1.2.4, 1.2.5 and 1.3.3 proved including that Mr Mazumder's conduct was dishonest. The Tribunal found allegations 1.2.2, 1.2.3, 1.3.1 and 1.3.2 not proved.

8. Mr N Khan denied all of the allegations. The Tribunal found all allegations proved.

9. Mr S Khan denied all of the allegations he faced. The Tribunal found allegations 5.1.1 and 5.2 not proved. The Tribunal found allegation 5.1.2 proved, save that it did not find that Mr S Khan's conduct lacked integrity in breach of Principle 2, nor did it find that his conduct was dishonest.

10. The Tribunal's findings can be accessed here:

<u>The First Respondent</u>

- Allegation 1.1
- Allegation 1.2.1
- Allegations 1.2.2 and 1.2.3
- Allegation 1.2.4
- Allegation 1.2.5

<u>The Second Respondent</u>

- Allegation 4.1
- Allegations 4.2 and 4.3

<u>The Third Respondent</u>

- Allegation 5.1
- Allegation 5.2

Sanction

11. The Tribunal determined that given the serious nature of Mr Mazumder's conduct, the only appropriate and proportionate sanction was to strike Mr Mazumder off the Roll of solicitors. The Tribunal did not find that there were any exceptional circumstances that would render such a sanction disproportionate. The Tribunal's sanction and its reasoning as regards Mr Mazumder can be accessed here:

- Mr Mazumder's sanction

12. The Tribunal determined that given the seriousness of Mr N Khan's misconduct, a fine in the sum of £10,000 was appropriate. Having considered his means, the Tribunal determined that there should be a reduction of 50% in the fine payable by him. Accordingly, the Tribunal Ordered that Mr N Khan pay a fine in the sum of £5,000. The Tribunal's sanction and its reasoning as regards Mr N Khan can be accessed here:

- Mr N Khan's sanction

13. The Tribunal considered that in all the circumstances, the appropriate and proportionate order was to make No Order. The Tribunal's reasoning can be accessed here:

- Mr S Khan's sanction

Documents

14. The Tribunal reviewed all the documents submitted by the parties, which included (but was not limited to):

- Rule 12 Statement and Exhibit IWB1 dated 4 April 2023
- First Respondent's Answer and Exhibits dated 10 May 2023
- Second Respondent's Answer and Exhibits dated 18 May 2023
- Third Respondent's Answer and Exhibits served on 22 May 2023
- Applicant's Schedule of Costs
- First Respondent's Statement of Means dated 31 January 2024
- Second Respondent's Statement of Means dated 30 January 2024
- Third Respondent's Statement of Means dated 8 May 2023

Preliminary Matters

15. <u>The order of cross-examination</u>

15.1 Mr Collis submitted that it was usual for the Applicant to be the last to cross-examine the Respondents in any matter, and that it was the ordinary convention that co-respondents would cross-examine each other before the prosecutor did so. This was an express requirement in the criminal procedure rules and this was the format usually copied in regulatory proceedings. The defences advanced by the Respondents were 'cut-throat' defences. The Applicant should have the opportunity to cross-examine after any allegations of wrongdoing had been put by their co-respondents.

15.2 Mr Abebrese submitted that it was preferable for matters to proceed in the usual order. To do it in any other way might give the Applicant a slight advantage.

15.3 Mr Fazli was neutral as to the application.

15.4 Mr S Khan was neutral as to the application.

15.5 The Tribunal determined that there was no reason to depart from the usual convention. Whilst the standard of proof was different in criminal proceedings and those before the Tribunal, the burden of proof remained with the prosecutor in both jurisdictions. Accordingly, it was appropriate for the prosecutor in the proceedings to be the final party to cross-examine the Respondents and any of their witnesses.

16. Submission of No Case To Answer on behalf of Mr N Khan

The Second Respondent's Submissions

16.1 Mr Fazli submitted that there was no evidential basis for allegation 4.1. The allegation he faced was that he signed the employment contract that contained a supervision clause, such supervision being beyond his competence. The Applicant relied upon:

(i) the contract itself;

(ii) the evidence of Mr Mazumder that Mr N Khan signed the contract knowing that the supervision clause formed part of the contract;

(iii) the evidence of Mr S Khan that he was supervised by Mr N Khan; and

(iv) the meeting notes of 16 August and 9 November 2018.

16.2 Mr Fazli submitted that it was not disputed that the signature on the contract was that of Mr N Khan.

16.3 Mr N Khan's evidence, it was submitted, had been consistent throughout the investigation and during the course of these proceedings; he had never agreed to undertaking any supervision. Mr N Khan had not knowingly signed a contract containing a supervisory clause. As he had explained, he was aware that as someone with less than three years post qualification experience, he was not permitted to supervise others. Mr N Khan was only two months qualified when he joined the Firm. Mr Fazli submitted that given he knew that he was not sufficiently qualified to supervise, it was unlikely that he had knowingly agreed to do so. This position, it was submitted, undermined the Applicant's case.

16.4 Mr Fazli submitted that the Applicant had failed to adduce any evidence to demonstrate that Mr N Khan had agreed to the supervision clause, or that he had, in fact, supervised any member of staff. There was no evidence that from Mr N Khan joining the Firm on 1 March 2018 to the issuing of the Hamid notice, that Mr N Khan had supervised anyone in the Firm. This, it was submitted, was significant and demonstrated an additional weakness in the Applicant's case.

16.5 Mr Fazli submitted that it was clear from the evidence of the Investigation Officer that there was an assumption that Mr N Khan had not properly read the contract and that the Applicant had proceeded on the basis that the clause was contained within the contract at the time of signing. It was noted that the copy of the contract that had been uploaded contained gaps at the top of each page which allowed for additional clauses to be added to the contract post any signature.

16.6 It was not the Applicant's case that Mr N Khan worked full time, or that he was employed by the Firm. Further, there was no evidence that Mr N Khan was being remunerated for his supervisory responsibility.

16.7 As regards the meeting notes, they suggested that Mr N Khan was present at those meetings. This was not accepted. Accordingly, the notes of the meetings could not be relied upon and thus further undermined the Applicant's case.

16.8 Mr Mazumder, it was submitted, had a clear motive for suggesting that Mr N Khan was responsible for supervision and amending the contract to add the supervisory clause. Mr Mazumder faced serious allegations at the High Court. Mr Fazli submitted that there were serious credibility concerns about Mr Mazumder's account and that his oral evidence should be treated with the greatest of caution. Mr Mazumder had accepted that he did not tell the truth in his witness statement to the High Court in which he stated that Mr Mahfuz's claim was the first independent judicial review claim on which Mr S Khan worked and, significantly, the High Court made an adverse observation as to the accuracy of that particular account contained within the witness statement. In the transcript of the High Court hearing, Mr Mazumder accepted that he did not tell the truth in that respect. This suggested that Mr Mazumder was prepared to potentially lie or to be reckless as to the accuracy of his account in order to protect himself by means of a misguided attempt. Mr Fazli submitted that in all the circumstances, it was highly likely that Mr Mazumder included this supervision clause within the contract after it was signed by Mr N Khan in a misconceived attempt to protect himself. Amending the contract would give him the advantage of having another person to share the responsibility. Mr Fazli submitted that this was the context in which the Tribunal should consider allegation 4.1.

16.9 Further, and in any event, the supervision clause would be void and unenforceable on the basis that Mr N Khan could not agree to supervise the firm or those working in it when he was not able to do so. If he had been induced to agree to this clause by misrepresentation or concealment, then the contract was plainly void. If, which was denied, Mr N Khan simply did not know the rules, then this was an innocent error of judgement and could not reasonably give rise to the charge that he acted outside his competence.

16.10 Mr Fazli submitted that even if Mr N Khan had signed the contract without reading it fully, public trust in him and in the profession would not be undermined given that, as a matter of fact, he was unable to supervise. The signing of the contract itself was insufficient to undermine public trust. Additionally, the High Court treated the supervision clause as inconsequential.

16.11 In all the circumstances, it was submitted, the Applicant had failed to substantiate any breach of Principle 6. Accordingly, allegation 4.1 should be dismissed.

16.12 With regard to allegations 4.2 and 4.3, it was accepted that monies had been paid into Mr N Khan's personal account. Mr N Khan had provided his personal account details in order for Client A to repay a personal debt owed to Mr N Khan. However, Client A had paid both the amount owed to Mr N Khan as well as monies due to the Firm into Mr N Khan's personal account. The amount owed to the Firm was paid by Mr N Khan to the Firm. Further, there was no conflict of interests as Mr N Khan had no financial

interest in acting for Client A. The sum owed by Client A of £160 was minimal and was insufficient to give rise to an own client conflict.

16.13 There had been no breach of the Principles as alleged. Mr N Khan had acted in Client A's best interests. All monies had been returned to Client A, including the amount that he owed to Mr N Khan. It was not arguable that Client A's best interests were impacted due to the amount he owed Mr N Khan. Mr Khan rectified the error made by Client A immediately. Mr Fazli submitted that the amount involved together with Mr N Khan's conduct did not amount to a breach of Principle 6. Accordingly, allegations 4.2 and 4.3 should be dismissed.

The Applicant's Submissions

16.14 Mr Collis submitted that it was important to be clear as to the Applicant's case on allegation 4.1. The allegation was that Mr N Khan signed a contract which entailed supervisory responsibility when such responsibility was beyond his competence. Mr Fazli had made submissions as regards his non-performance of supervision, however that was not the allegation made.

16.15 Mr Fazli referred to a comment made by Mr S Khan earlier in the hearing suggesting that he was not supervised by Mr N Khan. That comment was not evidence as Mr S Khan had not yet given evidence in the proceedings. Additionally, in his documentary evidence Mr S Khan expressly stated that he had been supervised by Mr N Khan. In any event, whether or not he had actually undertaken supervision did not assist with determining the allegation when actual supervision had not been alleged. The Applicant's case rested on the signing of the contract that contained a supervision clause. This contract was produced at the Hamid hearing.

16.16 In his response to the investigation into his conduct dated 18 January 2022, Mr N Khan confirmed that he saw a copy of the contract being relied upon at the Hamid hearing in the bundle being sent to the High Court. Mr Collis submitted that the exchange with Mrs Justice Andrews during the hearing was clear. Whilst Mr N Khan denied that he was responsible for supervision in the office, at no point did he assert (as he now did) that the contract before the Court was not reflective of the contract that he had signed. When asked by Andrews J whether he raised *"any questions about that when you came to sign this contract? Did you say to Mr Mazumder, "Why is it you are saying that I am responsible for supervising your office when I am actually working?""*, Mr N Khan replied: *"I told him personally. I told him personally, because I am not supervising anybody. I told him several times."* Mr Collis noted that his response also suggested that there had been a discussion with Mr Mazumder about the supervision clause prior to the Hamid hearing but that there was no suggestion during that discussion that this was not the version of the contract signed by Mr N Khan.

16.17 Mr N Khan remained working at the Firm until late 2020. This, it was submitted, was a startling position if, as was now being asserted, he considered that Mr Mazumder had inserted a clause into his contract in order for Mr Mazumder to protect himself in court proceedings.

16.18 Mr Collis noted that during his interview in October 2020, Mr N Khan did not suggest that the version of the contract that was before the High Court and relied upon in these proceedings, was not the version of the contract that he signed.

16.19 It was submitted that in the response to the investigation into his conduct dated 18 January 2022, Mr N Khan had expressed two separate positions namely that (i) he signed the contract without reading it and (ii) if he had read the contract completely before signing it.

16.20 Mr Collis noted that it was only in this document that Mr N Khan, for the first time, questioned whether the supervision clause had been in the original contract: *"I asked for an explanation for not having given me a copy of the contract when I had signed it and whether the supervision clause truly existed in the original agreement."* It was noted that even here, Mr N Khan left open the possibility that the clause was in the original agreement and had been included as *"an innocent error"* on Mr Mazumder's part as Mr N Khan did not have the capacity to supervise.

16.21 Mr Collis submitted that the Applicant's evidence, taken at its highest, was sufficient such that the Tribunal could properly conclude that it was more likely that not that this was the version of the contract signed by Mr N Khan. The concept of a solicitor signing a contract either without reading it or without understanding it was capable of amounting to a breach of Principle 6. Accordingly, the application of no case to answer should be dismissed.

16.22 With regard to allegations 4.2 and 4.3, Mr Fazli sought to put forward his client's case before it had been given in evidence and tested in cross-examination. It was clear that (i) Mr N Khan had provided Client A with his personal account details and (ii) that he had requested a payment of £360. The documentary evidence showed that only £200 was paid to the Firm and that Mr N Khan retained £160. There was no documentary evidence from either Client A or the Firm that Mr N Khan was entitled to retain £160. On the contrary, when Client A sought a refund, he sought it in the full amount of £360, which suggested that none of the monies paid by him were to satisfy a personal debt.

16.23 The evidence relied upon by the Applicant was sufficient to establish that (i) Mr Khan had provided his personal account details to Client A and requested payment into that account, (ii) only £200 of the money received by Mr N Khan was paid to the Firm, and (iii) Client A considered that he was owed £360 by the Firm, not £200 as the remainder was in settlement of a personal debt. The amount, it was submitted, was irrelevant to whether or not the conduct amounted to a breach of the principles.

16.24 Mr Collis submitted that taking the Applicant's case at its highest, the Tribunal could properly find that the conduct alleged amounted to a breach of the Principles as alleged. Accordingly, the submission of no case to answer should be dismissed.

The Tribunal's Decision

16.25 The test to be applied was that formulated in R v Galbraith [1981] 1WLR 1039:

> *"If there is no evidence that the crime alleged has been committed by the Defendant there is no difficulty, the Judge will stop the case. The difficulty*

> *arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness, because it is inconsistent with other evidence. Where the Judge concludes that the Prosecution case, taken at its highest, is such that a Jury properly directed could not properly convict on it, it is his duty on a submission being made to stop the case. Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witnesses reliability or other matters which are generally speaking within the province of the Jury and where on one possible view of the facts there is evidence on which the Jury could properly come to a conclusion the Defendant is guilty the judge should allow the matter to be tried by the Jury."*

16.26 With regard to allegation 4.1, the Tribunal found that there was clear evidence that Mr N Khan had signed the contract. The Tribunal agreed that whether or not Mr N Khan had actually supervised staff was irrelevant as the fact of supervision did not form part of the allegation. The issue to be determined was whether Mr N Khan had signed a contract that included a clause which fell outside of his competence. It was not in dispute that Mr N Khan was not sufficiently qualified to act as a supervisor. Nor was it disputed that Mr N Khan had signed the contract. Taking the Applicant's case at its highest, the supervisory clause was contained in the contract that was signed by Mr N Khan. As to whether the supervisory clause was actually contained within the contract was a matter of fact for the Tribunal to determine depending on the view it took of the evidence of Mr Mazumder and Mr N Khan.

16.27 The Tribunal found that taking the prosecution case at its highest, there was evidence upon which a properly directed Tribunal could find that Mr N Khan was culpable of the misconduct alleged. Accordingly, the submission of no case to answer as regards allegation 4.1 failed.

16.28 With regard to allegations 4.2 and 4.3 it was accepted that monies had been paid by Client A into Mr N Khan's account, Mr N Khan having provided Client A with his personal account details. It was also clear that Mr N Khan had retained some of the monies paid into his personal account. There was no evidence of any arrangement with Client A or the Firm that would allow for Mr N Khan to retain any of the monies paid. It was plain, the Tribunal determined, that taking the Applicant's case at its highest, a properly directed Tribunal could find that Mr N Khan was culpable of the misconduct alleged. Accordingly, the submission of no case to answer as regards allegations 4.2 and 4.3 failed.

17. <u>The Tribunal's query re the sufficiency of the evidence on behalf of Mr S Khan</u>

17.1 At the conclusion of the Applicant's case, Mr Ghosh, in pursuance of the Tribunal's obligation to assist a litigant in person particularly in circumstances where that litigant in person was assisted by an interpreter, questioned the sufficiency of the evidence upon which the Applicant relied. Mr S Khan, it was understood, had denied that he signed the statement upon which the Applicant relied and had referred to his signature therein being forged. The Applicant had failed to instruct any expert opinion to assist in that regard. The Tribunal was unable to compare the signature on the documents and to form its own opinion. It was for the Applicant to prove that the signature on the document

was that of Mr S Khan, and thus, given his denial, it was for the Applicant to provide the expert opinion in that regard.

17.2 Mr Collis submitted that given the concerns as regards the sufficiency of the evidence, it was appropriate for those concerns to be addressed as if a submission of no case to answer had been made. It was not necessary for Mr S Khan to make the submission in all of the circumstances, and having regard to the fact that he was assisted by an interpreter for the proceedings.

17.3 Mr Collis submitted that there were two separate documents in which Mr S Khan accepted that he had signed the 14 May 2019 statement:

- In an email to the Applicant dated 14 March 2022, when asked whether the signature on the statement was his, Mr S Khan replied: "The signature on the last page of the statement is my own. It is forcing me to do it. I don't know what he wrote on it. I was forced to sign and I did sign".

- In a letter to the Applicant dated 9 August 2022, Mr S Khan stated (in relation to the 14 May 2019 witness statement): "he took an upper hand on me to take signature which I believe on the statement he produced in my name" and that due to his vulnerable position Mr Mazumder "made me sign anywhere he wished".

17.4 In his Answer, Mr S Khan referred to the signature on the statement being forged however, that seemingly related to the self-employment contract and not the witness statement as Mr S Khan stated:

> *"Allegation 5.1 signing of 14 May 2019 witness statement is denied. I do not recognise the signature on the documents presented as mine. I believe that he forged my signature to create this self-employment agreement contract".*

17.5 In its Reply to the answer, the Applicant sought clarification from Mr S Khan as to whether he denied signing the witness statement or the self-employment contract, noting that if it related to the witness statement, this contradicted the accounts he had given to the Applicant on 14 March and 9 August 2022. No direct response or clarification was received from Mr S Khan on this point.

17.6 In his witness statement, Mr S Khan explained:

> *"I have explained that in relation to allegation 5.1, that although the signature appears to be similar to mine, it is in fact someone forging my signature as I have never signed this document. I have asked that you put the letter dated 17/10/2018 and the purported self-employment contract dated 20/01/2018 side to side as you would see the signature is not identical."*

17.7 Mr Collis submitted that it remained unclear as to whether the denial of the veracity of the signature related to the witness statement as well as the contract, as in both his Answer and his witness statement, in response to the allegation regarding the witness statement, Mr S Khan had made express and specific reference to the employment contract only.

17.8 Mr Collis submitted that in circumstances where Mr S Khan had accepted on two separate occasions that he had signed the witness statement dated 14 May 2019, the Applicant had adduced sufficient evidence upon which the Tribunal could find the matters proved.

The Tribunal's Decision

17.9 The Tribunal noted that there was no clear denial by Mr S Khan that he signed the witness statement; his denial seemed to relate to the self-employment contract. On the contrary, there were two express assertions by Mr S Khan that he had, in fact, signed the witness statement, having been forced to do so by Mr Mazumder.

17.10 It was plain, the Tribunal determined, that taking the Applicant's case at its highest, a properly directed Tribunal could find that Mr S Khan was culpable of the misconduct alleged. Accordingly, there was sufficient evidence for the allegations against Mr S Khan to proceed.

18. Applicant's application to make closing submissions

18.1 Mr Collis submitted that given the significant factual dispute between the Respondents, and the large amount of oral evidence, the Tribunal might be assisted in hearing closing submissions from the Applicant.

18.2 Mr Abebrese submitted that whilst it was unusual for the Applicant to make closing submissions, there had been a significant amount of evidence and lengthy break in the proceedings. Mr Abebrese considered that it would be in everyone's interests to allow the Applicant to make closing submissions. The Applicant should make those submissions before the Respondents made their closing submissions.

18.3 Mr Fazli agreed with the Applicant and Mr Abebrese, considering that closing submissions from the Applicant would be helpful.

18.4 Mr S Khan did not object to the application.

18.5 The Tribunal determined that for the reasons submitted by the parties, it would be assisted in hearing from the Applicant in closing. Accordingly, the application was granted.

19. Application to amend the Rule 12 Statement following submissions on illegality of the employment contract

The Second Respondent's Submissions

19.1 Mr N Khan was not entitled to sign a contract containing the supervision clauses as he was not sufficiently qualified to supervise, therefore the contract could not be valid. Mr Fazli submitted that even if the Tribunal found that Mr N Khan had signed the contract containing the supervision clauses, the contract could not be binding as it was void/voidable/unenforceable for illegality; as a matter of law, Mr N Khan was unable to supervise and therefore the contract could not be valid. Further, if Mr N Khan had

not read the contract, there could be no consideration and accordingly there was no binding contract.

19.2 The Tribunal was referred to Parkingeye Ltd v Somerfield Stores Ltd [2012] EWCA Civ 1338. Parkingeye had agreed to provide parking control for Somerfield. Payment was to come from the parking charges levied. The contract was terminated early. The defence raised was illegality. At paragraph 30 it stated:

> *"Mr Fealy invokes the principle stated in its generality here. He says the guilty party, ParkingEye, had the intention from the outset to perform the contract unlawfully. He reinforced his submissions by reference to what Waller LJ said in Colen v Cebrian [2003] EWCA Civ 1676, [2004] ICR 568 at [23]:*
>
> *... an analysis needs to be done as to what the party's intentions were from time to time. If the contract was unlawful at its formation or if there was an intention to perform the contract unlawfully as at the date of the contract, then the contract will be unenforceable."*

19.3 Mr Mazumder, it was submitted, knew that Mr N Khan could not perform the supervision clauses contained within the contract. Accordingly, the contract was unlawful. It was immaterial whether this existed at the time the contract was signed, or if the clause was later inserted by Mr Mazumder. As Mr N Khan could not legally carry out the supervision clauses, they were void or illegal.

19.4 In Patel v Mirza [2016] UKSC 42, the court held:

> *"Not every case, however, has received such strict treatment. In Mohamed v Alaga & Co [2000] 1 WLR 1815 the Court of Appeal took a more flexible approach. The plaintiff, a Somali translator and interpreter, sued the defendant solicitors for breach of a contract by which he was to introduce Somali refugees to the firm, and assist in the preparation and presentation of their asylum claims, in consideration for a half share of the legal aid fees received by the firm. Alternatively, he claimed payment for his professional services as a translator and interpreter on a quantum meruit. His claim was struck out on the ground that the alleged fee sharing contract contravened rules which had statutory force under the Solicitors Act 1974 and that he was therefore precluded by the doctrine of illegality from claiming payment for services provided under the contract. The Court of Appeal restored the claim for payment on a quantum meruit."*

19.5 Mr Fazli submitted that this was reflective of the position of Mr N Khan. As Mr N Khan was not permitted to supervise, that part of the contract was illegal and unenforceable.

The Applicant's Submissions

19.6 Mr Collis submitted that there was nothing within Parkingeye which supported the contention that the offending supervisory clause rendered the entirety of the document void as a contract. To advance that argument to its logical conclusion and that proposition was correct and Mr Mazumder withheld payment for work undertaken, Mr N Khan would not have been able to bring a claim for breach of contract due to the

entirety of the contract being void. The Applicant's principal contention was that this was not the correct approach to contract law. If that was correct, then the offending clause could not render the entire document void. It was accepted that the supervisory clause was not enforceable. However, the simple fact of an unenforceable clause does not render an entire contract void for illegality. The principle of the centrality of illegality applied in this matter. The supervisory responsibility was only one part of what the contractual obligations. There was nothing in Parkingeye to support the contention that the entire contract was void.

19.7 The secondary position of the Applicant was that if the Tribunal considered that Mr Fazli's argument was well founded, then the Applicant would apply to amend the wording of allegation 4.1. The use of the wording "employment contract" in the allegation was to denote the document to which the Applicant referred.

19.8 Mr Collis submitted that the way in which allegation 4.1 was worded required a contract to be in existence. The issue now raised by Mr Fazli was that if the clause was void for illegality, then it could not be treated as a part of the contract. It was deeply regrettable that the first time this argument was being explored was in closing submissions. It had not been a feature of the case advanced on behalf of Mr N Khan until now. It was not deployed in the same terms in the submission of no case to answer. Had it been deployed earlier, the Applicant could have researched the appropriate law. The Applicant has not yet had the opportunity to consider the caselaw now relied upon. Had it been raised previously, the Applicant could have considered whether it was necessary to apply to amend the Rule 12 Statement. The Applicant, in its drafting of allegation 4.1, sought to address the mischief of Mr N Khan signing a document that contained supervisory clauses that he was not authorised or competent to perform. The classification of the document was the lesser issue.

19.9 Mr Fazli confirmed that it was not being argued that the entire contract was void/voidable/unenforceable for illegality, but that the specific clause was illegal.

19.10 Mr Collis submitted that in all of the circumstances, the Applicant considered that it was appropriate to apply to amend allegation 4.1 to include the words "or purported to entail" after the word "entailed". It was the Applicant's case that the allegation could properly be found proved without amendment. It was not accepted that the use of the word "entailed" within this context necessarily required the supervisory responsibilities to be legally or contractually enforceable. The simple fact of an unenforceable clause did not mean that the document did not entail those duties. The Applicant considered that the most appropriate way to address the issues was to amend the Rule 12 Statement. It was acknowledged that this was a late stage in the proceedings for such an application to be made, however this point, as it had evolved had been raised incredibly late. Whilst the matter might have been circled around previously, it had not been advanced in this way.

19.11 Mr Collis submitted that there was no prejudice to Mr N Khan if the application were to be granted as it did not, in any way, change the nature of the case that Mr N Khan was being asked to meet. The mischief that allegation 4.1 sought to address was Mr N Khan's signing of a document that contained supervisory responsibilities that he was not competent to perform. It was the Applicant's case that no solicitor should sign a document that contained clauses that could not be performed by him, whether or not

that clause was enforceable. The Applicant was not seeking to change the allegation Mr N Khan was required to answer. The amendment was to ensure that the wording of allegation 4.1 fully encapsulated the mischief alleged.

19.12 In reply, Mr Fazli submitted that he understood the issues arising as regards the application to amend were the result of his late clarification of the point. Mr Fazli did not consider that the amendment would make much difference as the words "employment contract" remained. Mr Fazli submitted that even if the contract was signed, the fact that the contract was not valid for reasons of illegality, the points being made were inconsequential.

19.13 Given those submissions, Mr Collis applied for a further amendment to include the additional words "or a purported employment contract" after the words "employment contract". Mr Fazli's position, in his reply, had moved from the clause being illegal to the entire contract being void for illegality. Whilst the Applicant's position remained the same, it was appropriate to insert this additional amendment for all of the reasons previously submitted.

19.14 Mr Abebrese confirmed that Mr Mazumder's position had not changed in light of the discussions. Mr S Khan made no submissions on that point.

The Tribunal's Decision

19.15 The Tribunal noted the timing of the applications. The Tribunal was troubled by the extreme lateness of the submissions giving rise to the applications. To raise new points of law in closing submissions was wholly unsatisfactory and did not comply with the overriding objective for cases to be dealt with efficiently and expeditiously.

19.16 The Tribunal made no criticism of the Applicant in the lateness of the applications in all the circumstances; it was the extraordinary lateness of the submissions that gave rise to the need for the applications to amend. The Tribunal did not find that there would be any prejudice to Mr N Khan in granting the applications. The amendments did not change the substance of the allegations, nor did they change what had been said by Mr N Khan in his defence. Further, the Tribunal noted that there was no objection to the amendments raised by Mr Fazli. The Tribunal determined that in the circumstances, it was just to grant the application. Allegation 4.1 detailed above thus includes the amended wording.

20. The First and Second Respondents' applications to adduce their statements of means out of time

20.1 The Standard Directions required the Respondents to adduce any statement of means by 7 August 2023. Mr S Khan filed and served his statement of means on 8 May 2023. Mr Mazumder filed and served his statement of means on 31 January 2024. Mr N Khan filed and served his statement of means on 30 January 2024.

20.2 Mr Collis submitted that it would be disproportionate to disallow those late submissions. The Tribunal agreed with that summation. Accordingly, the Tribunal determined that it was just and fair to allow the late submission of the statements of means of both Mr Mazumder and Mr N Khan.

21. Issues as between the Respondents

21.1 The Tribunal noted, and heard, a significant amount of evidence from each of the Respondents regarding issues in dispute between them. Those matters are not detailed in the Judgment as they were not issues that the Tribunal needed to determine in order to consider the allegations each of the Respondents faced. The lack of particularisation of those matters in this Judgment should not be taken to mean that those matters were not noted or considered by the Tribunal. Where the Tribunal was required to determine those issues in order to make a determination on the allegations, the Tribunal's findings are detailed within its reasoning.

Factual Background

22. The Firm was registered with the SRA in January 2018. The Firm closed on 16 April 2021. The owner and sole manager for the Firm was Mr Mazumder. The Firm's Head Office was registered as an address in Southampton, which was Mr Mazumder's home address. The practice primarily operated from Whitechapel Road, London.

23. The First Respondent

23.1 Mr Mazumder was admitted to the Roll in July 2012. In addition to being the owner and sole manager of the Firm, he was also registered as the Firm's Compliance Office for Legal Practice ("COLP") and the Firm's Compliance Officer for Finance & Administration ("COFA") during the whole period the Firm was open.

23.2 Mr Mazumder held a current unconditional Practising Certificate. Information registered with the SRA as at 1 November 2020, suggested that Mr Mazumder was also a Freelance Solicitor since 1 November 2020 and was currently working as a Consultant for DC Legal Services Ltd, (which traded as Simon Noble Solicitors).

24. The Second Respondent

24.1 Mr N Khan was admitted to the Roll in January 2018. He worked at the Firm as a self-employed consultant solicitor from 1 March 2018 until 30 November 2020. Mr N Khan held an unconditional Practising Certificate.

25. The Third Respondent

25.1 Mr S Khan was employed as a paralegal at the Firm from 20 January 2018 to 22 May 2019. He was paid on a commission basis for each client he referred to the Firm. Mr S Khan was not admitted to the Roll.

Witnesses

26. The following witnesses provided statements and gave oral evidence:

- Sarah Taylor – Forensic Investigation Officer in the employ of the Applicant.

- Mohamed Mazumder – the First Respondent

- Hamida Mazumder – witness on behalf of the First Respondent

- Yousuf Hussain - witness on behalf of the First Respondent

- Naser Khan – the Second Respondent

- Salauddin Khan – the Third Respondent

27. The written and oral evidence of the witnesses 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 facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

28. The Applicant was required to prove the allegations 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 Respondents 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.

Dishonesty

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

> *"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 knowledge or 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."*

30. When considering dishonesty, the Tribunal firstly 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. It then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

Integrity

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

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

Recklessness

32. The test applied by the Tribunal was that 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."*

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

Matters of fact relied upon by the SRA in support of the allegations

34. The SRA first received a complaint in relation to Mr Mazumder and Mr N Khan from the High Court following a Hamid hearing that took place on 30 July 2019. Both Mr Mazumder and Mr N Khan attended the Hamid hearing. This hearing took place as a result of the Firm filing a judicial review claim on 28 January 2019. The claim was certified as being totally without merit by Andrews J on 12 April 2019.

35. The High Court's criticisms, at the Hamid hearing, related to:

- The failure on the part of Mr Mazumder to control the issuing of judicial review claims from within his Firm; and
- Mr N Khan's involvement in a judicial review claim which "…had no prospect of success and was entirely misconceived" and the fact that Mr N Khan knew this.

36. As a result of the referral from the High Court, a Forensic Investigation Officer ("FIO") for the SRA conducted an investigation into the Firm and the three Respondents. This investigation culminated with the production of a Forensic Investigation Report ("FIR") on 13 November 2020.

Background to Hamid hearing

37. The Mahfuz Claim Form asserted that the decision to be judicially reviewed was: "The decision of Upper Tribunal Judge Kebede dated 06 September 2018 to refuse the Claimant's permission to appeal", although immediately after this assertion it was claimed that the date of the decision was "07 November 2018".

38. Mr Mahfuz's solicitors were recorded as the Firm, with Mr Mazumder's e-mail address provided as the contact email address. The Applicant was aware that there was a dispute between Mr Mazumder and Mr S Khan about the use of email addresses. There were

other generic email addresses that had been used on other judicial review claim forms. Mr Collis submitted that there were at least three separate email addresses used by the Firm at the material time. Mr Mazumder's name also appeared on page four of this Claim Form. It also appeared that Mr Mazumder had signed the form in two places.

39. The Claim Form was filed with a document headed "Grounds for Judicial Review" as an attachment. Andrews J rejected this claim and certified it as totally without merit on 12 April 2019. Andrews J's decision commenced with the highly critical comment:

> *"There is so much wrong with this claim that it is difficult to know where to begin."*

40. Andrews J then attempted to itemise the extent of the errors contained within the Claim Form and the accompanying document:

- The application was submitted out of time, yet no application had been made for an extension of time;

- The Grounds for Judicial Review document made no reference to a decision by Upper Tribunal Judge Kebede, despite it being asserted in the Claim Form that this was the decision against which the claim was being brought;

- The Upper Tribunal has no record of that particular judge having made any decision in a case relating to Mr Mahfuz;

- When asked by the court to provide a copy of the judge's decision which was being challenged, the Firm stated they did not have one;

- The Grounds for Judicial Review document did not name the Upper Tribunal as a Defendant;

- In 2017, Mr Mahfuz did bring an unsuccessful appeal before the First-Tier Tribunal ("FTT") in relation to the refusal of his claim for asylum. Permission to appeal to the Upper Tribunal was refused by both the FTT and the Upper Tribunal. A claim for judicial review against that refusal was refused on 30 November 2017. On 25 July 2018, now being represented by the Firm, Mr Mahfuz made further submissions to the Secretary of State for the Home Department ("SSHD"). The SSHD responded on 13 September 2018, confirming that Mr Mahfuz did not qualify for leave on any basis. On 23 October 2018, the Firm sent a pre-action protocol letter to the SSHD, seeking to challenge the 13 September 2018 decision. The SSHD replied to this on 7 November 2018, and the date of this letter may explain the reference to 7 November 2018 within the Claim Form;

- No claim for judicial review of the SSHD's decision of 13 September 2018 and/or the decision of 7 November 2018 to uphold the 13 September 2018 decision had been issued, and such a claim should not be issued in the High Court in any event;

- An unissued judicial review claim form in the Administrative Court, bearing Mr Mahfuz's name and naming the SSHD as Defendant, had been sent to Andrews J with the papers on this case. This unissued judicial review claim form sought

"mandamus, prohibition and damages" in relation to the 13 September 2018 decision, but not a quashing order. This document was also signed by Mr Mahfuz's solicitor on 25 January 2019;

- The contents of the Grounds for Judicial Review document make claims that can only relate to a decision by the SSHD and not, as the Claim Form asserts, a decision by the Upper Tribunal;

- The documents fail to identify any basis upon which it could properly argued that the 13 September 2018 decision is open to challenge by way of judicial review;

- The Grounds for Judicial Review document falsely claimed that Mr Mahfuz was being detained within immigration detention which, if this claim had been correct, would place the case within the limited exceptions where the Administrative Court could consider a judicial review of the SSHD's decision;

- The Government Legal Department ("GLD"), on behalf of the SSHD, had e-mailed on 5 April 2019 to confirm that Mr Mahfuz was not detained and had never been detained by the Home Office under immigration powers, and yet despite being copied into this e-mail, Mr Mahfuz's solicitor took no steps to withdraw that aspect of their claim or to clarify the assertions made in the Grounds; and

- The Grounds finished with a plea for the judge to grant permission to appeal to the Upper Tribunal, whereas a successful challenge to the SSHD's decision of 13 September 2018 would have simply led to another hearing of Mr Mahfuz's asylum/human rights claim before the FTT.

41. Andrews J concluded with providing a direction that Mr Mazumder be contacted and asked to show cause as to why he should not be brought to court to explain the *"shambolic conduct of these proceedings"*, pursuant to the court's jurisdiction identified in R (Hamid) v Secretary of State for the Home Department [2012] EWHC 3070 (Admin). Andrews J also identified ten specific questions which should be put to Mr Mazumder. It was also made clear that Mr Mazumder should provide an explanation as to why he should not be reported to the SRA.

42. On 2 May 2019, the Administrative Court Office wrote to Mr Mazumder, attaching a copy of Andrews J's 12 April 2019 decision. Mr Mazumder was asked to respond to the ten specific questions posed by Andrews J in relation to the handling of the Mahfuz judicial review claim, as well as provide an explanation as to why he should not be reported to the SRA. Mr Mazumder was asked to reply within 14 days of the date of the letter.

43. Mr Mazumder replied on 16 May 2019. Attached to the reply was both a 16 May 2019 statement from Mr Mazumder and a 14 May 2019 statement from Mr S Khan. Both statements concluded with a signed statement of truth from Mr Mazumder and Mr S Khan.

16 May 2019 statement from Mr Mazumder

44. Mr Mazumder's statement was signed with a statement of truth. It made the following claims:

- That he supervised the Firm's quality controls, compliance issues, and oversaw the work of the paralegals, case workers and other members of staff;
- That he was very sorry and apologised for the errors made by Mr S Khan in wrongly submitting a claim for judicial review to the Administrative Court without his (Mr Mazumder's) permission;
- As a result of this incident, he had put in place "additional quality control and check procedures" to try and ensure that "such sub-standard practice" never occurred again;
- That Mr Mahfuz was known to the Firm's paralegal, Mr S Khan, and that Mr S Khan had received instructions from Mr Mahfuz to deal with his immigration matter in January 2018;
- "We rarely deal with Judicial review cases";
- That the judicial review applications that the Firm had dealt with, "have been advised upon and drafted by the counsels whom we instruct prior to submissions";
- At the material time that Mr S Khan submitted Mr Mahfuz's claim, he was "away from the office and was seeking medical treatment" for health matters and he, "may have been at the doctors / hospital at the time";
- "Unfortunately, due to my such [sic] temporary absence from the office I did not have a chance to properly review the documents and the JR was sent by Mr [S] Khan without my knowledge to the Admin Court. As was explained by Mr [S] Khan in his witness statement this had happened due to the time pressure to file documents";
- "Additionally, at Heans Solicitors we have another qualified solicitor who is able to review the bundles prior to the submission to the court, but the paralegal Mr [S] Khan, due to time constraints, as mentioned above, submitted the bundle wrongly without showing it to the that [sic] solicitor either, which is very regretful";
- That the judicial review claim had been drafted and submitted without his permission;
- That he had been told that due to "the timing issue", Mr S Khan had taken it upon himself to deal with it;
- "Mr [S] Khan had done number [sic] of applications to the Home Office but this is his first independently worked JR application. It also seems that Mr [S] Khan used

the pre-signed form that that [sic] had my signature on, which had to be used only after I checked the completion bundle that was destined to [sic] the court";

- A breakdown of Mr Mazumder and Mr S Khan's qualifications were provided;

- That the Firm "only deals with very few Judicial Review cases";

- That "As of now, all judicial review instructions cannot go ahead without my review and approval of all documents and/or without counsel's advice in some cases as may be necessary";

- That he will ensure "that we will not take client instructions to proceed with the case to the Admin Court if the case is not arguable and has no genuine merits";

- That he will "personally see all of the refusal letters from the Home Office, First-tier Tribunal, Upper Tribunal and judicial review applications";

- "Further actions on application refusals and decisions must be approved by me or my firm's other qualified solicitor prior to being progressed further";

- That the Firm had implemented monthly random file audits and quality checks to review the file compliance and quality of work of the paralegals and caseworkers;

- That communication between the qualified solicitors and the rest of the staff had greatly increased, with more reporting and case analysis being carried out prior to submission of the files to court;

- Mr S Khan had been suspended for "at least 6 months until he receives a proper training" and he would be "attending training courses, CPDs, purchasing relevant books and given access to articles relating to the case"; and

- Mr S Khan would "benefit from immigration membership to various useful sites that run immigration and legal articles. Only after this training process is complied [sic] then we will review the situation on whether or not to allow him to work in this firm again".

<u>14 May 2019 statement from Mr S Khan</u>

45. Mr S Khan's statement was signed with a statement of truth and made the following claims:

- That he was the person *"who had filed the Judicial Review application at the Administrative Court and the errors containing [sic] in the submitted application are entirely my fault and I fully accept my shortcomings"*;

- *"I apologise to the learned judge unreservedly and promise that such mistakes will never happen again"*;

- That Mr Mahfuz was known to him and had approached him for assistance with his immigration case in January 2018. Mr S Khan submitted his further submissions to the Home Office, but these were not accepted as a fresh claim. Due to Mr Mahfuz's immigration history, the Mr S Khan believed that the next step would be to apply to the Administrative Court for judicial review. Mr S Khan prepared the case himself and submitted the documents accordingly;

- *"At the time of the document submission to the Admin Court, my principal solicitor Mr Mohammed Mazumder, was seriously ill.... ....and as a result [sic] not being at work regularly in to [sic] the office for about a month and and [sic] a half. There is another solicitor, Mr Naser Khan, present in the office who was working regularly from the office, but I did not realise that I had to ask him for advice prior to submission of JR to the Admin Court. This is my genuine mistake and it is first time I submitted the case without supervision of firm's solicitor"*;

- Initially he submitted a judicial review claim form making the Upper Tribunal the First Defendant and the SSHD the Second Defendant in error;

- On 8 April 2019, he submitted an amended pages one and two of the judicial review claim form, which made the SSHD the First Defendant and removed the reference to the Upper Tribunal and the particular judge named in the original claim form;

- These amended pages did specify that the decision that was being challenged by way of judicial review was the decision by SSHD on 13 September 2018;

- That he had confused the SSHD's refusal date and the refusal date from the Government Legal Department ("GLD"), and that he believed the three-month time limit ran from the date of the GLD's refusal . As a result, he did not provide an explanation for any delay in the claim form;

- *"I regret that I did not ask my principal solicitor on this point prior to the preparation and submission of the JR application and supporting documents to the court"*;

- That he had used the Firm's e-mail account "through the admin staff" without the knowledge of Mr Mazumder to provide updated documents to the court;

- That following review of *"...my JR work and learned judge's letter, I have been suspended from work at this firm. This is for six months to enable me to get proper training and the firm will then review my position"*;

- *"I owe the learned judge Mrs Justice Andrews and the court an unreserved apology. My initial misunderstanding of the process, which was followed by real training from my principle [sic] solicitor and judge's comments on the decision letter clearly shows that I have been in the wrong"*; and

- *"To clarify my position on these mistakes, at the time of submission my principal solicitor at Heans Solicitors was away ill, and due to time constraints I had to send the JR without my supervisor making final checks at [sic] the submitted papers"*.

<u>23 May 2019 letter from Administrative Court Office</u>

46. Following receipt of the 16 May 2019 letter and the accompanying witness statements, the Administrative Court Office wrote back to Mr Mazumder on 23 May 2019. The letter commenced by summarising the position advanced by the Mr Mazumder and Mr S Khan in their respective witness statements, before making the following assertion:

> *"In light of your evidence, Mrs Justice Andrews directed that copies be provided to her of papers relating to all previous and existing applications for judicial review that have been brought by your firm in the Administrative Court and in the Upper Tribunal.*
>
> *It appears that since your firm started in practice in January 2018, ten claims for judicial review have been brought in immigration matters, five in the Upper Tribunal and five in the Administrative Court (including CO/448/2019). That claim appears to have been the only claim brought in the wrong forum, but consideration of the other claims, far from allaying the Judge's concerns, has only served to reinforce them".*

47. The letter then proceeded to identify a further nine judicial review claims brought by the Firm, in addition to the Mahfuz case, and provided a summary of the criticisms identified in relation to them relating to a number of significant failures or errors contained within the claims. It was also noted that errors in one claim duplicated the errors made in another claim. It was also noted that the grounds for review in one matter were strikingly similar to those in another: The letter remarked:

> *"There is a striking similarity between the contents of the "Grounds for Judicial Review" in Alauddin and those in Mahfuz. A direct comparison between the two documents indicates that the contents of the Grounds in Alauddin have been copied virtually word for word in Mahfuz (including the typing errors) with only a few changes in the dates and details. They appear to be the source of the offending passage relating to alleged detention that appears in Mahfuz and is replicated without any attempt at correction in CO/1009/2019, Khan (No.2). It appears highly likely that the Grounds in Alauddin were the source on which the Grounds in Mahfuz and the second Khan case were based, without any thought being given as to whether it was appropriate to make these submissions".*

48. In relation to five judicial review claims brought in the Upper Tribunal, the letter identified three claims which were brought by the Firm in the Upper Tribunal, which were withdrawn. A further claim for judicial review was *"…refused permission on the basis that the proceedings served no further purpose"*.

49. The final judicial review claim referred to in the letter was that of <u>Kawsar Ahmed v SSHD</u>. The claim form and Grounds for this matter appeared to have been filed on 4 September 2018. The name provided for the Applicant's solicitor was that of Mr N Khan. It was also of note that the e-mail address provided on this claim form was a generic e-mail address for the Firm (info@heanssolicitors.co.uk), as

opposed to Mr Mazumder's e-mail address that was used on the Mahfuz claim form and the Alauddin claim form.

50. HHJ Eady QC refused permission in the Ahmed case on the papers on 30 November 2018 on the basis that "…the Secretary of State had merely refused to entertain 'fresh claim' submissions under paragraph 353 of the Immigration Rules and not, as claimed, certified the Applicant's claim as "clearly unfounded" under s.96(1) of the Nationality Immigration and Asylum Act 2002". It followed that the claim for judicial review was being brought against a decision that had not in fact been made.

51. The letter provided the following critical comment in relation to this claim:

> *"This was a fundamental error which is somewhat difficult to comprehend. The Applicant ended up worse off because he was ordered to pay the Secretary of State's costs in the sum of £445".*

52. The letter then made the following request of Mr Mazumder:

> *"In the light of all your written responses and all the above information Mrs Justice Andrews has directed that you, and any other solicitor responsible for the conduct of these cases, should attend a hearing before a Divisional Court to further address the conduct of the proceedings in CO/448/2019 and issues arising from your responses in your letter of 16 May 2019 and the two accompanying witness statements, but also to address the concerns arising from your firm's conduct of CO/3991/2018 (Khan No 1) CO/4035/2018 (Alauddin), JR/5928/2018 (Kawsar Ahmed) and CO/1009/2019 (Khan No 2)".*

53. The letter from the Administrative Court Office then set out fourteen specific matters upon which it required Mr Mazumder to comment. Mr Collis submitted that the most pertinent of those for the allegations before the Tribunal were as follows:

- *"Why you appear to have considered it to be an appropriate practice for you to pre-sign a proforma claim for Judicial Review, thereby enabling anyone with access to it, including on your account of events an unsupervised paralegal, to issue proceedings, apparently authorised by you and with a statement of truth bearing your signature, without your knowledge or permission?";*

- *"If you still maintain that all JR applications that you have dealt with prior to CO/448/2019 (Mahmuz) have been advised upon and drafted by counsel instructed by you prior to submission, please identify by name each of the counsel you instructed to advise and draft grounds for judicial review in CO/3991/2018, CO/4035/2018, and JR/5928/2018, the date on which he or she was instructed by your firm in respect of the claims for judicial review and precisely what work was done by counsel. A copy of counsel's fee notes evidencing such instructions and the work done should also be provided where possible and it this is not possible, an explanation for this must be provided.";*

- *"In any event you must identify the name of the person (whether or not it was counsel or a solicitor) who drafted the Grounds of Judicial Review in CO/4035/2018 (Alauddin) and state whether you approved their contents before*

the claim was issued. If you did, on what evidential basis were you satisfied that it could properly be asserted that the Secretary of State had (a) acted in bad faith and (b) disregarded the claimant's human rights?";

- *"How did it come about that none of the counsel you say in paragraph 4 of your witness statement you have always instructed in Judicial review proceedings put their name on the Grounds for Judicial Review which you allege they drafted?";*

- *"If on reflection you consider that what you said in your witness statement about instructing counsel in all earlier JR applications is inaccurate, you should provide an explanation for how you came to make such an inaccurate statement in a witness statement which was intended to provide reasons why the court should not report you to the SRA, and to which you appended a signed statement of truth";*

- *"How was it that a paralegal was able to us the firm's email account through the administrative staff to communicate with the court without your knowledge, as he alleges that he did in the case of Mahfuz? How many administrative staff do you employ and what are their roles?"; and*

- *"Please supply a list of all the dates on which you were absent from the office for medical reasons in 2018 and 2019".*

54. Attached to the 23 May 2019 letter was an Order from Andrews J, requiring both attendance at court and also the need to file any further written submissions or evidence within 28 days from the date of service of the Order.

<u>Post-23 May 2019 letter events</u>

55. On 31 May 2019, the Administrative Court Office e-mailed Mr Mazumder requesting availability in July 2019 "as a matter of urgency" for a Hamid hearing to take place. On 5 June 2019, it appeared that the court had to send a chasing e-mail to Mr Mazumder.

56. On 6 June 2019, the court sent notification to Mr Mazumder that the Hamid hearing had been fixed for 30 July 2019.

57. On 11 June 2019, the Firm were sent a letter in relation to CO/1009/2019 (Khan No 2), which referred to a directions hearing scheduled to take place on 30 July 2019.

58. On 18 June 2019, Mr Mazumder contacted the Administrative Court Office by both letter and e-mail. The letter appeared to be a direct response to the court's communication in CO/1009/2019 (Khan No 2), but referred to the claim numbers for both Khan No 1 and Khan No 2. The letter made the following claims:

> *"We have never advised, acted on behalf of or being [sic] instructed by the Applicant Mr Salauddin Khan in regards to the above stated immigration matter. Our firm generates a unique file reference number for each client upon receiving client's instructions to deal with a matter. Our records show that there*

are [sic] no file references exist nor instructions to act for Mr Khan was ever received by our firm"

"…It is evident that Md Salauddin Khan in CO/1009/2019 (Khan No 2) used our office address, which is 108A Whitechapel Road, London E1 1JE as his own home address. We were not aware of it and would not have approved it in any circumstances.

Mr Khan was working at our firm as part time self-employed caseworker (paralegal) and was volunteering up until April 2019, which included recording of firm's daily incoming and outgoing post. It appears that by having access to the firm's post Mr Khan was removing the letters that were relating to his own matters without showing us. As such we were not [sic] did not see any letters, including the letters from the Admin Court dated 15 April 2019 (re Mahfuz case), that were addressed to the firm but contained information relating to Mr Khan.

We only came to know about the above matter when the Admin court officer emailed to me a letter dated 2 May 2019 to my email address (mm@heanssolicitors.co.uk) which unfolded everything.

Mr Salauddin Khan has been initially suspended and later dismissed from the firm due [sic] gross misconduct".

59. The 18 June 2019 e-mail sought an extension of time to file further submissions in response to the court's 23 May 2019 letter, and went onto make the following claims:

"…However, following the dismissal of the caseworker Mr Salauddin Khan from our firm, the cooperation from Mr Khan has become difficult.

We found out that CO/3991/2018 (Khan No 1) and CO/1009/2019 (Khan No 2) cases come to light which we were not aware of that these cases were sent by Mr Salauddin Khan directly to the court from our firm without us being instructed to act on his behalf.

In addition we are still investigation [sic] various issues brought up in the court letters and doing our own internal investigations…".

60. The court replied the same day (18 June 2019) to confirm that an extension of time had been granted to 4 July 2019.

61. On 4 July 2019, Mr Mazumder wrote to the Administrative Court Office ahead of the Hamid hearing that by this point has been scheduled for 30 July 2019. Attached to this letter was a bundle. The version the SRA has received contained two separate indices; one which related to a 541-page bundle and one which related to a 373-page bundle. Given that one of the documents in the 541-page bundle contained a letter dated 4 October 2019, which quoted from the transcript from the Hamid hearing that took place on 30 July 2019, it was believed that the court were sent the 373-page bundle.

4 July 2019 bundle

62. The first document within the bundle was a document headed, “Responses to 14 Points Raised. The document provided a response to the fourteen specific matters Mr Mazumder was asked to address in the 23 May 2019 letter from the court. In the course of that response, Mr Mazumder made the following assertions:

63. In response to point 2, about the use of a pre-signed proforma claim for judicial reviews:

> *“I do not consider it to be an appropriate practice for me to pre-sign a proforma claim form for Judicial Review nor do I allow it to happen. However, it was a one-off case where I signed the form in advance to be sent once the bundle of documents were checked by me or by my fellow solicitor at the firm prior to submission.*
>
> *This unfortunately happened because I was not regularly attending office due to my illness. The idea was because of time factor, if I am not physically available, I could check the documents on personal email or get approval from Mr Nasir Khan, and give go ahead to file case”;*

64. In response to point 4 about Mr S Khan’s involvement in the Mahfuz case:

> *“Mr S. Khan was not allowed to give any advice but was allowed to carry out preparatory work under supervision*
>
> *On around March 2018 Mr Mahfuz wanted to make further representations to the Home Office. Mr Salauddin Khan brought him to me to take instructions.*
>
> *Heans Solicitors prepared the Further Representations that were sent to the Home Office, and these were the conclusion of the work as per instructions to me.*
>
> *It seems that further work was done for Mr Mahfuz by Mr Salauddin Khan, but without my knowledge. It is important to note that one of the duties of Mr Salauddin Khan was to open the post on daily bases [sic] and to put post before the relevant files and case workers. Also he was involved to [sic] taking post to Post Office.*
>
> *My pre-signed signature was not meant to be for this application, which in this instance was used by Mr Salauddin Khan to submit the application to the court. So any proceedings lodged by Mr. Salauddin Khan was without permission by me.”;*

65. In response to point 6 and the request to identify the names of counsel that were instructed in the Khan (No 1), Alauddin and Kawsar Ahmad cases, Mr Mazumder made the following claims:

- That Khan (No 1) and Khan (No 2) had been submitted by Mr S Khan on his own behalf and the Firm were not involved; Mr Mazumder was not aware if Mr S Khan obtained counsel’s advice;

- In relation to the Alauddin case: "It seems that Mr S. Khan without informing me, had gone ahead and submitted a JR application. Looking at the application form, it is not my signature but someone has tried to copy my signature, and most likely it is Mr S Khan."; and

- That Mr N Khan had prepared and submitted the judicial review in the Kawsar Ahmed case, and that Mr N Khan would give his own explanation in relation to this.

66. In relation to point 7 about the quality of the application and the assertions that had been made in the Alauddin case and whether he had approved their contents:

- *"This case was dealt by Mr. Salauddin Khan, I do not know how the grounds were drafted. I did not approve the contents because this case was dealt without my permission. I was not aware of the contents or quality of the grounds"*

67. In relation to point 8 and the query relating to the absence of counsels' names from the Grounds for Judicial Review documents:

- *"Of the four Judicial Review applications in question, I have explained in '6' above that except the case of Kawser, Mr Salauddin Khan dealt with the Judicial Review without my approval or permission."*

68. In relation to point 10 and the query as to whether instructing counsel in all judicial review claims was inaccurate, the following points were made:

  - *"To clarify my witness statement, I have truly meant that all the judicial review claims to all courts as per our firm's procedures need to be advised and drafted by the counsel prior to being submitted to court.*

  - *Our firm's procedures further to the letter from the Administrative Court office in reference the Court order dated 12 April 2019 (received by email on 2 May 2019) and issued the [sic] by Honourable Mrs Justice Andrews, on the application of MAHFUZ versus UPPER TRIBUNAL and other (Immigration and Asylum Chamber), not to accept any client instructions for Judicial Reviews ("JR") to the Administrative Court unless the clients agree to pay the additional fees for the advice on merits of their case and the grounds need [sic] be prepared by the barrister.*

  - *…On 5th May 2019, I took advice from Counsel for JR from Counsel David Sellwood (see copy attached), who had advised against JR and this advice was followed.*
  - *Apart from these there have been no other JR for Admin Court where Counsel was involved"*

69. In response to point 11, which was a query about Mr Mazumder's knowledge of the Civil Procedure Rules ("the CPR") and why he had allowed proceedings to be issued which did not address the correct test for the grant of permission:

- *"Our procedures state that further to the letter from the Administrative Court office in reference [sic] the Court order dated 23 January 2019 (received by us on 29 January 2019) and issued the by Honourable Mrs Justice Lang DBE, on the application of MD ALAUDDIN versus UPPER TRIBUNAL and other (Immigration and Asylum Chamber), we should not accept any client instructions for Judicial Reviews ("JR") to the Administrative Court unless the clients agree to pay the additional fees for the advice on merits of their case and the grounds need to be prepared by the barrister….Again to clarify I have not dealt with JR to Admin Court except for the case where Counsel Sellwood advised."*

70. In response to point 12 and the query about who was responsible for issuing the proceedings Khan (No 2) and Mr Mazumder's knowledge:

- *"Mr Salauddin Khan was responsible for issuing the proceedings…as it was his own personal case. I have had no knowledge and no instructions received by the firm to act in this matter…I do hope that Mr Salauddin Khan will explain himself to the Court. But unfortunately Heans Solicitors have permanently dismissed him. He was given a copy of the Court Letter and Order dated 23rd May 2019. But since then he refuses to contact us.*

- *Since, it is his own case it is hoped that he will appear before the Court at the next hearing"*

71. In response to point 13 and the query about Mr S Khan's access to the Firm's e-mail account:

- "*My wife, Mrs Hamida Mazumder, is voluntarily assisting our firm in administrative work since 16th November 2018. She's a full time member of staff and has 20 year work experience in the Department for Work and Pensions.*

- *Only Mrs Mazumder and Mr Ravson (trainee solicitor) have access to my email account mainly to read email and report to me.*

- *Whilst I was off sick and did not have access to my inbox and email was received from the court regarding case of Mahfuz. Mrs Mazumder had read the email and forward it to Mr Salauddin Khan as he was a relevant caseworker.*

- *Mr Salauddin Khan decided to reply to the email and prepared the reply with some relevant documents, he approached Mrs Mazumder and asked her to send a reply urgently to a specific court email with a relevant attachment. Mrs Mazumder considered the matter as being [sic] urgent court matter, considering Mr Mazumder was away from the office, mistakenly decided to help Mr Salauddin Khan as a case worker.*

- *This step taken by Mrs Mazumder was wrong and regretful, she has been warned, and from now on she will not allow anyone to use my email without getting my permission first"; and*

72. In relation to point 14 and the extent to which Mr Mazumder was absent from the office for medical reasons in 2018 and 2019:

- *"On 20 January 2019 I felt seriously ill (chest, neck, back and shoulder pains) and had visited the GP surgery. Medical report and various hospital letters is attached.*

- *Ever since 20 January 2019 I have been in and out of office owing to my poor health. My treatment is still ongoing and so far I have had several MRI scans, x-rays, physiotherapy, taken antibiotics and painkillers. From December 2017 to June 2018 I was under tuberculosis treatment and had a neck operation. Initially the doctors presumed I had a cancer on my neck and operated my neck but it turned out to be not cancer but the tuberculosis. I also suffer from diabetes.*

- *Since 2 May 2019 when I received an email from the Administrative court I am in the office every day in our London office. I have since informed all my caseworkers not to submit judicial review applications without my input and prior approval".*

73. The second document in the bundle submitted to the High Court was a further witness statement from Mr Mazumder, dated 2 July 2019. This document repeated a number of the assertions made in the first witness statement, dated 16 May 2019 and updated on others (e.g. the subsequent dismissal of Mr S Khan), and the "Responses to 14 Points Raised" document. Mr Collis submitted that it significantly made the following claims:

- *That "Mr Mahfuz has been a personal friend and client of Mr Md Salauddin Khan even before Mr Mahfuz was involved with Heans Solicitors";*

- *"At Heans Solicitors we rarely deal with Judicial Review cases";*

- *"It is my firms internal procedure since 4 February 2019 is that all Judicial Review Court should require advice and drafting by Counsel. But for Judicial review cases at the Upper Tribunal I encouraged the solicitors to seek advice from counsel where costs allow it";*

- *In relation to the Alauddin case: "I have been told by Mr MD Salauddin Khan's that the grounds for Judicial Review in CO/4035/2018 (Alauddin) were prepared by a barrister but as yet we have not received the name of the barrister from Mr Khan despite sending number of letters to him requesting the information. Heans Solicitors have also not received any fee note or communication from the barrister. This case is not in the register of Heans Solicitors";*

- *"Unfortunately, it was due to my temporary absences from the office, that I did not have a chance to properly review the documents and the JR was sent by Mr Salauddin Khan without my knowledge to the Admin Court. This is explained by Mr Salauddin Khan in his witness statement who states this had happened due to time pressures to file the documents";*

- *"Additionally, at the time at Heans Solicitors we had another qualified solicitor Mr Naser Khan who was covering my absence. Mr Naser Khan, is able to review the bundles prior to the submission to the court. But Mr Salauddin Khan, due to time restraints, submitted the bundle wrongly to the Court without showing it to Mr Naser Khan, this is wholly wrong and is very regretful. This Judicial Review was drafted and submitted without my permission or permission of Mr Naser Khan. I am told that it was because of the timing restraint that Mr Salauddin Khan took it upon himself to deal with it";*

- *"When I gave my response on 16 May 2019 I understood that Mr MD Salauddin Khan had dealt with a number of applications to the Home Office but the case of Mahfuz was his first independently worked JR application. It also seems that Mr MD Salauddin Khan used the pre-signed form that [sic] that had my signature on, which could only be use after I or Naser Khan checked the completion bundle that was to be filed at court";*

- *"I do not consider it to be an appropriate practice for me to pre-sign a proforma claim form for Judicial Review nor do I allow it to happen. However, in this case I was told it was urgent case where I signed the form in advance to be sent once the bundle of documents were checked by me or by my fellow solicitor at the firm prior to submission. Again this was at a time when I was ill and not attending office frequently";*

- *"As I had said that I was under the impression that this was Mr Salauddin Khan's first independently worked JR application, however, as per the court records Mr MD Salauddin Khan had submitted his own two JR applications through to the court, albeit without giving his firm formal instructions to Heans Solicitors";*

- *"This firm only deals with very few Judicial Review cases";*

- *"All our Judicial Reviews must not be submitted to the court without obtaining an advise and preparation of the grounds by Counsel"; and*

- *"Since new evidence relating to Mr Salauddin Khan's conduct on other cases came to light, this firm has dismissed his services with Heans Solicitors permanently. As such Mr Salauddin Khan is no longer employed by Heans Solicitors".*

74. As with the 16 May 2019 statement, the 2 July 2019 witness statement concludes with a statement of truth.

75. The bundle submitted to the High Court also contained a 4 July 2019 witness statement from Mr N Khan. This document contained the following assertions:

- That he had been working at the Firm as a solicitor, under the supervision of Mr Mazumder, since 1 March 2018;

- That he had prepared the grounds for judicial review for Kawsar Ahmed, with the knowledge of his principal. Mr N Khan later clarified that this was a typing error and should have read "without" the knowledge of his principal; and

- That he had advised Mr K Ahmed as to merits of his claim and had advised him to have the grounds prepared by counsel. Mr Ahmed informed him that he could not afford to pay for counsel, but was concerned that he would be returned to Bangladesh. As a result, he (Mr N Khan) decided to prepare his grounds for judicial review.

76. Mr Mazumder also provided the court with a copy of Mr N Khan's "Self Employment Contract", dated 1 March 2018. Mr Collis submitted that this document contained the following sections of note:

- Mr N Khan was stated to be a "fee earning Consultant Solicitor";

- As a definition for 'supervising responsibility', the following text was provided at Paragraph 1 of the document: "the Principal Solicitor and fee earning Solicitor is combindly [sic] and collectively responsible for supervision [sic] the Firms office at 108A whitechapel road, London, E1 1JE, in order to comply with any rule and regulation of the Law Society regarding supervision";

- Paragraph 2.1(b) concerning Performance of Services stated: "the Consultant Solicitor shall perform as a fee earning Solicitor and work on his own dealing with his own caseload and supervising the firms' [sic] in absence of Principal Solicitor";

- Paragraph 3 concerning Location of Provision of Services states: "The Consultant Solicitor will be responsible for supervision of the Firm office at 108A Whitechapel Road (2nd floor), London E1 1JE and at such other places as the satisfactory discharge of his services as the Firm shall require and shall if required, temporarily assist at any other office held by the Firm now or in the future in order to comply with any rule and regulation of the Law Society regarding supervision".

77. The contract appeared to have been signed by both Mr Mazumder and Mr N Khan.

78. Mr Mazumder also provided the court with a witness statement, dated 4 July 2019, from his wife, Hamida Mazumder. Mrs Mazumder's statement made the following assertions:

- That she joined the Firm as an office manager and receptionist in November 2018;

- That she had been responsible for opening the Firm's post since 1 May 2019; and

- *"I also have full access to Mr Mazumder's firm's email inbox. Mr Salauddin Khan had asked me to send an email to the court, relating to Mahfuz's case, when Mr Mazumder was ill and away from work, citing the urgency and importance of the matter and giving me full assurance that he knew what he was doing. I reluctantly agreed to Mr S Khan's request to use Mr Mazumder's email to send the correspondence to the court in order to avoid potential court sanctions if the reply is not sent to the court urgently".*

79. Mr Mazumder also provided the court with a 1 July 2019 witness statement from Mr Yousif Naji Hussain, who described himself as a Conveyancing Executive. Mr Hussain's statement made the following claims:

- That he started working at the Firm as trainee solicitor in late June 2018;

- That he and Mr S Khan shared the same work station and worked in the same room as each other at the Firm:

- That Mr S Khan was entrusted to open all the incoming post and make the necessary arrangements for the outgoing post at the Firm;

- That Mr S Khan held himself to be an *" 'expert' or 'specialist' in Immigration law"* and he *"...was always reluctant to accept our advice or assistance from senior colleagues"*;

- *"In few occasions only Mr Khan has submitted a judicial review to Administrative Court, as he explained that he was complied [sic] with the firm's rules"*;

- That he was, *"...aware of the fact that Mr. Mazumder had a severe back pain and other health problems and as result from the 20/01/2019, Mr Mazumder has started to come less often to the office";* and

- That following the show cause letter from the Administrative Court, the First Respondent arranged an urgent meeting and decided, amongst other things, that, *"All judicial review shall not be submitted to the court without obtaining an advise [sic] and preparing the ground by barrister"*.

80. Immediately following Mr Hussain's statement in the bundle, is an e-mail from a "Yousif Naji" to Mr Mazumder, which asserted that the 19 November 2018 email sent from the "heans@heanssolicitors.co.uk" e-mail address to Doughty Street Chambers, in relation to an immigration case involving a "Mr Khan" was not sent by him.

81. Mr Mazumder also provided a copy of a document headed "MEMORANDUM TO ALL CASEWORKERS AND SOLICITORS", which was dated 4 February 2019. This document would appear to have been created as direct result of the judicial review in the Alauddin case being refused by Lang J on 23 January 2019, given its content:

> *"Further to the letter from the Administrative Court office in reference the Court order dated 23 January 2019 (received by us on 29 January 2019) and issued the [sic] by Honourable Mrs Justice Lang DBE, on the application of MD ALAUDDIN versus UPPER TRIBUNAL and other (Immigration and Asylum Chamber), please do not accept any client instructions for Judicial Reviews ("JR") to the Administrative Court unless the clients agree to pay the additional fees for the advice on merits of their case and the grounds need be prepared by the barrister."*

82. A copy of a similar 3 May 2019 memorandum was also included in the bundle, although this reads as a direct response to the refusal for permission for judicial review in the Mahfuz case. This memorandum contains the additional extra passage:

> *"Upon completion of the prepared bundle including completed application, barrister's written grounds, client's witness statement, latest refusal letter and other relevant documents, and prior to submission to the relevant court (Upper*

Tribunal or Administrative Court), the file needs to be shown to the firm's principal solicitor for the final check and his signature."

83. Mr Mazumder also provided the court with a number of documents relating to his health 1]. These documents appeared to suggest that Mr Mazumder had a series of appointments during the relevant timeframe for the Allegations. None of the documents provided by Mr Mazumder referred to his health problems being such that he was unable to attend work (save for the frequency with which he was attending appointments). Furthermore, none of the documents made reference to the symptoms impacting on his specific health concerns mentioned until the 11 February 2019, as opposed to the date of 20 January 2019 he asserted in his 2 July 2019 witness statement.

84. A series of letters from Mr Mazumder to Mr S Khan were also included in the bundle. These consisted of:

- A 22 May 2019 letter, which contained the following comments:

  "Following your suspension for 6 months from our firm, and in conclusion of our investigation, and receiving the letter from the court dated 20 May 2019 (The Queen on the application of MD SALAUDDIN KHAN versus UPPER TRIBUNAL (IMMIGRATION AND ASYLUM CHAMBER) and Others), it is now clear in our view that your conduct fell short of expected professionalism we require from the employees of our firm.

  With regret, you are now dismissed from the firm indefinitely for gross misconduct… We would expect your cooperation on the above matter and provide the requested information to the court by 20 June 2019."

- An 18 June 2019 letter, informing Mr S Khan that the Hamid hearing had been listed for 30 July 2019 and that any further evidence upon which he wished to rely should be served by 20 June 2019. The letter concludes with the assertion: *"Your witness statement and presence at the court is a must and we expect you to respect your duties"*;

- A 27 June 2019 letter which:

  - Summarised Mr Mazumder's understanding of Mr S Khan's ability to work in the UK;

  - Referred to an urgent meeting which took place after receipt of the court letter, dated 2 May 2019;

  - Made reference to Mr S Khan's working arrangements with the Firm, which apparently contained a term which stated: *"The Consultant shall work on a 70% on Immigration work and 60% for other work fee sharing basis while acting solely on a particular case. The Consultant is entitled to 30% of the fee share if the work has been procured by the firm. Should the Consultant require more assistance or supervision on a particular case, he shall be entitled to a lesser percentage than the usual 50% of the fees as will be agreed between the parties"*. Mr Collis submitted that this term seemed to suggest that there was a

financial incentive for Mr S Khan to undertake work without supervision. Namely as a result of the reduced income, Mr S Khan might have sought to avoid the supervision or assistance he should have sought.

- *"Before you submitted the following JRs you confirmed to me that the grounds of the case (ME/SK/2.50/IMM/M.ULIE), were prepared by counsel and that it was prepared professionally who was a specialist in judicial review cases in the Administrative court"*; and
- Requested that Mr S Khan provide the barrister/legal adviser's name that prepared the grounds in the Ulie, Alauddin and Mahfuz cases.

85. The bundle also included a number of documents relevant to the Mahfuz claim including official court documents and correspondence in February, March and April 2019. Many of the incoming documents were sent to Mr Mazumder's email address in the first instance and were then forwarded to Mr S Khan's email address. Mr Collis submitted that the correspondence between the Court, the Firm and the GLD, showed a steady flow of communication with the Firm on this matter.

<u>30 July 2019 Hamid hearing</u>

86. The Hamid hearing took place on 30 July 2019, before Simon LJ and Andrews J. The hearing was attended by Mr Mazumder and Mr N Khan. Mr S Khan did not attend the hearing.

87. In response to the query of the whereabouts of Mr S Khan, Mr Mazumder stated: "My Lord, since I dismissed him, he has disappeared from us and I cannot contact him"

88. Simon LJ summarised the court's concerns, referencing Mr S Khan, in the following way:

> *"…what is being said is that there was really no oversight of this man who came into your office, who was not legally qualified, but proceeded to issue proceedings, apparently, in the name of your firm, these proceedings being substantially without merit. They were to all intents and purposes bogus claims. Two of them were issued in almost identical terms, the cases of Mahfuz and Alauddin. It is not said that you were personally responsible for the misconduct but what is said is that you failed to control this man and that was a matter that is of sufficient concern that it should be referred to the Solicitors Regulation Authority"*

89. Mr Mazumder made the following comments of relevance during the exchanges at the hearing:

- The cases of Alauddin, Khan (No 1) and Khan (No 2) had never been instructed to the Firm;
- He was unable to say whether the Third Respondent had drafted the judicial review grounds himself as a result of this;

- That Mr Mazumder and Mr S Khan had worked together at three separate law firms before their time at the Firm; AK Solicitors, E1 Solicitors and Simon Noble Solicitors;

- That he, *"…would not take any risk with any case that I have to submit in the Administrative Court without grounds prepared by the barrister and not only grounds prepared I would not take any instructions ever. It is our strong principle in our firm, any instruction has to be advised by the barrister before there is an instruction filed. So it is a strong precedent. Mr Khan bypassed our system and submit judicial review without my consent, without my supervision, in the Administrative Court, my Lord"*;

- When asked if the Firm had any written instructions in place for the employees to the effect that before any grounds or claim were issued, a member of the Bar had to be instructed and funds has to be procured in order to pay for that barrister, Mr Mazumder referred the court to the 4 February 2019 memorandum;

- That he sent out this memorandum as a result of Mr S Khan bypassing the Firm's system in the Alauddin case and so this was a case here he knew that Mr S Khan had ignored his previous instructions;

- That the Firm had received the Alauddin refusal on 29 January 2019 and the Mahfuz claim had been submitted on 25 January 2019;

- That he had not been in the office from 20 January to 4 February 2019;

- That when he returned to the office on 4 February 2019, he saw the refusal in Alauddin;

- Mr Mazumder's attention was drawn to his assertion in his 16 May 2019 statement that the Mahfuz case was Mr S Khan's *"…first independently worked JR application", and it was put to him that this was not true. Mr Mazumder replied, "It is true, my Lady"*;

- That the Third Respondent had submitted a claim for judicial review to the Upper Tribunal (JR/5845/2018) with Mr Mazumder's supervision, and the case was then withdrawn with a consent order;

- That by February 2019 at the latest, Mr Mazumder was aware that Mr S Khan had gone behind his back and issued proceedings in the Administrative Court;

- In an exchange between Mr Mazumder and Andrews J, it was put to Mr Mazumder that if he knew in February 2019 that Mr S Khan had issued the claim in Alauddin, which had bypassed the Firm's system, it was not a true claim to say in the 16 May 2019 statement that the Mahfuz claim was Mr S Khan's *"…first independently worked JR application"; Mr Mazumder replied, "It is not true, yes"*;

- That Mr Mazumder had not read Mr S Khan's 14 May 2019 witness statement before he (Mr Mazumder) had submitted it to the court, but he had read it after it was submitted;

- The reason that Mr Mazumder had not read it before submission is that Mr S Khan handed it to him "…at the 11th hour"; that it had been received just fifteen minutes before it had to be submitted;

- When asked if he thought there was anything in Mr S Khan's statement that required correction, Mr Mazumder replied, *"He did the statement and then he disappear, my Lady, so I cannot---"*; and

- When referred to the fact that Mr S Khan had at first been suspended for six months, Mr Mazumder stated:

  > *"My Lady, I thought, if I suspended him, the reason I want to get further clarified from him why he did all this thing in my behind, why he damaged our reputation, why he damaged my firm's reputation. Then I suspend him to bring him to justice. I tried to bring him and I tried to get his explanation. When I received that strong email from the court and also about his work things were not right, I am clear he (inaudible) ---when I received the email from -- a copy of the court, Administrative Court, straightaway I suspended him. Since I suspended him, he completely miscommunicated and disappeared from my system, my Lady"*

90. Mr N Khan, in his exchanges with the court, made the following comments:

- That he became a solicitor in January 2018 and since then had only been involved in two judicial reviews; Ahmed and Bahar;

- When referred to the supervisory responsibilities in paragraph 3 of his *"Self Employment Contract"*, he stated: *"I work as a caseworker, I am not responsible for the office"*;

- Mr N Khan repeated this assertion with: *"Actually I am like other caseworker in this office as a solicitor but I do not really supervise anybody"*; and

- When asked by Andrews J if he had raised with Mr Mazumder an issue about the supervisory responsibility within his contract, the Second Respondent replied: *"I told him personally. I told him personally, because I am not supervising anybody. I told him several times"*.

<u>Events following the Hamid Hearing</u>

91. Following the decision by the High Court to refer both Mr Mazumder and Mr N Khan to the SRA, the SRA received a further report from Legal Compliance Consultants on 20 September 2019. This report identified the company as the Firm's "Compliance Consultant". This report, in relation to Mr S Khan made the following assertions:

- That Mr S Khan undertook work without the knowledge of Mr Mazumder;

- That in relation to Khan (No 1) and Khan (No 2), Mr S Khan had used the Firm's letterhead and resources to deal with his own personal matters, in which the Firm was not instructed;

- That Mr S Khan had taken instructions in Mahfuz and submitted an application for permission to apply for judicial review in January 2019, without Mr Mazumder being aware or having given his permission. The refusal decision was *"…received in 12 April 2019, again the firm were not aware of this as Mr Khan concealed the decision"*;

- That Mr S Khan had prepared the grounds for a judicial review application in the Alauddin case and submitted them without them being reviewed and approved by Mr Mazumder; and

- *"The firm are aware that Mr Khan's actions will call into question about the firm's supervision process and procedures; and during the relevant time, between January 2019 and April 2019, the Principal was suffering from ill health and was absent from the office on many occasions due to the ongoing health issues and attendance at various hospital appointments. Upon the firm becoming aware of Mr Khan's conduct, his employment was terminated in May 2019.*

  The firm have since instructed Legal Compliance Consultants to review the firm's policies and procedures to ensure compliance with the SRA Code of Conduct. The firm were also advised to self-report their own conduct with regards to the supervision of Mr Khan and the conduct of Mr Khan himself".

92. Mr Collis submitted that the Applicant placed no reliance on the report from Legal Reliance Consultants in support of its case against Mr S Khan. This document was relevant to assist the Tribunal in understanding the factual dispute between Mr Mazumder and Mr S Khan.

93. On 30 September 2019, Mr Mazumder received a response in relation to a report he had made to the Action Fraud Team. Given the contents of this document and its reference to identity theft, as well as the description of the document ("Action Fraud Report against S Khan unauthorizedly use our office address as his correspondence address"), it is apparent that at some point Mr Mazumder made a report to Action Fraud about Mr S Khan.

94. The updated Index referred to additional documents above and beyond those that were placed before the court for the Hamid hearing on 30 July 2019. Two documents referred to in this Index which were likely to be relevant to the Tribunal's consideration were as follows:

    - The "Self Employment Contract", dated 20 January 2018, between the Firm and Mr S Khan. Paragraph 4.1 of this contract contained the phrase that was quoted in Mr Mazumder's 27 June 2019 letter to Mr S Khan, namely: "The Consultant shall work on a 70% on Immigration work and 60% for other work fee sharing basis while acting solely on a particular case, if he has procured the particular case. The Consultant is entitled to 30% of the fee share if the work has been procured by the Firm. Should the Consultant require more assistance or

supervision on a particular case, he shall be entitled to a lesser percentage than the usual 50% of the fees as will be agreed between the parties";

- A 24 May 2019 letter from Mr Mazumder to Mr S Khan. This wording of this letter was similar to the 27 June 2019 letter referred to above, with one notable exception - in the 24 May 2019 letter, there was a paragraph that read:

  "According to our firms procedure prior to submitting all JR applications to the Administrative court the advice on the merit of the case and the grounds of the case must be prepared by a barrister. Before you submitted the following JRs you confirmed to me that the grounds of the case were prepared by Mr Shafiul Tauhid and that he prepared it professionally who was a specialist in judicial review cases just like barristers"

95. The corresponding paragraph in the 27 June 2019 letter did not attribute Mr Shafiul Tauhid to this role. Rather it simply referred to "counsel".

96. On 30 March 2020, the FIO e-mailed Mr Mazumder with a series of questions relating to his conduct arising from the referral by the High Court. Mr Mazumder replied on 7 April 2020. His response clearly borrowed wording from the 20 September 2019 report from Legal Compliance Consultants, but appeared to make the following new points:

- In relation to the case of Ulie, the judicial review application had been submitted by Mr S Khan on behalf of the Firm. Before it was submitted, Mr S Khan informed Mr Mazumder that the grounds had been prepared by Mr Shafiul Tauhid; a senior legal consultant at Hubers Law Solicitors and provided details of Mr Tauhid's experience; and

- Mr S Khan worked at the Firm from 20 January 2018 to 22 May 2019.

97. The exchange between Mr Mazumder and the FIO continued, with Mr Mazumder e-mailing the FIO on 4 May 2020, as a response to a series of questions raised with him on 27 April 2020. In response to the query about how Mr S Khan was supervised when he (Mr Mazumder) was absent from the office, Mr Mazumder stated:

    "Mr Khan was only allowed to work of [sic] his client's related immigration file which was supervised by me. During my ill health, he must produce the [sic] all prepared documents to the another [sic] solicitor of our firm for final check or submit the prepared documents to my wife to submit in our firms [sic] WhatsApp group then I can supervise the matter viya [sic] WhatsApp Video Call through my wife (who voluntary helping firms admin work [sic]) other than via telephone call. Alternatively, If I was not available to access video call due to my ill health, Mr khans [sic] prepared documents must submit to another solicitor of our office for a final review prior to submitting the documents same to the Home Office, Court or tribunal".

98. On 22 September 2020, the FIO wrote to Mr S Khan as a result of the 20 September 2019 referral. This was followed up with a telephone call between the FIO and Mr S Khan on 7 October 2020, during which Mr S Khan made the following points:

- That he had only worked voluntarily at the Firm;
- That he had been forced to sign the "Self Employment Contract"; and
- That Mr Mazumder was fully aware of his claim for asylum, and he was lying if he said he was not.

99. As part of her investigation, the FIO interviewed Mr Mazumder on 8 October 2020, during the course of which Mr Mazumder made the following points:

- That the Firm primarily operated from the 108a Whitechapel Road address;
- If there were any weekend appointments, they would be dealt with at the Southampton office as Mr Mazumder tended to be in Southampton at the weekends;
- That at the time of the Hamid hearing, the Firm employed Mr N Khan and Mr S Khan, as well as Shane Ravson (a trainee) and Yousif Naji. This meant that there were three solicitors and two paralegals, as well as one registered foreign lawyer;
- That the staff at the Firm worked under his supervision;
- That he had known Mr S Khan since 2010, and the two of them had worked together at both AK Solicitors and Simon Noble Solicitors;
- That Mr S Khan worked under Mr Mazumder's supervision and Mr S Khan *"take the instruction in front of [Mr Mazumder] or any client come to him introduce [Mr Mazumder] for the initial instruction"*;
- That any court documents provided to the court had to be checked by both him and Shane Ravson;
- That Mr N Khan started at the Firm in March 2018 and he was responsible for supervising when Mr Mazumder was absent;
- That he would check the incoming and outgoing post when he was at the Firm;
- That he travelled to Bangladesh from 15 August to 23 August 2018 due to a serious family occasion;
- When he went to Bangladesh, he left Shane Ravson responsible for checking the e-mails. Mr Ravson could then contact Mr Mazumder by phone and he would advise Mr Ravson as to how to respond;
- That the trainee, Mr Ravson, was the only person with access to Mr Mazumder's computer, which was in his room;

- That he did not have access to his e-mail account whilst he was in Bangladesh;
- Had it not been for Mr N Khan's presence, as a solicitor who only practised in immigration, he would not have left the Firm open whilst he was away;
- That Shane Ravson would check the e-mail and would contact Mr N Khan. If anything further was necessary, he (Mr Ravson) could contact Mr Mazumder;
- He left the key to the Firm's office with Mr N Khan
- That Shane Ravson contacted him via telephone a couple of times whilst he was away;
- That he returned to the UK on 23 September 2018;
- That he spoke to Shane Ravson and Mr N Khan, and they informed him that there had been no problems whilst he had been away;
- *"From the day of the Judicial Review I put in place all the Judicial Reviews must have to be approved by me, must prepare the grounds by the Barrister"*;
- After he returned from Bangladesh, if he was not in court, he would be in the Whitechapel office from Monday to Friday;
- That he became ill in the beginning of January 2019;
- That the problems commenced at the end of December, but by the end of January he was seriously ill and could not move the whole of his left side;
- That he was in pain, but neither the doctors nor the specialist could find anything. This meant that he was in the office only a few times for a few hours before 15 April 2019;
- That he came into the office on 4 February 2019 from the hospital and found the refusal for permission to bring a judicial review in the Alauddin case;
- *"Then we take the senior decision memorandum so nobody do not send anything, judicial review without my knowledge or without my approval"*;
- That after February 2019 he was only in the office for one or two hours, that he was on pain killers and he could not sleep nor sit down;
- That around 15 or 20 April 2019, he started coming back to the office full time;
- That due to his prior knowledge and involvement with Mr S Khan, he believed him to have a good working knowledge of the Immigration Rules;
- That when Mr S Khan started at the Firm, he brought with him two trainees from Hubers Law;

- That Mr S Khan introduced him to Sahfiul Tauhid, who was a senior consultant working at Hubers Law;

- That the contract with Mr S Khan would involve a 70 percent/30 percent split of the fee charged to the client; Mr S Khan would receive 70 percent and the Firm would receive 30 percent];

- That Mr S Khan showed him a letter confirming he was entitled to work and told him was entitled to work a 20-hour week;

- That he received one of the refusals from the Administrative Court on 7 May 2019, which related to a decision that had been made on 12 April 2019;

- That Mr S Khan had been helping him with the post whilst he was ill;

- That he had contacted the Home Office in relation to Mr S Khan's ability to work in the UK and they confirmed that he could work 20 hours a week;

- He did not make enquiries of Mr S Khan as to who was dealing with his ongoing immigration matter;

- That Mr Mazumder had assisted Mr Mahfuz to make a further submission to the Home Office, but it had been refused in September 2018, whilst Mr Mazumder was in Bangladesh;

- The caseworker on the Mahfuz case was Mr S Khan, and he would have been supervised by Mr N Khan, whilst Mr Mazumder was away];

- That Mr Mazumder met with Mr Mahfuz, after he returned from Bangladesh, and gave him a letter and oral advice;

- That he discovered that Mr S Khan had submitted a claim for judicial review on behalf of Mr Mahfuz whilst he (Mr Mazumder) was away due to illness;

- That he had told both the Second and Third Respondents that they needed to take advice from a barrister for judicial review cases;

- Mr Mazumder was asked about the pre-signed judicial review claim form and for which case he thought it was intended. He replied: "I did not err, I did not err remember, because I was in such pain physically ill at that time";

- That Mr S Khan had told him that he needed to do a judicial review urgently, and so he had just signed the form;

- He told Mr S Khan to check with either him, his wife or another solicitor before this judicial review was filed, but Mr S Khan did not do that;

- That he did not follow-up with Mr S Khan what had happened with the pre-signed judicial review claim form due to his health;
- That he did not inform Mr N Khan that Mr S Khan was in possession of a pre-signed judicial review claim form;

- That the only reason he had pre-signed a judicial review claim form when he did not know for which case it was intended was because it was *"…very urgent and I was very sick, my whole arms and left side was in heavy pain so I really unconscious basically that time"*;

- That the Firm had dealt with seven judicial review cases from January 2018 to July 2019;

- That in October 2018, Mr S Khan had dealt with a judicial review case under the supervision of Mr Mazumder;

- That Mr S Khan had not shown him any case papers before he was asked to pre-sign a judicial review claim form;

- When the refusal decision was received in the Mahfuz case, he asked Mr S Khan to show him the paperwork. Mr Mazumder noted that the application was out of time;

- That from November 2018 his wife had access to his e-mail account, and she forwarded e-mails to Mr S Khan for him to reply;

- That Mr S Khan wrote the e-mails to the court, but they were sent by Mr Mazumder's wife;

- That Mr Mazumder was not checking his e-mails in April 2019 as he was, *"…actually seriously physically unconscious at that time"* and he, *"…couldn't concentrate or to sit down properly"*;

- His wife did not tell him that she had been sending e-mails to the court from his e-mail address;

- Mr Mazumder accepted that the Firm's controls and procedures over the legal work were not functioning accurately due to his health condition;

- That Mr S Khan told him that Shafiul Tahuid had prepared the judicial review grounds in both the Alauddin and the Mahfuz case;

- That the signature on the Alauddin claim form was not his and he believed that it had been forged by Mr S Khan;

- That he saw the refusal in the Alauddin case when he came to the office from East London Hospital on 4 February 2019. He issued the memorandum to the Firm that day, and spoke to Mr S Khan about the case. Mr S Khan told him the grounds had been prepared by Shafiul Tahuid;

- That he had looked at the judicial review claim form and asked Mr S Khan about the signature, but he did not give a reasonable explanation;
- That he agreed that during this timeframe, supervision in the Firm was not satisfactory;

- That the 16 May 2019 statement to the court only referred to the Mahfuz case which is why he said it was Mr S Khan's first independently worked judicial review claim;

- He denied saying that this statement was not true in the Hamid hearing, and that there may have been an issue with his language or communication;

- He confirmed that when he signed the 16 May 2019 statement, he knew of two judicial review cases upon which Mr S Khan had independently worked;

- That Mr N Khan had issued the judicial review application in Ahmed in September 2018 when he (Mr Mazumder) was in Bangladesh;

- That the Firm's procedures relating to needing a barrister to prepare the grounds for a judicial review had always been in place; and

- That of the five cases which had been identified by the High Court for consideration in the Hamid hearing (Alauddin, Ahmed, Mahfuz and Khan (No 1 and No 2), the Khan cases were not dealt with by his Firm and he was either away on holiday or away sick for Alauddin, Mahfuz and Ahmed.

100. In Mr N Khan's interview with the FIO, which also took place on 8 October 2020, he made the following points:

- That he practised in immigration, family law and a small amount of conveyancing;

- He commenced work at the Firm in March 2018 on a self-employed basis, and he also operated on a 70-30 split with the Firm;

- He had never been asked to supervise Mr S Khan;

- When asked if he had signed his contract without reading it, he stated: "I just read it the first day I just joined and I sign it";

- That he was not under any obligation to supervise anyone;

- That he told Mr S Khan he was not entitled to give legal advice, but Mr S Khan was furious with him;

- That Mr S Khan would see clients without Mr Mazumder being present;

- That he was not told about the pre-signed judicial review claim form until May 2019;

- That he continued to work at the Firm under the same contract, but he had told Mr Mazumder to amend it;

- When he started in March 2018, he was informed by Mr Mazumder that counsel's advice should be taken before a judicial review was commenced. In his letter dated 18 January 2022, Mr N Khan denied that the Firm required all JR grounds to be drafted by Counsel and stated that this was not the position when he launched the JR. He noted that in a letter to the SRA, Mr Mazumder acknowledged that this was not the position until February 2019, five months after the submission of the Ahmed JR;

- That he had submitted the judicial review claim in Ahmed whilst Mr Mazumder was in Bangladesh;

- He did not discuss the grounds with Mr Mazumder and the client could not afford to instruct counsel, but that he (Mr N Khan) believed that there was merit in the claim;

- That Mr Mazumder was in Bangladesh when the Ahmed case was submitted, but he did have his contact number;

- That he had been asked by Mr Mazumder to look after the office whilst he was away; and

- That the Ahmed case was the first judicial review he had worked on and the mistakes he made were just honest mistakes.

<u>Post-interview events</u>

101. On 1 December 2020, Mr Mazumder forwarded onto the SRA a letter, dated 30 November 2020, terminating Mr N Khan's consultancy agreement and making a series of accusations against him. The SRA requested further information from Mr Mazumder in relation to these claims. On 15 December 2020, Mr Mazumder sent a series of e-mails, letters and attachments to the SRA. A follow-up e-mail, providing further attachments, was sent by Mr Mazumder on 8 January 2021. In short, Mr Mazumder made accusations against Mr N Khan both in relation to his conduct in the Ahmed case, but also in relation to other matters. One of these matters related to Mr N Khan's conduct in the Client A matter (which is the subject of Allegations 4.2 and 4.3).

102. The attachments Mr Mazumder provided to the SRA included:

- Correspondence between Mr Mazumder and Mr N Khan;

- A purported updated contract between Mr Mazumder and Mr N Khan dated 17 July 2019, in which Mr N Khan is referred to as a "Director". This updated contract included the clauses relating to supervisory responsibility;

- A record of a change being registered at Companies House on 17 July 2019, in relation to Mr N Khan as a director;

- A 9 January 2020 e-mail from Mr N Khan, resigning as a director; and

- A 30 November 2020 letter to Mr N Khan from the Firm, terminating the consultancy agreement.

103. On 9 – 10 November 2021, the FIO contacted all three Respondents in relation to the on-going investigation and provided them with a copy of the FIR.

104. On 11 November 2021, Mr S Khan replied and provided: (i) A 17 January 2018 reference from Mr Mazumder, which refers to Mr S Khan as a "volunteer case worker assistant" at Simon Noble Solicitors; (ii) E-mails dated 4, 5 and 8 April 2019 from the Administrative Court Office to Mr Mazumder's e-mail address, in relation to Khan (No 2); and (iii) A 5 April 2019 e-mail response, sent to the Administrative Court Office, from Mr Mazumder's e-mail address.

105. On 1 December 2021, Mr S Khan sent an e-mail to the FIO, attaching a 30 November 2021 letter. In the course of this letter, Mr S Khan made the following claims:

- He denied that he ever acted for Mr Mahfuz outside of the Firm's authority and instruction; Mr Mazumder and the Firm knew exactly what steps Mr S Khan was taking. Mr S Khan queried what case the pre-signed judicial review claim form could have been for if not this case;

- He denied forging Mr Mazumder's signature on the Alauddin claim form and stated that he was quite sure it had been signed by Mr Mazumder himself. He encouraged the SRA to obtain a handwriting assessment;

- All his judicial review cases were completed with the Firm's full knowledge and approval; it would not have been possible to hide them from the Firm;

- He queried why he was not summarily dismissed by Mr Mazumder if he had forged his signature on the Alauddin claim form;

- Mr Mazumder was aware of all the details in relation to the Mahfuz claim. Mr S Khan does not remember asking Mr Mazumder's wife to send e-mails to the court from Mr Mazumder's email account;

- Mr Mazumder was not away from the office with illness or because he was abroad, as he had claimed. Mr Mazumder was in fact present and working at the time of the relevant files. Mr Mazumder's wife was also present and she was *"...kind of second in command at the office"*;

- The Firm was instructed to deal with his own personal judicial review claims, but did not require him to pay fees. As a result, he was expected to do the bulk of the work involved;

- There was no formal process in relation to judicial review claims and there was never any strict rule requiring counsel to be involved; and

- During his time at the Firm, he was supervised by Mr Mazumder and, to a lesser extent, Mr N Khan and Mr Nagi.

106. On 10 December 2021, Mr Mazumder sent a letter to the IO. An updated version was sent on 12 December 2021. The updated version made the following claims:

- Between January 2015 and January 2018, he worked as a Consultant Solicitor at Simon Noble Solicitors. The Firm (Heans Solicitors Ltd) was incorporated on 8 April 2014, but it did not start trading until January 2018;

- An office manual was put in place for the Firm. Mr Collis noted that there was no requirements in the office manual as regards the handling of Judicial Review claims;

- The Firm's policy was that *"any applications for Judicial Review were subject to authorisation from the principal and if necessary to take Counsel's opinion in the first instance. It was the firm's policy that no application for Judicial Review could be made unless Counsel has provided merits."* This procedure was put in place in 2018;

- Due to that change in procedure, on 17 July 2018 Mr K Ahmed stated that he did not have enough money to comply with this and withdrew his instructions from the Firm;

- He had a reasonable expectation that Mr N Khan would read and understand the terms of his contract; he did not accept Mr N Khan's assertion that he was neither aware of his supervisory duties nor was he in fact responsible for supervising staff;

- In relation to signing a blank judicial review claim form: *"I accept that I signed a blank document when requested to do so by Mr Khan in January 2019. I did so after Mr S Khan had explained the reason he needed me to do so. I had every expectation that Mr S Khan would be truthful in his account to me. However, at the time I did this I was unwell. I accept that this was an error of judgment on my part. I held a genuine belief at the time I signed the document that either myself or Mr N Khan would see the completed document prior to it being filed with the Court. However, Mr S Khan bypassed our firm's policy for supervision and Judicial Review … Had I not been unwell, I would not have signed the blank document. I would have ensured that the contents were completed beforehand as per our firm's policy"*;

- In relation to the assertion he had misled the court in his 16 May 2019 witness statement, Mr Mazumder stated that he did not believe that he misled the court and, if he did, this was unintentional. Mr Mazumder was aware that Mr S Khan was working on Mr Alauddin's permission to appeal and, as such, he believed that Mr S Khan was working under his supervision;

- When Mr S Khan filed the judicial review claim in Alauddin in October 2018, he did this without Mr Mazumder's approval and bypassed the Firm's rule on judicial review claims;

- The personal judicial review claims submitted by Mr S Khan did not relate to the Firm at all;

- It was for these reasons that he had made the assertion that the Mahfuz case was Mr S Khan's first independently worked judicial review case; and

- In relation to comments made by him during the Hamid hearing: *"During the hearing, I attempted to refer her Ladyship to the documents so that I could explain in more detail. However I was not able to. As can be seen from the transcript, my English can sometimes be muddled and I feel that I was unable to communicate my responses in a way that would clarify the issue for the Judge. I feel that my answers were not always understood by the Judge"*.

107. On 18 January 2022, Mr N Khan provided a document responding to the concerns outlined in the FIR. In relation to the issues arising from the judicial review claims, the document contained the following assertions:

- "*In my knowledge, I never had the role to supervise anyone in Heans Solicitors, and hence, supervising anyone by me is beyond question"*;

- He signed the 1 March 2018 contract without reading it;

- *"Yes I admit that as a solicitor I should not have done this. I did it on good faith, and in fact, he required me to sign it with an extreme urgency without allowing me time to fully read it. This is not to say that it was his intention to hide the terms of the agreement from me or to trap me to sign it. Neither do I see a reason why he would have inserted such a term intend [sic] that I would not see it. There was simply no reason for him to have done so when I only started my practice as a solicitor. It was not normal for Mr Mazumder to have incorporated this clause 3. in the agreement, and in fact, no firm would permit somebody, who had less than 3 years practicing [sic] experience, given the Law Society Practice note Rule 4.1"*;

- *"However I have concerns about the supervision clause (clause 3) as I have a good reason to believe that it has been altered. Since I do not have a copy of the contract, I am not able to verify which one of the terms was included, and which was not, in the copy which I had signed on 01 March 2018"*;

- He did not receive a copy of the contract that he signed, although he asked Mr Mazumder for one; Mr Mazumder said *"he was busy meeting some urgency" and that he would do it later"*;

- He did not remember all the terms that had been agreed verbally, save for the percentage of fee sharing;

- *"If I had read it completely before I signed, and if the supervision clause was there, I would have rejected it without shadow of a doubt because I was fully aware of the Law Society Practice note 4.1. Clearly therefore, I would not have agreed this term before I complete three years of practice"*;

- *"I, therefore, find it strongly likely that all pages in this agreement except the signature page and the page before it have been changed. I say this because the signature page and the page before it carried the mark of staples whereas all other pages do not"*;
- *"This leads to no conclusion other than that I reject all other pages except the last two pages to be genuine. But even if they are found to have been genuinely included in my agreement, it must have been an innocent error on his part to have inserted the supervision clause there, because it was obvious to him that I did not hold the legal capacity to be a supervisor"*;

- The first time he saw a copy of the contract was when Mr Mazumder was preparing the bundle for the Hamid hearing at the High Court. He went onto say: *"I asked for an explanation for not having given me a copy of the contract when I had signed it and whether the supervision clause truly existed in the original agreement. He did not reply"*;

- He believed that Mr Mazumder felt the need to change some of the terms of the agreement in order to deal with the fact that he left the Firm unsupervised from November 2018 to January 2019, when he (Mr Mazumder) was in Bangladesh;

- Mr Mazumder had no issue with his health and was in fact heavily engaged with political activities in Bangladesh;

- Before signing the later contract in July 2019, Mr N Khan was careful to check that there was no supervision clause. He would not have signed it if such a clause existed. Mr N Khan kept a copy of the version he signed in July 2019, but he was not allowed to retrieve his belongings when he was removed from the office on 3 December 2020;

- He denied being assigned a supervisory role in the Firm and denied failing adequately to supervise the conduct of four judicial review claims which were considered to be totally without merit;

- He drafted the grounds in the Ahmed claim on his own. At the time, he wrongly but innocently believed that there were grounds for success. He also acknowledged that he made a further error by following a template from another judicial review case which challenged a certification, whereas the SSHD's decision in the Ahmed case was not certified;

- He denied that it was the Firm's position that all judicial review grounds had to be drafted by counsel at the time he filed the Ahmed claim (September 2018) Any suggestion from him in his interview with the FIO that this might be the case would be because he misunderstood the question; and

- There was a typing error in his 4 July 2019 statement; it should have read that the grounds in Ahmed were prepared without Mr Mazumder's knowledge. This is accordance with his assertions in the interview with the FIO that he did not contact Mr Mazumder as he was in Bangladesh at the time.

108. On 14 February 2022, the IO e-mailed Mr S Khan and queried with him the apparent contradiction between his 30 November 2021 letter and his 14 May 2019 witness statement for the High Court. The FIO referred Mr S Khan to three separate passages ((a) – (c)) of the 14 May 2019 witness statement.

109. Mr S Khan replied, that same day, and asserted: *"I am disagree with the statements at (a) to (c) above. I would like to explain. give me a couple days [sic]"*. On 9 March 2022, Mr S Khan provided further information in relation to his comments on 14 February 2022. He claimed (quoted as per his response):

- "*First of all I never ever stated anything before you said my previous statement on page number 65. It is not my statement how you find it is my statement I totally disagreed with. the statement"*

- *"1. question NO one (A) I never ever stated that my principal Mr. Mazumder was serious sick I disagree with this statement and I clear that when I submitted the Mr Mahfuz application administrative Court that I get permission from Mr Mazumder was present at Hean's solicitor's office and he checked the file and gave me permission to submit the judicial application in the court…"*

- *"…He never was suffering back pain. It is a total misrepresentation with the SRA therefore I request the SRA investigate his medical report which he submitted … He was only two days in the hospital for two days for operations";*

- *"Q NO B. I clarify that Question number B. There is a Stick rule in the office Without permission from Hean's solicitors principal Nobody can submit any documents to any Court or home office. Then how can I submit the JR application?";* and

- *"Q NO C. I also disagreed with the Q C That was the nothing hurry about submission about Mahfuz's application he manipulate Mr. Mazumder himself because it has time to submit judicial review claims in the court it's too early Mazumder he stated the wrong statement I think so Mr. Mazumder Gave it to the incorrect information to SRA due to his negligence. Mr Mazumder himself filed a Signed judicial review application."*

110. In light of these comments, the IO e-mailed Mr S Khan, on 10 March 2022, querying the 14 May 2019 witness statement, the signature on it, and how it was created. Mr S Khan replied on 14 March 2022 and asserted as follows (quoted as per his response):

  - "*Q No 1. I do not know anything about this statement. made the statement with the following link. Mazumder just told me to sign the following page of this treatment and I wish I had not read this statement. I don't know anything, so I made it clear to you that I did not write any statement for any court. He did everything he needed to do it and made us stupid. Then I signed it on the last page.*

  - *Q NO 2. The signature on the last page of the statement is my own. It is forcing me to do it. I don't know what he wrote on it. I was forced to sign and I did Sign.*

- *Q NO 3. I did not get any chance read that statements, Majumdar did not give us such an opportunity that I read the whole statement read and signed it but I was afraid that the movement Majumdar and his trainee solicitor Mr. Shane made that statement and did not give me an opportunity to read. I was forced to do this site because I was disgusted with his office work because he did not give me an opportunity to read these statements.*

- *Q NO 4 I was the victim of the situation. I had no choice but to let him out of the office. He used his power to sign. I signed out of the office and after that, I never went to his office. And I didn't know anything. I was aware of the matter when you emailed me, then I knew so I'm answering your question today. You must understand. I believe you will understand this with your experience."*

Allegations 4.2 – 4.3

111. Some of the material provided by Mr Mazumder to the SRA related to Mr N Khan's involvement with Client A.

112. Client A appeared to have approached Mr N Khan for assistance relating to the return of a deposit in a landlord and tenant dispute, in which he (Client A) had acted as guarantor. The documents revealed the following picture concerning the dealings between Mr N Khan and Client A:

- On 30 August 2018, Client A forwarded onto Mr N Khan an email relating to the dispute;

- On 10 September 2018, a letter from the Firm was sent on behalf of Client A;

- A Case Summary Sheet, a Letter of Authority, an Attendance Note and an Initial Instructions and Advice document all referred to contact between Client A and Mr N Khan in relation to the matter. The Case Summary sheet referred to fees being agreed at £1,200, with £200 already having been received, whereas the Initial Instructions document suggested that the fee was £200;

- An invoice to Client A, dated 3 October 2018, referring to a £200 fee;

- A paying-in slip, suggesting that £200 in cash had been deposited in relation to Client A's case;

- A Client Care letter, dated 10 October 2018, which refers to a fixed fee having been agreed as £200; and

- A Telephone Message Note, dated 15 November 2018, referring to a call from Client A, and a request to close the file as the matter had been settled with the landlord.

113. However, on 6 September 2018, Mr N Khan sent a message to Client A which contained the following request:

"Plz pay £300plus £60 VAT Total:360"

114. The bank details contained within that message to Client A were those for Mr N Khan's own bank account.

115. On 15 October 2020, Client A sent a message seeking the return of £360 transferred to "Naser Khan Apu" as the matter did not proceed.

116. As a result of Mr Mazumder's report of this matter, reference was made to this incident in the 10 November 2021 letter sent to Mr N Khan by the SRA. Mr N Khan provided an explanation for this incident in his 18 January 2022 "statement in response" to the SRA. Mr N Khan's account was summarised as follows:

- That Client A's payment of £360 into his personal account on 7 September 2018 relates to these instructions;

- That at the time of instruction, Client A personally owed him £160;

- Client A had sought a consultation in relation to this matter when Mr N Khan had called him to chase him for the £160. Mr N Khan had agreed to take the instruction, "with £1200, with £300+VAT to be paid upfront";

- Mr N Khan had been advised by Mr Mazumder to add VAT to payments as the Firm was going to be VAT registered;

- Client A was supposed to pay £360 (£300+VAT) to the Firm and make a separate payment of £160 to Mr N Khan. Instead, he simply paid £360 into Mr N Khan's account;

- "Due to miscommunication, this came to my personal bank account on 7 Sept 2018, so that I could I keep my £160 and pay the firm remaining £200";

- Mr N Khan made it clear to Client A that he would be keeping his £160 from the £360 that he had received; and

- He left £200 in cash in an envelope in the file in the office.

<u>Post-Notice representations from the Respondents</u>

117. On 26 September 2022, representations were sent to the SRA on behalf of Mr Mazumder, which made the following points:

- Both Mr N Khan and Mr S Khan were paid on a 70% commission fee-sharing basis;

- Mr Mazumder held a staff meeting on 16 August 2018 to discuss how the Firm would operate in his absence. It was agreed that Mr N Khan, as the only other solicitor working in the Firm at the time, would take on supervising responsibility. Mr N Khan agreed to do this, and so the Firm was able to remain open whilst Mr Mazumder was in Bangladesh from 18 August and 23 September 2018;

- On 24 September 2018, Mr Mazumder returned to the office and held a one-to-one meeting with Mr N Khan; he was not informed that a *"…judicial review instruction had come back to the firm…"* whilst he was away;

- Mr Mazumder returned to Bangladesh for the period 10 November 2018 to 10 January 2019. Before he returned there, a further staff meeting was held on 9 November 2018 in order to discuss, again, how the Firm would operate in his absence;

- *"Unfortunately, from 12 January 2019 the Defendant became quite seriously ill in his neck, back, shoulder and left side, which worsened from 20 January 2019. As a consequence, he was out of the office and not working between that latter date and the middle of April 2019"*;

- *"At no stage did the Defendant delegate or authorise responsibility to anyone else in the firm to pursue judicial review proceedings on its behalf. All case workers must comply with the firm's procedure including obtaining prior express approval from the Defendant. The relevant case worker must then do work on the file under the Defendant's direct supervision and may not submit any judicial review documents to any court or tribunal outside his approval…In addition to the standard procedures for file management, it was the firm's policy that any applications for judicial review had to be subject to authorisation from the Defendant as principal and the opening of a new file before commencing any work and following the obtaining of instructed Counsel's positive opinion on the merits"*;

- *"The Defendant submitted four case [sic] to the Upper Tribunal".* The Applicant inferred that the four cases were Judicial Review claims;

- There was nothing on the face of the Orders made in those four cases which led to questions being raised about the Firm's conduct, except for the Ahmed case;

- JR/1633/2018 and JR/5251/2018 were prepared and submitted by Mr Mazumder himself;

- Mr S Khan worked on the Parvin case under Mr Mazumder's direct supervision;

- Mr N Khan worked on the Bahar case under Mr Mazumder's direct supervision;

- Mr N Khan submitted the judicial review claim in Ahmed, bypassing the Firm's policies and without the Firm's authority, whilst Mr Mazumder was in Bangladesh;

- *"The Defendant rarely submits judicial review claims to the Administrative Court"*;

- The judicial review claim in Alauddin was filed by Mr S Khan on 8 October 2018, without either Mr Mazumder and/or (presumably) Mr N Khan's involvement. The signature used on the claim form was not that of Mr Mazumder's. *"The Defendant notes that The Grounds in Alauddin do not have Counsel's name and were not drafted by counsel"*;

- Mr Mazumder did not sign the claim form in Khan (No 2) and believed that Mr S Khan *"…cut and pasted material in that case and either forged his signature or used a pre-existing pro forma signature of the Defendant which was unauthorized and which he knew he was not permitted to do"*;
- Mr S Khan hid the refusal from the Administrative Court in the Mahfuz case, but Mr Mazumder finally received a copy on 2 May 2019;

- Mr Mazumder believes that the Grounds in Alauddin, Mahfuz and Khan (No 2) are all based on the same source material, and have been copied into these applications (including typing errors), with only minor necessary changes in the dates and details;

- Mr Mazumder drafted his 16 May 2019 witness statement having considered Mr S Khan's witness statement, dated 14 May 2019. He also checked the Firm's database to see whether the Mahfuz case was on file. Mr Mazumder believed, at the time, that the 16 May 2019 witness statement was a true statement. Mr Collis submitted that this contradicted Mr Mazumder's assertion that he had not read Mr S Khan's statement having only received it 15 minutes before it was due to be submitted:

- The High Court did not consider his amended hearing bundle that was submitted for the 30 July 2019 Hamid hearing; this bundle included his 4 July 2019 witness statement;

- *"The Defendant alleged that at the time Hamid Hearing notice [sic] from the High Court the Defendant did not notify that the Defendant allowed to instruct a barrister to represent his case in the Hight [sic] Court. However, the Defendant represent his own case in the Hight [sic] Court which he never did before, for that reason the Judge some time did not clearly understand the defendant's full submission due to his lake [sic] of experience"*;

- Mr Mazumder maintained that there was appropriate and suitable training and supervision in place at the Firm, but that Mr N Khan and Mr S Khan deliberately flouted and bypassed these systems for their own personal reasons; and

- Mr Mazumder denied dishonesty in relation to his dealings with the court; any mistakes made by him occurred in good faith, with Mr Mazumder relying on the honesty of Mr N Khan and Mr S Khan.

118. The SRA received a document from Mr Fazli, dated 13 September 2022, on behalf of Mr N Khan. This document made eleven separate points in relation to the supervisory clause within Mr N Khan's contract. These points included the following assertions:

- That Mr N Khan had never signed any contract in which he knowingly agreed to supervise the Firm, anyone working in the Firm, or to act in any other supervisory capacity;

- The wording of paragraph 4.1 of a Law Society Practice Note, dated 28 June 2022, and Regulation 10 of the SRA's Authorisation of Individuals Regulation 2019,

make it unlikely that Mr N Khan would sign an employment contract which contained supervisory responsibility; and

- Mr N Khan himself was away in Bangladesh from 10 November 2018 to 10 January 2019, making it highly unlikely that he would have agreed to supervise the office in that timeframe.

119. Further, in relation to the Client A matter, the point was made that Mr N Khan had in fact acted in the best interests of Client A, and so this incident could not amount to a breach of Principles 4 and/or 6.

120. On 9 August 2022, Mr S Khan sent further representations to the SRA, alongside a short bundle. In the course of these documents, Mr S Khan made the following points:

- He did not recall entering into the self-employment agreement with Mr Mazumder, nor signing the document. He believed that Mr Mazumder had forged his signature on this document;

- He denied that he acted in the Mahfuz case outside of the Firm's authority; the judicial review form was signed by Mr Mazumder whilst he was in the office, before the application was sent to the court. Mr S Khan was unaware of any blank, pre-signed, judicial review claim forms;

- He was quite sure that Mr Mazumder signed the Alauddin claim form himself, but in any event, he denied the assertion that he forged Mr Mazumder's signature on this document;

- The fact that Mr Mazumder knew about the Mahfuz case was demonstrated by a 3 April 2019 e-mail being sent regarding the judicial review application from Mr Mazumder's e-mail address;

- That he never instructed counsel for his own case, let alone any other cases he was working on at the Firm; and

- In relation to the statement for the High Court, Mr Mazumder, *"…took an upper hand on me to take signature which I believe on the statement he produced in my name. Importantly, as it is evidenced that during those days my immigration status was not lawful, he had every opportunity to abuse me because of my precarious immigration status, for he always used to hint that at any time I may be caught by the immigration police. Given such a vulnerable position, he made me sign anywhere he wished. It is also essential to note that no one like Mazumdar can ever abuse me".*

121. **Allegation 1.1. – Between approximately January 2018 and 30 July 2019, Mr Mazumder failed to ensure that: (1.1.1) The staff at the Firm were adequately supervised in relation to judicial review claims; and/or (1.1.2) The Firm had effective systems and controls in place in relation to judicial review claims; and in doing so breached any or all of Principles 4, 5, 6 and 8 of the 2011 Principles and failed to achieve Outcomes 7.2 and/or 7.8 of the 2011 Code.**

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

121.1 Mr Collis submitted that between January 2018 and July 2019, the Firm was linked to ten judicial review claims by the High Court and reference was made to involvement in an eleventh case during the Hamid hearing on 30 July 2019. Of these eleven judicial review claims in which the Firm appeared to have been involved, five were singled out for heavy judicial criticism and were the focus of the Hamid hearing. Mr Mazumder had questioned the extent to which he was aware that his staff members were filing claims for judicial review.

121.2 Mr Mazumder's failure adequately to supervise his Firm's staff members and put in place adequate systems and controls in relation to judicial review claims was clearly illustrated by: (i) The volume of judicial review claims that were filed, on his account, in breach of his Firm's policy and without his knowledge; (ii) The poor quality of and the lack of legal justification for those claims; (iii) His decision (on his account) to delegate supervisory responsibility to Mr N Khan, despite Mr N Khan only being admitted to the Roll in January 2018; and (iv) His management of Mr S Khan.

121.3 It was unclear how many of the eleven judicial review claims were filed without Mr Mazumder knowing. He had clearly asserted that he was unaware of the filing of the claims in Mahfuz, Alauddin, Ahmed, Khan (No 1) and Khan (No 2). He professed to be being aware of Parvin (JR/5845/2018) and Ulie. It was uncertain if the remaining four judicial review claims were known to Mr Mazumder or not. In any event, on his own account, staff members within his Firm had felt able to file five separate claims for judicial review, without his permission or approval.

121.4 Mr Mazumder had asserted that it was the Firm's policy that claims for judicial review had to receive his approval and to have been advised upon by a barrister. In his 12 December 2021 letter to the SRA, Mr Mazumder asserted that this has been the Firm's policy since 2018. Mr Collis submitted that leaving aside the fact that the only policy documents Mr Mazumder had produced in support of such a policy existing were dated 4 February 2019 and 3 May 2019, and the fact that Mr Mazumder was unable to give a clear answer when questioned on this topic at the Hamid hearing, it raised the question of what steps Mr Mazumder took when he first realised that judicial review claims were being filed without input from him or a barrister.

121.5 The wording of the 4 February 2019 memorandum made it clear that the refusal decision in Alauddin had been received and seen by Mr Mazumder, which was sent to the Firm on 25 January 2019. (Andrews J's criticisms of that claim are detailed above).

121.6 Alauddin was also the case in which Mr Mazumder has claimed that someone had attempted to forge his signature on the claim form.

121.7 The extent of Mr Mazumder's actions upon receiving a critical refusal decision in a judicial review claim, about which he claimed he knew nothing, with the claim form and Grounds attracting the high level of criticism it did from Andrews J, and containing (on his account) an attempt by someone to forge his signature, was to issue the 4 February 2019 memorandum. Mr Collis submitted that this could not possibly be advanced as an appropriate level of adequate supervision of his staff.

121.8 Mr Mazumder appeared to rely heavily on his account of his health and health issues, in order to explain his behaviour from January to May 2019. The extent to which Mr Mazumder had claimed his poor health was affecting him appeared to have steadily increased across the different accounts he has provided.

121.9 None of the documents that Mr Mazumder chose to place before the High Court demonstrated that he was unable to attend work (save for the volume of medical appointments that occurred within that timeframe).

121.10 The steps that Mr Mazumder took upon discovery of the refusal in the Alauddin case were inadequate given (on his own account) the scale and seriousness of the problems it revealed, and the obvious significance.

121.11 Whilst Mahfuz, Ahmed and Khan (No 1) were all filed before the Alauddin refusal decision was issued, had Mr Mazumder taken further steps to control and supervise his staff, following receipt of the Alauddin refusal, it might have prevented Khan (No 2) being filed on 9 March 2019. It might also have led to Mr Mazumder identifying that the Mahfuz claim had been filed in January 2019 and steps could potentially have been taken, it was submitted, to remedy or address the failings within that claim, or even for the claim to be withdrawn.

121.12 Andrews J's criticisms of the judicial review claims included the Ulie case; one of the claims that Mr Mazumder professed to have known about. Had Mr Mazumder been supervising and monitoring his staff, and (as he claimed a relevant policy was in force within the Firm since 2018) ensuring that counsel's advice was obtained in relation to judicial review claims, it presumably would have impacted to improve both the judgment on whether to issue and the quality of claims that were being issued in his Firm's name.

121.13 As regards the delegation of supervision to Mr N Khan, there was a factual dispute between Mr Mazumder and Mr N Khan as to:

- Whether the supervisory clauses were present in the contracts when they were signed by Mr N Khan;

- The extent, if at all, Mr N Khan was expected to supervise other staff members within the Firm; and

- The extent to which Mr Mazumder was absent from the office, thereby requiring Mr N Khan to perform such supervision.

121.14 On Mr Mazumder's account, Mr N Khan did sign contracts which contained supervisory clauses, and he (Mr Mazumder) would have closed the Firm when he was absent from the office for sustained periods in 2018 and 2019 were it not for Mr N Khan being present and able to supervise in his absence.

121.15 Mr Mazumder (on his account) chose to place this level of supervisory responsibility on an individual who had only been admitted to the Roll in January 2018; a mere two months before he started at the Firm. On his account, he continued to expect Mr N Khan to supervise staff in his absence in 2019, despite making the serious discoveries in

relation to the Alauddin, without it would seem, alerting Mr N Khan to the fact that staff members were breaking the Firm's policy on judicial review claims and forging his signature. Nor did he think it appropriate to alert Mr N Khan to the fact that Mr S Khan was in possession of a pre-signed Judicial Review claim form.

121.16 Mr N Khan was himself responsible for filing the judicial review claim in Ahmed on 4 September 2018. This claim was refused on 30 November 2018, leading to an adverse costs order against the Firm's client of £445. Mr Collis submitted that it was unclear from the documentary evidence, whether Mr Mazumder was aware of the filing of the claim for judicial review in this case, and its adverse outcome, before or after it was referenced in the 23 May 2019 letter from the High Court. If it was before, it further called into question Mr Mazumder's decision (on his account) to delegate supervisory responsibilities to Mr N Khan, given Mr N Khan's involvement in that claim. If it was after, it further called into question the level of supervision and control Mr Mazumder was exercising across his relatively small Firm and its staff, if poor quality judicial review claims could be issued, leading to adverse costs orders for the client, and he, as Principal, remained unaware of it.

121.17 As regards the management of Mr S Khan, there was a significant level of factual dispute between Mr Mazumder and Mr S Khan in relation to their respective actions. However, on Mr Mazumder's account of events:

- Mr S Khan persuaded him to pre-sign a blank judicial review claim form in January 2019. There appeared to have been no effort on the part of Mr Mazumder to identify the case for which it would be used or ascertain which barrister would be advising and/or drafting the Grounds;

- A matter of weeks later, on 4 February 2019, Mr Mazumder discovered the Alauddin refusal and the obvious serious implications (on his account) this had for Mr S Khan's conduct. Mr Mazumder's response was to issue a Firm-wide memorandum;

- There appeared to have been no steps taken by Mr Mazumder to monitor or ascertain the use Mr S Khan had made of that pre-signed judicial review claim form, despite his earlier discovery namely that a Judicial Review claim had been filed without Mr Mazumder's authority;

- Mr S Khan was continuously allowed to have unfettered access to the Firm's post and, apparently, Mr Mazumder's e-mail address, given the level of communication that flowed in Mahfuz and Khan (No 2) in the early part of 2019; and

- The discovery by Mr Mazumder in May 2019 that Mr S Khan had, for a second time, issued a judicial review claim in breach of the Firm's policy on claims for judicial review claims. On this occasion it was of sufficiently poor quality to warrant the High Court to certify the claim as *"...an abuse of the process of the Court and totally without merit"* and request that Mr Mazumder explain why he should not be referred to the SRA. Despite these further developments coming so soon after what Mr Mazumder claimed he learned in February 2019, Mr Mazumder considered that the conduct only warranted a six-month suspension and putting

steps in place to provide Mr S Khan with adequate training, along with the issuing of a further memorandum on 3 May 2019.

121.18 Mr Collis submitted that the chronology detailed above depicted an extraordinarily poor level of staff supervision, particularly given (on Mr Mazumder's account) the level of misconduct he discovered on Mr S Khan's part on 4 February 2019. Putting aside the extent to which (on Mr Mazumder's account) Mr S Khan was able to issue judicial review claims without his knowledge in 2018 (Khan (No 1) was issued on 26 September 2018 and Alauddin was issued in October 2018), Mr S Khan was free and able (on Mr Mazumder's account) to file Khan (No 2) in March 2019, despite the Alauddin claim being discovered on 4 February 2019.

121.19 The terms of Mr S Khan's contract with Mr Mazumder and the Firm, called into question further the extent to which Mr S Khan was being adequately supervised given (in the knowledge of the dispute between Mr Mazumder and Mr S Khan as to the legitimacy of the contract):

- The use of the word, "*solely*" in Clause 4.1 was of concern. As an unadmitted caseworker/paralegal/consultant, Mr S Khan would not have been entitled to conduct reserved legal activities. Nor, by virtue of the lack of evidence of his registration with the Office of the Immigration Services Commissioner ("OISC") or his membership of a profession permitted to provide immigration advice and services at the material time. It was not clear therefore to what extent he would have been entitled to work without supervision, so the use of the word "solely" in his contract may have provided Mr S Khan with a false assurance. Further it questioned the level of work that Mr Mazumder considered that Mr S Khan was able to undertake; and

- Clause 4.1 appeared to provide Mr S Khan with a financial incentive to conduct work without supervision, given the reduction in the percentage of the fee to which he would have been entitled should he, *"…require more assistance or supervision on a particular case…"*

121.20 Mr Collis submitted that it followed that Mr Mazumder's description of the way in which Mr S Khan was managed further supported the Applicant's contention that there had been a failure adequately to supervise staff in relation to judicial review claims.

121.21 In his 4 May 2020 response, Mr Mazumder referred to the way that remote supervision was conducted. There had been no suggestion from Mr Mazumder that the remote supervision was not allowed to continue after the discovery of the Alauddin refusal on 4 February 2019, which should have served to act as a clear indicator that the systems put in place for monitoring the work of his staff were proving to be ineffective.

121.22 It was the Applicant's case that the level of supervision that allowed the volume of poor quality judicial review claims to be issued in a relatively short timeframe demonstrated that Mr Mazumder had failed to put in place systems and controls required to achieve and comply with the Principles. It was therefore asserted that this conduct amounts to a failure to achieve Outcome 7.2 of the 2011 Code.

121.23 Outcome 7.8 of the 2011 Code required a system for monitoring clients' matters, to include the regular checking of the quality of work by suitably competent and experienced people. Had Mr Mazumder's conduct complied with this Outcome it was highly likely, if not inevitable, that the actions of his staff members would have been identified and addressed long before the 2 May 2019 letter was sent by the High Court.

121.24 The failure adequately to supervise staff in relation to judicial review claims, and the absence of an effective system or controls, led directly to the frequency of poor quality claims being issued by the Firm, with a number of them, in the view of the High Court, having no prospect of success (for example, the Ahmed claim related to a decision that had not in fact been made). The fact that clients had these claims filed on their behalf, which in the Ahmed case led to an adverse costs order against a client, demonstrated a failure to act in their best interests and to provide a proper standard of service. Such failings were in breaches of Principles 4 and 5 of the 2011 Principles.

121.25 The consequences of inappropriate applications for judicial review was that they wasted judicial time, which is at a premium, and risked delaying the prompt examination of other cases, which might have merit. The public trusted and expected solicitors to ensure that claims were only advanced where there was a realistic prospect of success. The public was further entitled to trust that solicitors adhered to these requirements, particularly in immigration cases, in order to ensure that an over-stretched court system was not further burdened by unmeritorious claims. The failure adequately to supervise staff within his Firm led to a large number of such cases being filed in the Firm's name. The public's trust in Mr Mazumder and in the provision of legal services generally would be damaged by this conduct. On that basis, a breach of Principle 6 was alleged.

121.26 The failure adequately to supervise his staff, and the absence of effective systems and controls which appeared to have contributed to the volume of poor quality judicial review claims issued in the Firm's name, demonstrated a failure to manage the Firm effectively and in accordance with proper governance and risk management principles. On that basis, the Applicant alleged that Mr Mazumder's conduct breached Principle 8 of the 2011 Principles.

<u>The First Respondent's Case</u>

121.27 At the close of the prosecution case, Mr Mazumder confirmed that he now admitted allegation 1.1 in its entirety, including that his conduct was in breach of the 2011 Principles and the 2011 Code as alleged.

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

121.28 The Tribunal found allegation 1.1 proved on the facts and the evidence. The Tribunal found his admissions to be properly made.

122. **Allegation 1.2 – On or around 16 May 2019, submitted a witness statement to the High Court, dated 16 May 2019, which contained the following assertions which were false and/or misleading: (1.2.1) "Mr Khan had done a number of applications to the Home Office but this is his first independently worked JR application"; (1.2.2) "We rarely deal with Judicial review cases"; (1.2.3) "This firm only deals with very few Judicial Review cases"; (1.2.4) "Those Judicial Review applications**

that we have dealt with have been advised upon and drafted by counsels whom we instruct prior to submissions"; and (1.2.5) That the documents in the judicial review claim for Mr Mahfuz had been submitted without being reviewed by either the First or Second Respondent due to time pressures, or words to that affect; and in doing so breached any or all of Principles 1, 2 and 6 of the 2011 Principles.

The Applicant's Case

122.1 Having received the 2 May 2019 letter from the High Court as a direct result of the flawed Mahfuz claim being refused, Mr Mazumder submitted a witness statement to the court, dated 16 May 2019, which contained a number of assertions that were demonstrably false and/or misleading, namely:

- That this claim was Mr S Khan's first independently worked judicial review application (Allegation 1.2.1);

- That the Firm rarely deals with judicial review applications/only deals with very few judicial applications (Allegations 1.2.2 and 1.2.3);

- That the judicial review applications that had been dealt with previously have been advised upon and drafted by counsel (Allegation 1.2.4); and

- That the documents in the judicial review claim had not been reviewed by either the Mr Mazumder or Mr N Khan due to time pressures (Allegation 1.2.5).

122.2 It was the Applicant's case that these assertions presented as an attempt by Mr Mazumder to paint a more flattering and exculpatory picture of his conduct, and that of his Firm's staff members, than was in fact the case. Mr Collis invited the Tribunal to consider the content of the claims that were the subject matter of these five allegations with that in mind.

Allegation 1.2.1 – First independently worked JR application

122.3 This assertion was made in the 16 May 2019 witness statement and was demonstrably incorrect given (on Mr Mazumder's account) Mr S Khan's unsupervised work on Khan (No 1), Alauddin and Khan (No 2); all of which had been filed by 16 May 2019.

122.4 Mr Mazumder's knowledge of these other claims, or lack thereof, was instructive in determining whether Mr Mazumder's conduct in making this claim amounted to a breach of the Principles, but, it was submitted, did not assist in determining whether this claim was in fact false and/or misleading. The Applicant contended that given it would appear (on Mr Mazumder's account) that Mr S Khan had worked independently on previous judicial review applications, this was a false and/or misleading assertion.

122.5 Mr Collis contended that, without more, the Tribunal was entitled to find that the provision of a false and/or misleading assertion in a witness statement to the High Court amounted to a breach of Principle 1 of the 2011 Principles. The High Court were seeking to ascertain, through its "Hamid" jurisdiction (which involved the court ensuring that lawyers conduct themselves according to proper standards of behaviour), what exactly had occurred to allow the woeful claim in the Mahfuz case to be filed and

were entitled to expect to be provided with accurate information, particularly from a solicitor. A failure to do that, whether deliberately, recklessly or through a simple failure on the part of Mr Mazumder to ensure that he was in possession of correct and up-to-date information, amounted to a failure to uphold the administration of justice. The Applicant's contention was that Mr Mazumder's conduct resulting in the breach was not just through a failure to ascertain the correct position, but aggravated by dishonesty and, if not, then recklessness.

122.6 On the same basis, it was contended that a breach of Principle 6 could be found proved, even if the Tribunal thought this was no more than a failure on the part of Mr Mazumder to ensure that he knew the correct position. The public should be able to trust that a solicitor would ensure, in these particular circumstances, that the court was provided with accurate information. A failure to do that would serve to damage that trust. The Applicant's contention was that Mr Mazumder's conduct resulting in the breach was not just through a failure to ascertain the correct position but aggravated by dishonesty and, if not, then recklessness.

122.7 The Tribunal would, however, have to make a finding as to Mr Mazumder's state of mind as to the accuracy of that statement in determining whether a breach of Principle 2 was made out. In Wingate it was said that integrity connotes adherence to the ethical standards of one's own profession. A solicitor recklessly, but not dishonestly, allowing a court to be misled was one of the six specific examples of conduct that denoted a lack of integrity set out in Wingate.

122.8 Mr Collis submitted that, at the very least, Mr Mazumder must have been aware of the risk that either (a) this information was incorrect; or (b) the words he had used could be construed to mean that this was the first time that Mr S Khan had worked unsupervised on a judicial review claim, even if that was not the point Mr Mazumder was attempting to convey when he made that claim.

122.9 At the time Mr Mazumder provided the 16 May 2019 statement, he had learnt of Mr S Khan's work on the Alauddin claim made previously and had felt the need to issue the 4 February 2019 memorandum as a direct result of that conduct. It followed that, at the very least, asserting that Mahfuz was Mr S Khan's first independently worked judicial review claim was reckless. A solicitor acting with integrity would not have been reckless with the contents of a witness statement provided to the High Court in these circumstances. It was therefore alleged that this conduct represented a breach of Principle 2 of the 2011 Principles.

Dishonesty in relation to Allegation 1.2.1

122.10 It was the Applicant's contention that Mr Mazumder deliberately provided false information in relation to Mr S Khan's history (as known to Mr Mazumder) of working independently on judicial review claims. In the context of a Hamid hearing in which the court would be considering whether the lawyers ordered to court had conducted themselves according to proper standards of behaviour, the obvious advantages to Mr Mazumder of deliberately making such a false claim could be seen as:

- An attempt to conceal the extent to which Mr Mazumder's operation of the Firm had allowed an unqualified caseworker to file a number of judicial review applications, without appropriate supervision; and

- Minimise the culpability of Mr Mazumder in the eyes of the court in relation to the contents of the Mahfuz claim (i.e. this was a one-off incident, rather than a pattern of behaviour).

122.11 As identified above, by the date of the 16 May 2019 statement, Mr S Khan (on Mr Mazumder's account) had worked independently on Khan (No 1), Alauddin and Khan (No 2). Mr Mazumder contended that he was unaware of Khan (No 1) and Khan (No 2) until he received the 23 May 2019 letter from the court or (as regards (Khan No2)), the refusal decision. Whether the Tribunal accepted that assertion or not did not obviate the fact that Mr Mazumder was clearly aware of Mr S Khan's earlier conduct in Alauddin, given his issuing of the 4 February 2019 memorandum within the Firm as a direct result of that case.

122.12 Mr Collis submitted that it must follow that Mr Mazumder knew that (a) Mr S Khan had worked on a judicial review claim independently previously; and (b) it was incorrect to assert otherwise.

122.13 Mr Mazumder asserted that he made this claim as Mr S Khan had been working under his supervision in relation to the permission to appeal stage in Alauddin and so therefore he considered Mr S Khan to be supervised. Mr Collis invited the Tribunal to reject this as an explanation for why Mr Mazumder made this claim given:

- The statement specifically referred to judicial review applications, not permissions to appeal;

- The witness statement was provided as a direct result of an explanation being required for failings in a claim for judicial review, not an application for permission to appeal; and

- This explanation was not provided by Mr Mazumder when questioned on the accuracy of this assertion in the High Court on 30 July 2019. In fact, Mr Mazumder conceded to the High Court that this claim was not true.

122.14 The Tribunal was therefore invited to conclude that this was a deliberate provision of a false assertion to the High Court, given the obvious advantages to Mr Mazumder in doing so. Such conduct, it was submitted, would be viewed as dishonest by the standards of ordinary decent people.

Recklessness in relation to Allegation 1.2.1

122.15 In the alternative, Mr Mazumder's conduct was reckless. If Mr Mazumder did not intend deliberately to mislead the High Court as to Mr S Khan's previous history in relation to working independently on judicial review applications, he must have at least been aware that there was a risk that the court would be so misled given (a) his choice of words; and (b) his knowledge of Mr S Khan's history, in particular in relation to the Alauddin claim.

122.16 Mr Collis noted that underlying the assertion in Allegation 1.2.1. was a factual dispute between the Mr Mazumder and Mr S Khan; Mr Mazumder asserted that this claim was filed without his knowledge and Mr S Khan obtained a signature on a blank judicial review claim form from him in order to achieve this, whereas Mr S Khan maintained that the judicial claim in Mahfuz was filed with the full knowledge and approval of Mr Mazumder.

122.17 Mr Collis submitted that following the hearing of evidence, if the Tribunal accepted Mr S Khan's version of events, it remained open to the Tribunal to find that the phrase (in relation to Mr S Khan) "...this is his first independently worked JR application" was false and/or misleading on the basis that it was not an independently worked judicial review application.

122.18 Should the Tribunal make such a finding, the Tribunal was also entitled to consider whether the assertion was a false and/or misleading, and whether such an assertion was made dishonestly or recklessly.

Allegations 1.2.2 and 1.2.3 – Volume/frequency with which Firm handled judicial review applications

Applicant's Submissions

122.19 At the time when this witness statement was written, the Firm that had only been operating since January 2018 had been involved in no fewer than eleven judicial review cases; the ten cases identified in the 23 May 2019 letter from the High Court, plus the additional case referenced by Mr N Khan at the Hamid hearing.

122.20 Mr Collis submitted that, putting to one side the issue of Mr Mazumder's knowledge as to whether those were false and/or misleading assertions, this volume of judicial review cases, from a Firm consisting of only three solicitors, within its first sixteen months of operating, did not represent only "rarely" dealing with judicial review cases, or dealing with "very few Judicial Review cases"; this volume of judicial review cases in that timeframe equated to approximately one every five to six weeks. Accordingly, it was submitted that the assertions were false and/or misleading.

122.21 Mr Collis submitted that it was open to the Tribunal to conclude that these false and/or misleading assertions amounted to breaches of Principles 1 and 6, even if it concluded that these claims were made by Mr Mazumder as a result of no more than a failure to ascertain the correct position. It was, however, the Applicant's contention that Mr Mazumder's conduct resulting in the breach was not a simple failure, but aggravated by dishonesty and, if not, then recklessness.

122.22 Mr Collis submitted that there was clear evidence that Mr Mazumder knew of at least three judicial review claims (in addition to the Mahfuz claim) of the eleven in question that had been filed at the time he wrote his 16 May 2019 statement, namely: (i) Alauddin, (ii) Parvin and (iii) Ulie. Mr Mazumder's 26 September 2022 representations contained acknowledgement of involvement in three additional judicial review cases.

122.23 Mr Collis submitted that it followed that there were at least six judicial review cases about which Mr Mazumder was aware at the time he signed the first witness statement

to the High Court. Also of note was that of the ten judicial review cases identified in the court's 23 May 2019 letter, Mr Mazumder only claimed ignorance of three of those cases in his "Responses to 14 Points Raised" document and his 2 July 2019 witness statement.

122.24 There is a factual dispute between Mr Mazumder and Mr S Khan as to whether Mr Mazumder knew of the two Khan judicial review claims. Whilst Mr N Khan accepts that he filed the Ahmed claim without Mr Mazumder being aware, it was unclear if Mr Mazumder knew of the refusal decision in Ahmed (given its adverse costs consequences for one of the Firm's clients) at the time he submitted his 16 May 2019 statement. Regardless of the Tribunal's determination on these points, there was clear evidence to suggest that Mr Mazumder believed the Firm to have been involved in seven judicial review cases by the 16 May 2019.

122.25 Even if the Tribunal were unable to determine that Mr Mazumder knew of any more than six or seven judicial review cases at the time he made the 16 May 2019 statement, it remained open for the Tribunal to conclude that six or seven judicial review cases in sixteen months (so approximately one every nine weeks) did not represent "rarely" dealing with judicial review cases or dealing with "very few" judicial review cases.

122.26 Mr Collis submitted that it followed from this that the Tribunal was able to find that Mr Mazumder knowingly or recklessly made these false assertions to the court. On that basis, a breach of Principle 2 was alleged.

Dishonesty in relation to allegations 1.2.2 and 1.2.3

122.27 Mr Collis submitted that a finding that Mr Mazumder knowingly and deliberately made these false and/or misleading assertions in his 16 May 2019 statement, would lead to a finding of dishonesty as such conduct would be viewed as dishonest by the standards of ordinary decent people.

122.28 The 16 May 2019 witness statement read as an attempt by Mr Mazumder to minimise his Firm's familiarity with judicial review cases and create the illusion that the Mahfuz claim was a one-off incident; an aberration on the part of the Firm that was otherwise operating perfectly adequately. It followed that there was an obvious advantage to Mr Mazumder in deliberately providing false information to the High Court as it fed into the false narrative he was seeking to present, in an attempt to avoid judicial criticism and referral to the SRA.

Recklessness in relation to Allegations 1.2.2 and 1.2.3

122.29 If the Tribunal determined that Mr Mazumder's conduct was not dishonest, then, it was submitted, his conduct was reckless.

122.30 By 16 May 2019 he was aware (on his account) that staff members at his Firm had bypassed the Firm's policy, and submitted judicial review applications without his permission, on at least two occasions: (i) Alauddin; and (ii) Mahfuz. Regardless of what Mr Mazumder knew of any other judicial review cases aside from those two, it must have been apparent to him at that point that there was a risk that there were other judicial

review claims about which he was unaware. Yet it would appear that no efforts were made by Mr Mazumder to investigate the actions of his staff and ascertain the volume of judicial review claims that had been issued in the Firm's name, before he made the claims he did in his 16 May 2019 statement. Mr Mazumder must, at the very least, have been aware of the risk that these claims were false and/or misleading. The decision to take that risk, in these particular circumstances, constituted recklessness.

Allegation 1.2.4 - That the judicial review applications that had been dealt with previously have been advised upon and drafted by counsel

122.31 Mr Collis submitted that this assertion was demonstrably false and/or misleading given that there was no suggestion that a barrister was involved in the judicial review claims filed in the Ahmed, Alauddin, Khan (No 1) or Khan (No 2) cases.

122.32 Whether or not knew that this assertion was false and/or misleading, in the particular circumstances in which it was made, it was open for the Tribunal to conclude this constitutes a breach of Principles 1 and 6, even if the Tribunal concluded this was an innocent mistake.

122.33 However, it was the Applicant's contention that this was more than an innocent mistake on the part of Mr Mazumder. As set out above, there was evidence to suggest that at the time he submitted this statement, he knew of six or seven judicial review claims that had been filed by his Firm. Given the circumstances connected with Alauddin, it would have been obvious to Mr Mazumder that these Grounds had not been drafted with the assistance of a barrister; indeed that much appeared to be accepted by Mr Mazumder in:

- The 20 September 2019 letter from Legal Compliance Consultants;
- The 7 April 2020 e-mail to the FIO; and
- His 26 September 2022 representations.

122.34 The assertions in these three documents that Mr S Khan prepared the grounds himself contradicted Mr Mazumder's previous claims that he had been told by Mr S Khan that the grounds had been prepared by a barrister, which were made in his 2 July 2019 witness statement; and his 8 October 2020 interview with the FIO

122.35 Mr Collis submitted that the inconsistent explanations provided by Mr Mazumder called into question the credibility of his assertion that Mr S Khan had told him the grounds had been prepared by a barrister, particularly considering the extent of the criticisms which the Alauddin claim and grounds received and the fact that, on Mr Mazumder's account, the Alauddin claim was submitted without his knowledge and involved a forging of his signature, yet he appeared to have taken no steps to address with any barrister whether they had prepared the grounds.

122.36 For those reasons, Mr Mazumder's claim that he was told by Mr S Khan that a barrister had drafted the grounds in the Alauddin matter should be rejected.

122.37 Mr Mazumder, in documents dated 24 May, 27 June 2019 and 30 March 2020, had made similar claims as to what he was told by Mr S Khan in relation to the Ulie claim; that he was told by Mr S Khan that they too were drafted by counsel.

122.38 Mr Collis noted that in the 24 May 2019 letter, Mr Mazumder identified Mr S Tauhid as the barrister in question. In the 27 June 2019 letter (which was the letter that Mr Mazumder chose to include in the bundle put before the High Court at the Hamid hearing), there was no reference to Mr Tauhid.

122.39 The changing account from Mr Mazumder, it was submitted, called into question whether he was in fact told by Mr S Khan that the grounds in Ulie were prepared by a barrister. Furthermore, if Mr Mazumder genuinely had been told that, given the extent of the criticisms the Ulie claim and grounds received, one might have expected Mr Mazumder to raise this with the barrister concerned. In any event, there was no assertion that a barrister was involved in five other matters of which Mr Mazumder was aware. Despite his awareness of the cases and his awareness that no barrister was involved in them, Mr Mazumder still claimed that the judicial review applications that the Firm had dealt with had been advised upon and drafted by counsel.

122.40 It followed that this was a further incident of Mr Mazumder knowingly, or at least recklessly, furnishing the court with false and/or misleading information. Such conduct, it was submitted, lacked integrity in breach of Principle 2.

Dishonesty in relation to Allegation 1.2.4

122.41 It followed that if the information provided to the court was deliberately false and/or misleading, such conduct would be considered to be dishonest by the standards of ordinary people.

122.42 If Mr Mazumder knew this to be the case, the making of the assertions presented as a further attempt to minimise the culpability of the Firm in the eyes of the court; a further attempt falsely to portray the Firm as operating appropriately, and the circumstances of the Mahfuz case being an aberration rather than the norm.

Recklessness in relation to Allegation 1.2.4

122.43 In the alternative, in making the assertion that he did, Mr Mazumder's conduct was reckless.

122.44 By 16 May 2019, he was aware (on his account) that staff members at his Firm had bypassed the Firm's policy, and submitted judicial review applications without his permission, on at least two occasions: (i) Alauddin; and (ii) Mahfuz. It was surely incumbent upon him to make enquiries within the Firm and with his staff to try and ascertain the true picture of what been occurring in relation to judicial review claims filed in his Firm's name, before blithely making claims in a witness statement to the High Court. His failure to do that and his readiness to make claims which were now shown to be demonstrably incorrect was behaviour that could be appropriately classed as reckless.

<u>Allegation 1.2.5 – Time pressures/time constraints</u>

122.45 In his 16 May 2019 witness statement, Mr Mazumder made no fewer than three assertions that Mr S Khan's conduct or management of the Mahfuz case would have been affected by time pressures or time constraints:

- *"…this has happened due to time pressure to file documents";*
- *"…but the paralegal Mr Khan, due to time constraints, as mentioned above, submitted the bundle wrongly…"; and*
- *"I am told that because of the timing issue that Mr Khan took it upon himself to deal with it"*

122.46 Whether or not Mr S Khan did in fact tell Mr Mazumder that there were timing issues, there was, as a fact, insufficient time pressure in this case to warrant documents being filed inappropriately. The time limit for filing a claim for judicial review is three months or, if the decision being challenged is the refusal by an Upper Tribunal Judge to grant permission to appeal a decision from the First-Tier Tribunal, sixteen days.

122.47 The original claim form filed in the Mahfuz case sought to challenge the decision of Upper Tribunal Judge Kebede which was said to have occurred, bizarrely, on both 6 September and 7 November 2018.

122.48 Depending on which time limit or which decision date the author of the claim form believed it had to comply with, the claim, when it was filed on 28 January 2019, was either already out of time or (at best) still had until 7 February 2019 to be filed (3 months from 7 November 2018).

122.49 Given that the claim form made no reference to seeking an extension of time to file the claim, it could be assumed that the author believed that they were working towards the 7 February 2019 date. Accordingly, it was unclear what time pressures or time constraints would have warranted the documents relating to this claim being filed without being checked (on Mr Mazumder's account) by either Mr Mazumder or Mr N Khan, given that there were still ten days in which the author apparently believed they had to file the claim.

122.50 Mr Mazumder claimed that he was absent from the office for most of January through to April or May 2019, but it was unclear why that absence (if accepted) would have prevented Mr S Khan having these documents checked by Mr N Khan, in the ten days still left available to them.

122.51 Mr Collis submitted that the explanation that Mr S Khan's conduct was affected by time pressures or time constraints was false and/or misleading. Whether Mr S Khan made that claim to Mr Mazumder was, to an extent, academic; as an experienced immigration solicitor, Mr Mazumder would have known of the time limits and would therefore have known that the claim was either filed late or still had ten days to be filed.

122.52 Such conduct, it was submitted, breached Principles 1 and 6 as alleged.

122.53 Additionally, the claims were either made by Mr Mazumder knowing them to be incorrect or without having looked properly at the claim form or considered the time limit that would have applied. This was either a deliberate false assertion given to the High Court, or an assertion given recklessly. Either way, such conduct lacked integrity in breach of Principle 2.

Dishonesty in relation to Allegation 1.2.5

122.54 Mr Collis submitted that Mr Mazumder knew these were false claims when he made them in his 16 May 2019 witness statement; it would have been apparent to anyone looking at the claim form and with a working knowledge of the relevant time limits for filing judicial review claims.

122.55 These false assertions, it was submitted, were made in an attempt to create the false impression that Mr S Khan submitted these documents without them being checked by a solicitor solely because of the time pressures involved in filing them. Whether the Mahfuz claim was in fact filed without being seen by Mr Mazumder was a matter of dispute between Mr Mazumder and Mr S Khan, but regardless, time pressures could not have been the explanation for them not being seen by a solicitor.

122.56 This deliberate false assertion, with the intention of misleading the High Court, is conduct that would be considered to be dishonest by the standards of ordinary decent people.

Recklessness in relation to Allegation 1.2.5

122.57 In the alternative, Mr Mazumder's conduct was reckless. Mr Mazumder could have identified that this explanation could not in fact be correct through a review of the claim form and a consideration of the relevant time limits. If he chose not to do that before making these assertions to the High Court, such behaviour would constitute recklessness.

<u>The First Respondent's Case</u>

122.58 Mr Mazumder denied allegation 1.2 in its entirety, including that his conduct was dishonest or reckless as alleged. Mr Mazumder submitted that he had not misled the Court, but if he had in any particular, this was not intentional but was a mistake, his having not been provided with the necessary information from Mr N Khan and/or Mr S Khan.

122.59 Mr Mazumder explained that it was the Firm's policy that any applications for judicial review needed to have his authorisation and an advice from Counsel as to the merits of the claim.

122.60 Mr Mazumder travelled to Bangladesh on 18 August 2018. On his return to the office on 24 September 2018, he had met with Mr N Khan and Mr S Khan, neither of whom had informed him that they had accepted instructions on any judicial review matters during his absence. Nor was he informed by his then trainee who was responsible for opening files that there had been any new matters opened during his absence.

122.61 Mr Mazumder returned to Bangladesh between 10 November 2018 and 10 January 2019. Mr Mazumder stated that he was not aware of any judicial review cases being submitted by Mr S Khan other than the Parvin matter, which Mr S Khan had worked on under Mr Mazumder's supervision.

122.62 Mr Mazumder stated that he was unaware that Mr S Khan had worked on judicial review cases, as he had done so outside of the Firm's system and without

Mr Mazumder's knowledge. He only became aware of some of the matters following his receipt of communications from the Court.

122.63 Mr Mazumder stated that in particular, he was unaware that Mr S Khan had submitted the Alauddin claim until receipt of the communication from the Administrative Court stating that the claim had been refused. It was a result of that claim that he created the 4 February 2019 memo, in which the Firm's rules for the submission of JR's was made clear. Staff were informed that before instructions for the submission of a JR to the Administrative Court were accepted, clients had to agree to pay counsel's fees for an advice on the merits of the case and the matter had to be submitted to the Principal for prior approval before submission.

122.64 Mr Mazumder explained that he was not aware of the Mahfuz case until receipt of the letter from the Court dated 2 May 2019. Mr S Khan had accepted instructions and submitted the claim without Mr Mazumder's knowledge, and in breach of the Firm's procedures. Further, he had no knowledge of the JR claims submitted by Mr S Khan on his own behalf. Mr S Khan had never instructed the Firm on those matters, and did not have permission from Mr Mazumder to submit any JR applications on his own behalf and in the Firm's name.

122.65 Mr Mazumder further explained that when referring to "independently worked" this was a reference to Mr S Khan's work being done without Mr Mazumder's knowledge and supervision. Mr Mazumder stated that he did not know how many cases Mr S Khan had conducted in this way. He had simply drafted his response on 16 May 2019. Mr Mazumder submitted that this was, at best, evidence of his poor expression. It was most certainly not an attempt to mislead the Court. He had been unable to find any other JR files worked on by Mr S Khan, as those files were not on the system, Mr S Khan having accepted instructions on those files without Mr Mazumder's knowledge or authorisation.

122.66 Accordingly, when he stated that this was Mr S Khan's first independently worked judicial review application, that was an accurate reflection of his belief at the time.

122.67 As regards the statements that the firm dealt with very few JR's or rarely dealt with JR's, Mr Mazumder stated that this needed to be considered in the context of the number of cases the Firm dealt with generally. The Firm had approximately three hundred cases; to Mr Mazumder's knowledge, the Firm dealt with four JR cases. His statements were therefore accurate and were not an attempt, deliberate or otherwise, to mislead the Court.

122.68 Mr Mazumder explained that when he stated that JR applications had been advised upon by counsel, he was trying to explain that the Firm's rules, as implemented in July 2018, required an advice from counsel. As a result of the 4 February 2019 memo, it was clear to all staff that advice from counsel was required for all JR claims submitted to the Court.

122.69 Mr Mazumder referred to his 2 July 2019 witness statement in which he explained why counsel had not been instructed. He was unaware of the Mahfuz case. Mr S Khan had been acting in this matter without Mr Mazumder's knowledge or authorisation. The Firm was not instructed in either of the cases relating to Mr S Khan. Until he received

the 20 May 2019 letter from the Court, he was unaware of those matters. Alauddin was Mr S Khan's case. Whilst the Firm had been instructed in Tribunal proceedings of which Mr Mazumder was aware, he was not aware, and did not authorise the Firm's instruction in the JR proceedings before the Court. Accordingly, Mazumder was not aware that there had been JR claims issued without counsel's advice.

122.70 Mr Mazumder explained that his references to time pressure were a repeat of what he had been told by Mr S Khan. Whilst he had checked the documents following receipt of the 2 May 2019 letter from the Court, he had accepted the explanation given to him by Mr S Khan as being true.

122.71 Mr Mazumder denied that he had made any assertions in his witness statement that he knew to be untrue or incorrect.

122.72 Mr Abebrese submitted that when Mr Mazumder wrote his witness statement, he was focussing on the questions asked as regards the Mahfuz matter. He apologised for the mistakes made by Mr S Khan. Indeed, Mr S Khan had written his own statement accepting responsibility for the mistakes that he made. That statement, it was submitted, was more likely than not to be more accurate than the evidence that Mr S Khan had given to the Tribunal. Mr Abebrese noted that Mr S Khan had not suggested, in his witness statement, that Mr Mazumder was the caseworker on the Mahfuz matter. In fact, Mr S Khan stated that Mr Mazumder was away from the office and that he (Mr S Khan) had not asked for help as he did not know that he could. Mr S Khan stated that it was his first independently worked JR claim. In his oral evidence before the Tribunal, Mr S Khan had sought to blame Mr Mazumder. Mr Abebrese submitted that Mr S Khan had clearly not read his own witness statement.

122.73 Mr Abebrese submitted that it was a stretch for the Applicant to suggest that due to the duty of candour, Mr Mazumder was under an obligation to refer to issues of which he might be aware on other matters. That was not the purpose of the request from the Court for information; the Court wanted information in relation to the submission of the Mahfuz claim. Mr Mazumder addressed wider issues in his July witness statement when asked to do so. Further, and in any event, Mr Mazumder would not have been aware of the other JR files as Mr S Khan had not opened those files on the Firm's system so they could not be located by Mr Mazumder when he interrogated the Firm's system. Mr Abebrese referred to the Firm's file opening system. He submitted that the files had not been opened in accordance with the system. As regards Ulie and Alauddin, the Applicant submitted that Mr Mazumder must have been aware of those matters. The question as regards those matters was who was responsible for the conduct of those matters. Mr Abebrese submitted that Mr S Khan was the fee earner for those matters. That being the case, the Tribunal should then consider whether Mr S Khan was supervised.

122.74 The Tribunal was referred to an application form for permission to appeal from the first-tier Tribunal. There was no file reference number on that document. This illustrated the difficulty Mr Mazumder had in trying to trace documents on the system.

122.75 Mr Abebrese submitted that the Tribunal's consideration of allegations 1.2.1 required an assessment of the credibility of Mr S Khan. If the Tribunal took the view that Mr S Khan was a credible witness, then it would find those allegations proved.

However, if the Tribunal took the view that any part of Mr S Khan's evidence was not credible, then the allegations against Mr Mazumder ought to be dismissed.

122.76 Mr S Khan had been cross-examined in regard to matters dealt with by him in his witness statement. He was unable to answer uncontroversial questions about his role and responded to other questions by blaming Mr Mazumder. His responses, it was submitted, were not sufficient given the seriousness of the allegations he faced.

122.77 Mr Abebrese submitted that in order to find that Mr Mazumder had committed misconduct when he stated that the Firm rarely dealt with JR cases, or that it dealt with very few JR cases, the Tribunal should assess those statements in the context of other work being undertaken by the Firm at the time. Those statements could not be considered in isolation. Given the number of matters the Firm was dealing with, those statements were accurate and accordingly, did not amount to misconduct.

122.78 As regards Mr Mazumder's assertions about time pressure, Mr Abebrese agreed with the Applicant's submission that an examination of the file would reveal that there was no time pressure with regard to the submission of the claim as the claim was either out of time, in which case an application for an extension of time was required, or it was within time. A competent solicitor would have ascertained this. It was clear, therefore, that it had been Mr S Khan who had submitted this application without Mr Mazumder's knowledge. Mr Mazumder, in his witness statement, had repeated what he had been told in this regard by Mr S Khan, believing that information to be correct.

122.79 Mr Abebrese submitted that Mr Mazumder was a candid and truthful witness. At the time, the Firm was new; Mr Mazumder had been determined to do whatever he could to hold on to his practice. He had made some poor decisions in terms of his supervision of staff and had admitted allegation 1.1 in that regard.

122.80 The assessment of Mr Mazumder required an assessment of the evidence of Mr S Khan. It was clear that Mr S Khan's evidence was not credible. Mr Abebrese relied on Mr S Khan's witness statement of 19 May 2019. His oral evidence was in direct contradiction of the matters within that statement. Mr Abebrese submitted that the Tribunal should accept that statement as being a true reflection of the facts at the tine and should disregard the oral evidence given by Mr S Khan. Mr S Khan, had, during his evidence, made a number of assertions as regards Mr Mazumder's conduct. Mr Abebrese noted that Mr S Khan had had a significant period of time in which to raise these issues but had failed to do so until the proceedings.

122.81 Mr Mazumder, it was submitted, had not knowingly submitted a witness statement that contained false and/or misleading assertions. His conduct had not been dishonest or reckless as alleged.

The Tribunal's Findings

Allegation 1.2.1

122.82 That Mr Mazumder was aware of the Alauddin case prior to the preparation and submission of his 16 May 2019 witness statement was clear. It was as a result of the issues arising in that case that Mr Mazumder issues the 4 February 2019 memo. Further,

it had been Mr Mazumder's evidence that Mr S Khan had either (i) forged his signature on the claim form, (ii) used a blank signed claim form without Mr Mazumder's permission or (iii) had copied his signature from another document and inserted into the form. In any event, it was not Mr Mazumder that had signed the form and the claim had been issued without his knowledge and consent.

122.83 In the circumstances, Mr Mazumder knew that he had not supervised Mr S Khan in this matter. The Tribunal did not accept that Mr Mazumder had believed that Mr N Khan was supervising this matter. Nor was it accepted that, at the time he wrote his witness statement in May 2019, Mr Mazumder did not recollect the Alauddin matter, or the issuing of the memo.

122.84 The Tribunal noted that in his witness statement, Mr Mazumder explained that the Alauddin case had been transferred to the Firm by Mr S Khan when he joined the Firm. Accordingly, the Tribunal did not accept that Mr Mazumder was unaware of that matter, or that the matter was not recorded on the Firm's database such that he would not have been able to locate it following an interrogation of the Firm's system. Further, and in any event, for the reasons detailed above, Mr Mazumder did not need to interrogate the Firm's systems to discover the existence of the Alauddin JR. He was aware of that matter by February 2019 at the latest, having created the 4 February 2019 memo. It was Mr Mazumder's evidence that the 4 February 2019 memo was issued as a direct response to the refusal in Alauddin.

123.85 The Tribunal had been referred to a form for permission to appeal as evidence in support of the contention that Mr S Khan had been submitting documents without authorisation and permission, and that files were being opened by Mr S Khan outside of the Firm's internal file opening system. The Tribunal did not find that this document was helpful, nor did it provide support for Mr Mazumder's proposition that files had not been opened on the system. Whilst it was correct that the form did not contain a file reference number emanating from the Firm, this did not appear to be a document generated by the Firm. The firm referred to as being instructed on the form was Simon Noble solicitors. Accordingly, the Tribunal found, it would not have a Heans reference number and was not relevant to its consideration of the accuracy of Mr Mazumder's assertion regarding independently worked JR's by Mr S Khan.

122.86 When asked about the Ulie JR where permission had been refused in 2018, Mr Mazumder stated that he was not aware of that matter. Mr Mazumder had also stated that he was unaware of the Mahfuz case until receipt of the 2 May 2019 letter from the Court. However, in his letter to Mr S Khan dated 24 May 2019, Mr Mazumder stated:

> *"<u>Before you submitted</u> the following JR's you confirmed to me that the grounds of the case were prepared by Shafiul Tauhid ...*
>
> *... Ulie (our firm's reference ME/SK/2.50/MM/M.UI.IE)*
>
> *... Alauddin (our firm's reference number ME/SK/2.27/MM/M.UDDIN)*
> *... MAHFUZ (our firm's reference number ME/SK/1.5/IMM/M.MAHFUZ)"*
> <u>(Tribunal's emphasis)</u>

122.87 Accordingly, the Tribunal found that not only was it clear that Mr Mazumder was aware of Alauddin at the time he wrote his witness statement, but he was also aware of the

Ulie and Mahfuz matters. Furthermore, and as evidenced by Mr Mazumder's own correspondence, each of those files had Firm file references numbers. The Tribunal thus did not accept Mr Mazumder's evidence that he had been unable to locate these files as they were not on the system, or that they had been conducted without Mr Mazumder's knowledge.

122.88 Mr Mazumder relied on the evidence of Mr Hussain. In his evidence Mr Hussain explained that on 2 May 2019, Mr Mazumder had arranged an urgent meeting. During that meeting, Mr S Khan had confirmed that he had submitted a few JR's to the Administrative Court on the Firm's behalf. When asked how Mr Mazumder reacted to this information, Mr Hussain stated: *"he was not happy to say the least."* As to why the reference to the submission of judicial reviews by Mr S Khan was not detailed in his witness statement of July 2023, Mr Hussain explained that this was a genuine mistake and confirmed that it should have been contained in the July 2023 statement.

122.89 The Tribunal found that in assessing the evidence produced by Mr Mazumder, including his own correspondence and the evidence of his own witness, it was clear that Mr Mazumder knew that the Mahfuz claim was not Mr S Khan's "first independently worked JR application". Accordingly, his statement was both false and misleading.

122.90 The Tribunal did not accept that in order to find this matter proved, it was required to assess the credibility of Mr S Khan's evidence. As detailed, the Tribunal had found the matter proved on Mr Mazumder's own case without any reference to the evidence of Mr S Khan.

Allegations 1.2.2 and 1.2.3

122.91 The Tribunal agreed with the submission of Mr Abebrese. In order to assess whether Mr Mazumder's assertions as regards rarity and number of JR claims were false and/or misleading, it was necessary to consider them in the context of the number of matters in the Firm. The Tribunal found that in comparison to the number of client matters of which the Firm had conduct, Mr Mazumder's statements in this regard were factually correct. Thus the Tribunal did not find that the assertions made by Mr Mazumder were either false or misleading. Accordingly, the Tribunal found allegations 1.2.2 and 1.2.3 not proved.

Allegation 1.2.4

122.92 It was clear, the Tribunal found, that Mr Mazumder's assertion: "Those Judicial Review applications that we have dealt with have been advised upon and drafted by counsels whom we instruct prior to submissions"; was incorrect. There was no evidence that counsel's advice had been obtained in Mahfuz or Alauddin. The Tribunal found Mr Mazumder's explanation in his oral evidence to be unconvincing. Mr Mazumder stated that he had simply got the tense wrong in the statement. When saying that advice had been obtained on all cases, he meant to say that advice would be sought on all cases moving forward. This did not accord with his evidence that it had always been the case that counsel's advice was required and that he had told Mr S Khan this "from day one". Nor did it accord with his evidence that the 4 February 2019 memo was a written crystallisation of the status quo operating within the Firm. Further, Mr Mazumder's explanation in his oral evidence was different to that in his written evidence where he

suggested that Mr Khan had informed him that advice had been obtained, and he had written his statement on that basis.

122.93 The Tribunal noted that the assertion was in a bulleted list within the statement. The previous assertion was that the Firm rarely dealt with JR cases. The Tribunal found that whether the assertion was considered on its own, or in the context of the words around it, it was intended to convey the impression that advice had been obtained, and that the grounds had been settled by counsel when he knew that was not the case. Accordingly, in making that assertion, Mr Mazumder had deliberately tried to provide a misleading impression to the Court.

Allegation 1.2.5

122.94 Mr Mazumder, during his oral evidence, accepted that there was no time pressure for the reasons detailed by Mr Collis. The Tribunal found that Mr Mazumder was an experienced immigration solicitor. He confirmed that prior to the submission of his statement, he had reviewed the Mahfuz file. As such he would have known that the claim was either out of time, or that there was still sufficient time within which to file the claim such that claims about time pressure were inaccurate. Indeed, it had been Mr Abebrese's submission that any competent solicitor would have seen that the claim was either out of time, or that there was sufficient time within which to submit it.

122.95 The Tribunal found that given Mr Mazumder's knowledge, on his own case, of the submission of Alauddin without his permission, he would have fully reviewed the Mahfuz file before making any assertions as regards its conduct. As a competent solicitor, he would have known that there were no time pressures. Notwithstanding this, Mr Mazumder referred to alleged time pressures to submit the claim. Such statements were made by him, the Tribunal found, knowing that they were false and/or misleading.

122.96 As detailed, the Tribunal found that Mr Mazumder had deliberately made false and/or misleading assertions in his 16 May 2019 statement to the High Court. That such conduct breached Principle 1 was plain. Mr Mazumder had sought to subvert the proper administration of justice in order to protect himself and his Firm. Members of the public would not expect a solicitor to deliberately provide false and/or misleading information in a witness statement being provided to the Court who was assessing the conduct of the solicitor and his Firm in the submission of claims deemed to be totally without merit. In doing so, Mr Mazumder had failed to maintain the trust placed in him and in the provision of legal services in breach of Principle 6.

122.97 Such conduct, the Tribunal found, lacked integrity in breach of Principle 2. In deliberately providing false and/or misleading information in his witness statement, Mr Mazumder had failed to act in accordance with the ethical standards of the profession.

122.98 The Tribunal found that Mr Mazumder knew, when making the statement, that the information provided therein was false and/or misleading. He had deliberately made these assertions in order to try to avoid a report to the SRA and in the hopes that nothing further would come of the significant failures evidenced by the conduct of the JR claims. Ordinary and decent people would find that a solicitor who deliberately and knowingly made false and/or misleading statements in a witness statement had acted

dishonestly. The Tribunal thus found that Mr Mazumder's conduct had been dishonest as alleged.

122.99 Accordingly, the Tribunal found allegation 1.2 proved, including that Mr Mazumder's conduct was dishonest, save that it dismissed allegations 1.2.2 and 1.2.3. Given those findings, the Tribunal did not consider whether Mr Mazumder's conduct was reckless as recklessness had been pleaded in the alternative to dishonesty.

123. **Allegation 1.3 – On or around 4 July 2019, submitted a witness statement to the High Court, dated 2 July 2019, which contained the following assertions which were false and/or misleading: (1.3.1) "At Heans Solicitors we rarely deal with Judicial Review cases"; (1.3.2) "This firm only deals with very few Judicial Review cases"; and (1.3.3) That the documents in the judicial review claim for Mr Mahfuz had been submitted without being reviewed by either the First or Second Respondent due to time pressures, or words to that affect; and in doing so breached any or all of Principles 1, 2 and 6 of the 2011 Principles.**

The Applicant's Case

123.1 After submission of the 16 May 2019 witness statement, the High Court wrote back to Mr Mazumder on 23 May 2019, presenting a different picture as to the Firm's conduct in judicial review cases. Despite this information being highlighted to Mr Mazumder, he still felt able to repeat a number of the assertions he had made in his 16 May 2019 witness statement.

123.2 Mr Collis submitted that the Tribunal's consideration of allegation 1.3 would inevitably involve an overlap with its consideration of allegation 1.2. The circumstances were slightly different as by 2 July 2019, Mr Mazumder would have been aware of the full extent of the High Court's criticisms contained within the 23 May 2019 letter.

123.3 Allegations 1.3.1 and 1.3.2 mirrored allegations 1.2.2 and 1.2.3. Mr Collis had already detailed at those allegations above, the Applicant's case as regards the rarity of the Firm dealing with judicial review claims. Those points, it was submitted, were now exacerbated by the fact that Mr Mazumder's attention was specifically drawn to the volume of judicial review claims that had been filed in his Firm's name in the court's 23 May 2019 letter. Continuing to make these claims, despite the evidence to contrary, continued to amount to a breach of Principles 1 and 6, for the same reasons as set out above. Further, the case for this being a deliberate or reckless false statement was now stronger in light of the 23 May 2019 letter. Accordingly, Mr Mazumder had acted without integrity in breach of Principle 2.

Dishonesty in relation to Allegations 1.3.1 and 1.3.2

123.4 Whilst the argument for these being false assertions remained the same, the consideration of whether the making of these assertions was dishonest was slightly different; it could no longer be said that these were made in an attempt deliberately to portray a false picture as to the frequency and volume of the judicial review cases that the Firm handled, as the 23 May 2019 letter made it clear that the court knew the correct position.

123.5 Mr Collis submitted that the repetition of the assertions in the 2 July 2019 statement, despite being presented with evidence by the court that would suggest that they were false, was indicative of a determination by Mr Mazumder to remain wedded to the false narrative that he set out in the 16 May 2019 statement. The fact that this false narrative was unlikely now to be accepted by the intended audience did not render the retelling of it any less dishonest than when it was first provided. On that basis, it was asserted that these false and/or misleading assertions would be viewed as dishonest by the standards or ordinary decent people.

Recklessness in relation to Allegations 1.3.1 and 1.3.2

123.6 In the alternative, it was at best reckless on the part of Mr Mazumder to make these claims.

123.7 Whether Mr Mazumder genuinely believed that this level and frequency of judicial review cases could be accurately described as "rarely" or "very few" or not, it must have been apparent to him that there was a risk that this description would not be accepted by his audience. Making that claim, regardless of the seriousness of the position he was in, in light of the contents of the 23 May 2019 letter, demonstrated a willingness to take risks unreasonably. On that basis, Mr Mazumder's conduct was, at best, reckless.

Allegation 1.3.3 – Time pressure/time constraints

123.8 Mr Collis submitted that the basis upon which the assertions were said to be false and/or misleading were as set out at allegation 1.2.5 above.

123.9 There was no new information as to the timing issue by the time Mr Mazumder made his second statement to the High Court. It followed that the same issues as to whether this amounted to a breach of the Principles, was dishonest or reckless, applied.

123.10 The only thing that had changed was that if there had been any doubt previously, Mr Mazumder could have been under no illusion as to the seriousness of the situation, given the contents of the 23 May 2019 letter from the Administrative Court. And yet despite that, he still felt able to repeat the false and/or misleading assertions as to time pressures impacting on the handling of the Mahfuz claim. Mr Collis submitted that this only served to strengthen the Applicant's position in relation to these assertions being dishonest or reckless, as detailed at allegation 1.2.5 above.

The First Respondent's Case

123.11 Mr Mazumder repeated his evidence as detailed at allegation 1.2 above. Mr Abebrese relied on the submissions made at allegation 1.2 above.

The Tribunal's Findings

123.12 For the reasons given at allegation 1.2 above, the Tribunal found allegations 1.3.1 and 1.3.2 not proved. The Tribunal found allegation 1.3.3 proved including that Mr Mazumder's conduct was dishonest. Given those findings, the Tribunal did not

consider whether Mr Mazumder's conduct was reckless as recklessness had been pleaded in the alternative to dishonesty.

Second Respondent

124. **Allegation 4.1 – On or around 1 March 2018, Mr N Khan signed an employment contract or purported employment contract for a role with the Firm which entailed or purported to entail supervisory responsibilities, when such responsibilities were beyond his level of competence, and in doing so breached Principle 6 of the 2011 Principles**

The Applicant's Case

124.1 On or around the 1 March 2018, Mr N Khan signed a contract with Mr Mazumder which included supervisory responsibilities within the Firm. Mr N Khan signed this contract despite only having been on the Roll for approximately two months.

124.2 Mr N Khan, in his 18 January 2022 letter to the SRA raised the issue of whether these clauses were present within the contract at the point at which he signed it, or if they had been retrospectively added to the document. The Applicant questioned the credibility of this claim given that:

- It was not a claim he made when the contract was being discussed at the Hamid hearing;
- It was not a claim he made during his 8 October 2020 interview with the FIO. In fact, he appeared to accept that he had signed the document without really reading it;
- There were no fewer than three separate references to supervision or supervisory responsibility within the document;
- Despite being presented with this clause at the Hamid hearing, he continued to work at the Firm up until 30 November 2020

124.3 Mr Collis submitted that the far more credible explanation was that Mr N Khan signed this document without really reading it or without really appreciating the implications of the clauses relating to supervisory responsibility.

124.4 The fact that signing this contract was attributing to Mr N Khan a level of responsibility beyond his level of competence was demonstrated by (i) the date he was admitted to the Roll; (ii) the quality of the judicial review claim he submitted in Ahmed; and (iii) the fact that Ahmed was, on his account, the first judicial review case he had dealt with.

124.5 It followed that acquiring supervisory responsibilities within a Firm practising in immigration, and so likely to involve the filing and serving of claims for judicial review, was outside the level of competence for Mr N Khan.

124.6 Public trust in Mr N Khan and in the provision of legal services would be damaged by his readiness to take on a level of responsibility for which he was not equipped to deal. The client in Ahmed suffered an adverse costs order as a result of his handling of that case and, despite his claim that it was his first judicial review claim, he did not feel the need to contact Mr Mazumder to discuss the claim before filing it. Accepting a level of supervisory responsibility despite his obvious limitations in these circumstances constituted a breach of Principle 6 of the 2011 Principles.

The Second Respondent's Case

124.7 Mr N Khan denied allegation 4.1.

124.8 Mr N Khan stated that he was troubled that the contract contained the supervision clause complained of. He confirmed that the signature on the contract produced was his signature. Mr N Khan stated in his witness statement dated 18 January 2022, that he "signed it without reading it."

124.9 Mr N Khan admitted that as a solicitor he should not have signed the contract without reading it first, but that he did so in good faith and in circumstances where Mr Mazumder required the contract to be signed "with an extreme urgency without allowing me time to fully read it."

124.10 It was not believed, at that time, that Mr Mazumder was attempting to "trap" Mr N Khan. However, Mr N Khan expressed concern about the supervision clause as he had "good reason to believe that it has been altered." As he did not have a copy of the signed contract, he was unable to verify whether the term was included in the contract that he had, in fact, signed. Mr N Khan had asked for a copy of the contract, but Mr Mazumder had not provided it.

124.11 Had he read the contract and it contained the supervision clause, he would not have signed it as he was aware that he was not sufficiently qualified to be a supervisor. Mr N Khan stated that he found it "strongly likely that all pages in the agreement except the signature page and the page before it have been changed. I say this because the signature page and the page before it carried the mark of staples whereas all other pages do not."

124.12 Mr N Khan stated that the first time he saw the contract was when it was included in the bundle for the Hamid hearing. He had asked Mr Mazumder for an explanation at not having provided him with a copy of the contract before and queried whether the supervision clause "truly existed in the original agreement". Mr N Khan stated that Mr Mazumder did not reply.

124.13 Mr N Khan stated that he believed that Mr Mazumder needed to change the terms of the contract to evidence that he had not left the Firm unsupervised when he was absent during November 2018 to January 2019. Therefore, it was "strongly possible that he later forged my contract just to portray to the SRA that he left the firm supervised in his absence."

124.14 In evidence, Mr N Khan denied that Mr Mazumder had stated during any meetings that he was to supervise the Firm in Mr Mazumder's absence. Further, Mr N Khan denied that he had agreed to any such arrangement.

124.15 During cross-examination, Mr N Khan stated that he had told Mr Mazumder "several times" that he could not supervise. This was said during discussions in the office. Mr N Khan explained that he did request a new contract after the Hamid hearing that did not contain any supervisory clauses, but that he was told not to worry about the clause as it was an illegal clause, and that the contract would not exist in the eyes of the law.

124.16 Mr Fazli relied on the representations made in his submission of no case to answer detailed above.

124.17 The question for the Tribunal to determine was whether the Applicant had proved that Mr N Khan had signed the contract containing the supervisory terms. It was not for Mr Khan to prove that the terms had been inserted by Mr Mazumder after he signed the contract. It was the Applicant's case that Mr N Khan had signed the contract without reading it. The evidence of the FIO was that Mr N Khan had signed the contract without fully reading it. Mr Fazli submitted that the FIO failed to probe Mr N Khan sufficiently as to whether he read the contract fully before he signed it.

124.18 When he was cross-examined, Mr Mazumder was unable to provide any clear evidence as to the discussions he said he had with Mr N Khan regarding supervision on the day that the contract was signed. It was noted that there was nothing in the contract that stated that Mr N Khan was responsible for supervision only when Mr Mazumder was not present.

124.19 Mr Fazli referred to the gaps that existed on the pages of the contract that had been adduced in evidence, noting that it was unclear why those gaps appeared. Mr Mazumder had been asked to provide the computer used to draft the contract. He had not done so, stating that the computer had been destroyed. Mr Fazli submitted that given the importance of documents contained on that computer, Mr Mazumder would have retained it or tried to have it fixed by a professional, rather than relying on his son to do so.

124.20 Mr Mazumder had stated that had he known that Mr N Khan was unable to supervise, he would not have included the supervision clause in the contract. Mr Fazli did not accept that Mr Mazumder was unaware of Mr N Khan's inability to supervise given his experience. This lent credence to the assertion of later insertion of the supervision clauses.

124.21 Mr Fazli noted that the supervision clause referred to supervision of the office but did not mention supervision of work. Further, there was no evidence that Mr N Khan had undertaken any supervision.

124.22 Mr Fazli submitted that in his 16 May 2019 witness statement, whilst Mr Mazumder had referred to Mr N Khan being able to review the claim prior to submission, he did not mention anything about Mr N Khan being responsible for supervision. Similarly, in his 2 July 2019 witness statement, Mr Mazumder stated that Mr N Khan was able to

review the bundles, but Mr S Khan had "regretfully" submitted them without first showing them to Mr N Khan. Again, there was nothing in that paragraph that stated that Mr N Khan was responsible for supervising Mr S Khan.

124.23 Mr Mazumder stated that he had made it clear in a meeting that Mr N Khan would be supervising in his absence. This was not accepted. Further, notwithstanding the evidence of Mr Hussain, who stated that this was discussed in a meeting, there was nothing in the meeting notes recording this discussion.

124.24 Mr Fazli submitted that even if the Tribunal found that Mr N Khan had signed the contract knowing that it contained the supervision clauses, this would be inconsequential; as a matter of fact and law, Mr N Khan had not carried out any supervision of the work of others in the office.

124.25 Mr Fazli submitted that the conduct complained of did not amount to a breach of Principle 6. Members of the public were unlikely to take the view that the failure of a solicitor to read a contract was unreasonable. In the event that Mr N Khan had not read the contract, and the clause was contained within the contract at the time that it was signed, Mr N Khan had done so, trusting that the contract was proper, based on his trust in Mr Mazumder. In the alternative, if he was aware of the clause, given that it was not enforceable, it was inconsequential and could not amount to a breach of Principle 6.

The Tribunal's Findings

124.26 The Tribunal noted that whilst there was no evidence of Mr Fazli had adduced that there was no evidence that Mr N Khan had actually supervised any work or members of staff, such an assertion did not form part of the case brought against him by the Applicant.

124.27 Further, it was not in dispute that Mr N Khan was not competent to supervise given his date of qualification. Indeed, it had been positively asserted by Mr N Khan that he was fully aware that he was not sufficiently qualified to supervise and that had he been aware of the supervision clause, he would not have signed the contract.

124.28 The Tribunal did not accept the criticism levelled at the FIO as regards failing to probe Mr N Khan further on how much of the contract he had read prior to signing. It had been his evidence that he did not read the contract and that the first time he read it was when it was contained in the bundle prepared for the Hamid hearing. It was not Mr N Khan's case that he had, in fact, read the contract. Mr N Khan's position was not different to that detailed by the FIO in evidence.

124.29 The Tribunal did not accept the assertion that the supervision clause was a late insertion by Mr Mazumder in order to evidence supervision when he was not in the office. Mr Fazli had referred to the gaps at the top of the pages of the contract, inferring that this might be evidence of later insertion. Mr Mazumder, when asked about this, stated that this was likely to be a result of the way the document had been uploaded to the system. The Tribunal found this to be a plausible explanation, particularly in circumstances where other documents in the bundle also included a significant gap at the top of each page, including the transcript of the Hamid hearing.

124.30 In evidence, Mr N Khan had confirmed that the signature that appeared on the document adduced as the employment contract was his signature. Having determined that the

supervision clause was not later inserted by Mr Mazumder, the Tribunal found that the document adduced as the employment contract was the document signed by Mr Mazumder.

124.31 As regards the submission that the contract was illegal, the Tribunal did not find that the entire contract was illegal as a result of the inclusion of the supervision clause that Mr N Khan was not competent to perform. The Tribunal did not consider that the legality or otherwise of the supervision clause was a matter upon which it needed to make a determination. The issue to be determined was whether, in signing a contract that contained the supervision clause, Mr N Khan had acted in breach of Principle 6.

124.32 Mr Fazli's submission that the contract was void for lack of consideration was, the Tribunal determined, misconceived. Consideration in contract law, did not mean the consideration of the document, rather it meant the exchange of value. In the contract in question, the consideration was the payment by Mr Mazumder for the work undertaken by Mr N Khan.

124.33 The Tribunal did not accept Mr Fazli's submission that as Mr N Khan was unable to comply with the supervision clause, that the signing of the contract was inconsequential. It was not acceptable, the Tribunal found, for a solicitor to sign a contract that contained clauses that he could not perform as they were beyond his competence and thus in breach of his regulatory duties. This was the case whether the solicitor was not aware of the clause because he had not read the contract, or was aware of the clause but had signed the contract in any event as he knew that the clause was not enforceable or considered the clause to be illegal.

124.34 The Tribunal found that in signing the contract, whether or not he knew that it contained the supervisory clauses, Mr N Khan had breached Principle 6. Members of the public would expect a solicitor to read a legally binding contract before signing it. Members of the public would also expect that a solicitor who had read a contract and knew that it contained an illegal or unenforceable clause, would not sign that contract until the offending clause had been removed.

124.35 Accordingly, the Tribunal found allegation 4.1 proved.

125. **Allegations 4.2 - On or around 6 September 2018, requested that Client A transfer money that was intended for the Firm to his own personal bank account, and in doing so breached any or all of Principles 2, 4 and 6 of the 2011 Principles.**

Allegation 4.3 - On or around 3 October 2018, inappropriately retained £160.00 of the money he had received from Client A, and in doing so breached any or all of Principles 2, 4 and 6 of the 2011 Principles.

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

125.1 On or around 6 September 2018, Mr N Khan sent a message to Client A requesting payment of £360. Despite the fact that it had apparently been agreed that this money was intended for the Firm, and that £60 of that £360 was specifically identified as being VAT, Mr N Khan provided his own personal bank details. Mr N Khan then chose to

retain £160 of the money he had received to off-set a personal debt owed to him by Client A, and only transferred on £200 of that payment to the Firm.

125.2 In his message to Client A, dated 6 September 2018, Mr N Khan clearly provided his own bank details, rather than those of the Firm. It was unclear how this could have resulted from a "miscommunication" as he asserted in his 18 January 2022 letter to the SRA. There had been no effort by Mr N Khan to correct the message he sent or provide Client A with the Firm's bank details through a separate form of communication.

125.3 Mr Collis submitted that the message sent by Mr N Khan presented as a straightforward request from him to a client to pay money that was intended for the Firm to him rather than the Firm.

125.4 Mr N Khan had then compounded the situation by choosing to retain £160 of that money and to transfer only £200 of it onto the Firm. Rather than returning the entire £360 to the client and asking for the transfer to be paid direct to the Firm, Mr N Khan chose to take advantage of the opportunity and use part of the funds he had received to off-set a personal debt owed to him by Client A.

125.5 The problem was further compounded by the fact that the paperwork issued from the Firm only referred to the £200 as having been paid by Client A; there was no record anywhere of initial agreement that the Firm would be paid £360, but that only £200 of that had been received due to Mr N Khan choosing to retain £160 of it.

125.6 Whilst Mr N Khan asserted that he had updated Client A as to what he intended to do with the £360 he had received, there was nothing to suggest that the Firm had been informed that £160 which was intended for the Firm had instead been retained by Mr N Khan.

125.7 Mr Collis submitted that Mr N Khan's actions, both in requesting that the money be paid into his personal account and then retaining £160 of it, did not represent the client's best interests. On the contrary, Mr N Khan's actions benefitted only him, with the client (on Mr N Khan's account) left still owing £160 to the Firm and the Firm being £160 out of pocket. Accordingly, he had failed to act in his client's best interests in breach of Principle 4.

125.8 Such conduct, which, it was submitted, appeared to have been driven by Mr N Khan's desire to recoup the £160 that he was owed by Client A, was the type of conduct that would damage the public's trust in Mr N Khan and the provision of legal services in breach of Principle 6.

125.9 Mr N Khan's explanation that the £360 was transferred into his account as a result of a "miscommunication" would present as far more credible if he had taken steps to correct that error, or created a paper trail to demonstrate that, whilst the client had paid out £360, only £200 of that would be used to meet the client's fees with the Firm. Instead, Mr N Khan retained the £360, before transferring £200 cash to the Firm. As far as the paperwork available to the Firm was concerned, it would appear as though the client had only ever paid out £200, rather than the £360 he did in fact transfer.

125.10 Mr Collis submitted that such conduct demonstrated a willingness on the part of Mr N Khan to prejudice the financial interests of both his client and those of the Firm; such behaviour represented a departure from the ethical standards of the profession in breach of Principle 2.

The Second Respondent's Case

125.11 Mr N Khan denied allegations 4.2 and 4.3. Whilst there was no dispute as to the facts, it was denied that his conduct had breached the Principles as alleged or at all.

125.12 Mr Khan explained that Client A's payment to his personal account was made as the result of an error in the provision of the bank details to which monies should be paid. Mr N Khan explained that he took instructions from Client A at the beginning of September 2018.

125.13 It was important to note that Mr N Khan had a personal relationship with Client A, and that Client A owed Mr N Khan £160 at the time of his instructions. Mr N Khan agreed to accept instructions in the matter informing Client A that the cost would be £1,200. The Firm would require a payment on account of £300 + VAT (£360). This was immediately after Mr Mazumder had told staff to add VAT to any payments except the non-VAT out of country immigration matters.

125.14 Client A was supposed to pay the firm £360 and make a separate payment of £160 to Mr N Khan in person. Instead, he paid to £360 to Mr N Khan's personal account. Mr N Khan explained that he had provided his personal account details to Client A in error.

125.15 Mr N Khan stated that he made it clear to Client A that he would keep £160 of the money paid in settlement of the debt owed. Client A agreed to this. Mr Mazumder, it was stated, was also aware of this arrangement.

125.16 Whilst instructions were taken on 7 September 2018, the client care letter was not issued until 2 October 2018. Mr N Khan stated that he made an error in that letter by stating that the fixed fee was £200 in total.

125.17 Mr Khan explained that he stood against Client A in a community event in November 2018. A few days prior to this, he had asked Client A to bring the client care letter into the office so that it could be amended. Client A stated that the fixed fee for the work was agreed at £200. Mr N Khan submitted that it was at this point that Client A informed Mr Mazumder that he wanted a full refund or he would report the matter to the SRA. Mr N Khan stated that he "compromised by returning him £360 in full via a common friend both of us. This is because, when I realised that I gave him my personal bank account instead of client account, I tried to mitigate the issue without referring the matter to the SRA."

125.18 Mr N Khan submitted that this was an error on his part, and it did not amount to a breach of the Principles.

125.19 Mr Fazli referred the Tribunal to a message sent by Client A to Mr Mazumder on 11 February 2020, in which Client A stated that there was a misunderstanding, and that he withdrew his complaint against Mr N Khan and he had no claim against Mr N Khan.

125.20 Mr Fazli submitted that there was no harm suffered by Client A as the monies had been returned to him. Further, there was no financial loss to the Firm as the monies were owed to Mr N Khan and not to the Firm. Mr Mazumder was aware of the position at the time and did not suggest that those monies should be transferred by Mr N Khan to the Firm. Mr N Khan considered that the complaint by Client A was as a result of their standing against each other in the community election, and had been encouraged by Mr Mazumder. Whilst it was accepted that there were no notes on file as regards the debt owed by Client A to Mr N Khan, Mr N Khan's evidence had been consistent on this point. Further, there was no credible evidence that Client A and Mr Mazumder were not aware of the monies he had retained and the reasons for its retention.

125.21 Mr Fazli submitted that the Applicant had failed to make out a breach of Principle 4. The interests of Client A had not been diminished or impacted in any way. Further, there had been no breach of Principle 6. Members of the public would understand that Mr N Khan had made an error in providing his own account details, but their trust in him and in the provision of legal services would not be diminished when taking account of the fact that the monies owed to Mr N Khan by Client A were the only monies retained by him.

125.22 The conduct did not amount to a lack of integrity in breach of Principle 2. It was accepted that Mr N Khan did not correct the breach, but this was in the context of monies that were owed to him by Client A. Whilst his conduct might amount to a breach of the Accounts Rules, it did not amount to a lack of integrity. Accordingly, allegations 4.2 and 4.3 should be dismissed.

The Tribunal's Findings

125.23 The Tribunal found that in requesting payment into his personal account and then retaining part of the monies, Mr N Khan had failed to act in his client's best interests in breach of Principle 4. It was clear from the request for payment, that Client A was expected to pay the Firm £360 on account. That was the amount of money that was paid by Client A. It was also clear that Client A considered that the monies he had paid, had been paid to the Firm. Mr N Khan stated that Client A was supposed to pay £360 to the Firm and to pay the additional £160 that was owed to him. If that were the case, the Tribunal would have expected Mr N Khan to have provided details for both of the accounts, however, only one set of account details were provided, and those were for Mr N Khan's personal account. The Tribunal found that it was clearly contrary to Client A's best interests for monies that he paid for the conduct of his case to be misdirected and then retained by Mr N Khan. Accordingly, the Tribunal found that in conducting himself as he did, Mr N Khan had failed to act in Client A's best interests in breach of Principle 4.

125.24 That such conduct failed to maintain the trust the public placed in Mr N Khan and the provision of legal services was plain. Members of the public would not expect a solicitor to provide his personal account details for the payment of monies requested on behalf of the Firm. Nor would members of the public expect a solicitor to retain monies

that were paid on account of work to be undertaken on a case, to be retained by a solicitor in satisfaction of a personal debt. Accordingly, the Tribunal found that Mr N Khan's conduct had breached Principle 6 as alleged.

125.25 The Tribunal considered that in acting as he did, Mr N Khan had put his personal circumstances above that of the Firm and Client A. Such conduct, it was determined, did not accord with the ethical standards of the profession. Accordingly, in acting as he did, Mr N Khan's conduct lacked integrity in breach of Principle 2.

Third Respondent

126. **Allegation 5.1 – On or around 14 May 2019, signed a witness statement dated 14 May 2019 intended for the High Court which either: (5.1.1) Contained information that he believed to be false and/or misleading, or; (5.1.2) He had failed to read, and in doing so breached any or all of Principles 1, 2 and 6 of the 2011 Principles.**

The Applicant's Case

126.1 Mr Collis submitted that Mr S Khan signed a witness statement intended for the High Court which contained assertions as to his conduct in the Mahfuz case and the extent to which Mr Mazumder's illness had kept him from the office. On 30 November 2021, Mr S Khan provided a letter to the SRA. In the resulting exchange between Mr S Khan and the SRA, Mr S Khan maintained that he:

- Disagreed with the claims he had made in the 14 May 2019 witness statement for the High Court;
- Had not read the document before he signed it; and
- Had been forced to sign the document by Mr Mazumder.

126.2 It followed that Mr S Khan either signed a statement which contained assertions that he believed to be incorrect (Allegation 5.1.1) or that he simply had not read (Allegation 5.1.2).

126.3 Either way, the signing of a witness statement in those circumstances represented a failure to uphold the proper administration of justice, given that the High Court was specifically trying to ascertain an accurate picture of how the Mahfuz claim was prepared and came to be filed. In conducting himself as he had, Mr S Khan had breached Principle 1.

126.4 Such conduct, which would simply frustrate the High Court's efforts (under its Hamid jurisdiction) to uncover the truth (including whether the lawyers involved had conducted themselves according to proper standards of behaviour), was the type of behaviour that would serve to damage the public's trust in Mr S Khan and in the provision of legal services in breach of Principle 6.

126.5 Whether it was found that Mr S Khan had either (i) signed a statement which contained assertions that he believed to be incorrect; or (ii) signed a statement which he simply had not read, it followed that Mr S Khan was culpable in allowing an account from him to be put before the High Court, which did not in fact represent an account that he had provided or with which he agreed. Signing a witness statement in those circumstances, given the purpose for which it was intended, represented a departure from the ethical standards of the profession in breach of Principle 2.

Dishonesty in relation to Allegation 5.1

126.6 Immediately above Mr S Khan's signature on his witness statement, dated 14 May 2019, is the Statement of Truth, which reads as follows:

> *"I make this statement believing the same to be true to the best of my knowledge and it is fully understood by me and accordingly my name and signature are printed below"*

126.7 Given Mr S Khan's involvement with the legal profession, and with immigration cases in particular, it was submitted that it was not unreasonable to assume that Mr S Khan would have a working knowledge of the expectations for witness statements, the contents of a Statement of Truth, and the need to ensure that the contents of such a document were accurate before they were signed.

126.8 Had Mr S Khan not read this witness statement, as he now claimed, he could not have legitimately and honestly signed this document; he was not entitled to sign to confirm the accuracy of the document.

126.9 Alternatively, if Mr S Khan had read the document, he must have known that it contained information in relation to (i) Mr Mazumder's absence from the office; and (ii) his (Mr S Khan's) own work on the Mahfuz case with which he did not agree. Despite this, he still signed to confirm the accuracy of the statement.

126.10 It follows that whether the Tribunal concludes that Mr S Khan did or did not read the witness statement, signing such a document in those circumstances would be considered to be dishonest by the standards of ordinary decent people.

<u>The Third Respondent's Case</u>

126.11 Mr S Khan denied allegation 5.1. He explained that he had not drafted the witness statement, nor had he read it. He accepted that he had signed the statement.

126.12 Mr S Khan explained that it was Mr Mazumder who was the caseworker on Mahfuz. The matters attributed to Mr S Khan within the statement were not true. It was not his statement and he had not made those assertions. He was forced by Mr Mazumder to sign the statement when he attended the office. Mr Mazumder, it was stated, had shouted at Mr S Khan when he attended the office and had threatened to call the police. Mr S Khan considered that he had no choice but to sign the statement. Mr S Khan had asked to read the statement before he signed it, but Mr Mazumder did not allow him to do so. When he asked to read the statement, he was told that it was required that day to be submitted to the Court. Mr S Khan explained that he signed the statement as he was

afraid. He was mentally frail at the time and was taking medication. Following the signing of the statement, Mr S Khan stated that he left the office and thereafter had no further contact with Mr Mazumder. He explained that he did not know the circumstances of the statement and did not consider whether it was appropriate to report that he had been forced to sign the statement. Mr S Khan accepted that signing the statement was his "big mistake".

126.13 As to the letters that Mr Mazumder purportedly sent to him dated 22 May and 18 June 2019, they were sent to an address at which he no longer resided and had not been residing there for some time. Mr Mazumder was aware of this. Further, Mr Mazumder had his phone number and his email address but had not used either of those to contact him.

126.14 Mr S Khan stated that he was unaware of the Hamid hearing. If he had known that it was taking place and that he was required to attend, he would have attended the hearing.

126.15 Mr S Khan stated that all the work he undertook at the Firm was under Mr Mazumder's supervision. He was aware of all cases and had accepted instructions on Mr S Khan's immigration matters.

126.16 It was not accepted that Mr S Khan was a consultant at the Firm. His immigration status meant that he was not entitled to work. He was assisting on matters and Mr Mazumder gave him monies for subsistence. He had never signed an employment contract with the Firm, and any signature on any such document was put there by Mr Mazumder.

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

126.17 The Tribunal examined the statements of 14 May and 16 May 2019 with care. The Tribunal determined that the statements had been written by the same person, or at the very least one in conjunction with the other. This determination was made on the very similar language, style, layout and formatting of the statements including the information contained within both. By way of illustration the Tribunal noted that paragraph 2 of Mr Mazumder's 16 May witness statement said:

> *"[Mr Mahfuz]is known to my firm's paralegal [Mr S Khan] and he had received instruction from him to deal with his immigration matter in January 2018. The client's previous immigration case history was as follows:*
>
> - *The client submitted his asylum claim and attended screening interview through his previous lawyers.*
> - *The client had his Home Office substantive interview and provided evidence.*
> - *The client's case was refused by the HO on the grounds that the submitted documents were fake.*
> - *The HO gave the client appeal right to the First Tier Tribunal.*
> - *The FTT refused the client's application on the same grounds as the HO.*
> - *The client applied to the FTT for permission to appeal to the Upper Tribunal.*
> - *The FTT refused his application for permission to appeal to the UT.*

- *The client then applied, through his previous lawyers, to the UT directly for permission to appeal to the UT. The UT refused the permission to appeal application. The client's appeal rights were exhausted.*
- *The client applied personally for the judicial review to the Admin Court/High Court against the UT's above decision. The application for permission was refused."*

126.18 Paragraph 4 of the witness statement attributed to Mr S Khan stated:

> *"The client Mr Arif Al Mahfuz was known to me previously and I have received instruction from him to deal with his immigration matter in January 2018. After I received his documents in relation to his previous immigration case I found out that his history of the case was as follows:*
>
> - *The client submitted his asylum claim and attended screening interview through his previous lawyers.*
> - *The client had his Home Office substantive interview and provided evidence.*
> - *The client's case was refused by the HO on the grounds that the submitted documents were fake.*
> - *The HO gave the client appeal right to the First Tier Tribunal.*
> - *The FTT refused the client's application on the same grounds as the HO.*
> - *The client applied to the FTT for permission to appeal to the Upper Tribunal.*
> - *The FTT refused his application for permission to appeal to the UT.*
> - *The client then applied, through his previous lawyers, to the UT directly for permission to appeal to the UT. The UT refused the permission to appeal application. The client's appeal rights were exhausted.*
> - *The client applied personally for the judicial review to the Admin Court/High Court against the UT's above decision. The application for permission was refused."*

126.19 The above was one example of the similarities that existed in the two statements. Those similarities, the Tribunal concluded, lent credence to Mr S Khan's submission that he had not written the statement. The Tribunal noted that Mr Mazumder did not suggest that he had not written his own statement. Accordingly, the Tribunal inferred that both statements had either been written by Mr Mazumder or under his direction.

126.20 The Tribunal noted that in his representations to the SRA dated 26 September 2023, Mr Mazumder stated that he had drafted his 16 May 2019 witness statement "having considered [Mr S Khan's] witness statement dated 14 May 2019". This, the Tribunal found, was in direct contradiction to his evidence at the Hamid hearing where he explained that he had not read Mr S Khan's statement before submitting it to the Court as he had only received the statement from Mr S Khan 15 minutes before the statements had to be filed and served, Mr S Khan having given him the statement at "the 11th hour".

126.21 The Tribunal rejected the evidence given by Mr Mazumder at the hearing. Further, it did not accept that Mr Mazumder had written his statement having considered

Mr Khan's statement. As detailed above, the Tribunal found that both statements were written by Mr Mazumder or at his direction.

126.22 The Tribunal accepted Mr S Khan's evidence that he did not read the statement before it was signed. Accordingly, Mr S Khan had not signed a witness statement intended for the High Court which he knew contained information that he believed to be false and/or misleading. Having made that finding, the Tribunal dismissed allegation 5.1.1.

126.23 In accordance with Mr S Khan's evidence, the Tribunal found that he had signed a witness statement which he had failed to read. The Tribunal found that in signing the witness statement in the way that he did, Mr S Khan had failed to uphold the rule of law and the proper administration of justice in breach of Principle 1. The Tribunal found that whilst this might not have been Mr S Khan's intention, this was the result of his actions.

126.24 Such conduct, it was determined failed to maintain public trust in Mr S Khan and in the provision of legal services. Members of the public would not expect Mr Khan to sign a statement that he had not read, given that he understood the importance of statements in legal proceedings. Accordingly, the Tribunal found that in conducting himself in the way that he did, Mr S Khan had failed to maintain the trust the public placed in him and in the provision of legal services.

126.25 The Tribunal accepted Mr S Khan's account of how it was that the statement came to be signed. Mr S Khan had, in effect, signed the statement under duress from Mr Mazumder. The Tribunal did not consider that this amounted to a lack of integrity on Mr S Khan's part. The Tribunal found that whilst duress did not absolve him of his duties as regards the breaches of Principles 1 and 6, it did provide a complete defence as regards a breach of Principle 2. Members of the profession, it was determined, would not consider that Mr S Khan had failed to uphold the ethical standards of the profession in sighing the witness statement in the particular and unique circumstances of this case. For the same reasons, the Tribunal did not find that Mr S Khan had acted dishonestly or recklessly as alleged.

126.26 Accordingly, the Tribunal found allegation 5.1.1 not proved. The Tribunal found allegation 5.1.2 proved, save that it did not find that Mr S Khan's conduct amounted to a breach of Principle 2. Nor did the Tribunal find that his conduct was dishonest or reckless.

127. **Allegation 5.2 - Between approximately 14 May 2019 and 30 July 2019, failed to take any steps to alert the High Court of the matters identified either in Allegations 5.1.1 or 5.1.2 above, and in doing do breached any or all of Principles 1, 2 and 6 of the 2011 Principles.**

The Applicant's Case

127.1 Whatever the circumstances in which Mr S Khan came to sign the 14 May 2019 statement, he must have known that a witness statement in his name was being submitted to the High Court, and he either did not agree with the contents or did not know what it contained.

127.2 Mr S Khan was kept updated as to progress of matters before the High Court and was informed that a hearing had been scheduled for 30 July 2019. Despite this, Mr S Khan made no efforts to contact the court and explain the true position in relation to the contents of the 14 May 2019 statement; either that (i) he disagreed with them; or (ii) he could not guarantee its accuracy as he had not read it.

127.3 In failing to notify the court of the true position, Mr S Khan's actions allowed the 30 July 2019 hearing to take place on a false premise; that the contents of the 14 May 2019 statement came from an account provided by, and confirmed as accurate by, Mr S Khan. In doing so, Mr S Khan's actions have failed to uphold the proper administration of justice in breach of Principle 1.

127.4 Allowing a High Court's interrogation of the circumstances leading to the Mahfuz claim being filed to start from a false footing without correcting the position was the type of behaviour that would damage the public's trust in Mr S Khan and in the provision of legal services in breach of Principle 6.

127.5 Recklessly allowing a court to be misled was one of the six specific scenarios identified in Wingate as constituting a lack of integrity. It followed that in failing to correct the position, and allowing the court to be so misled, Mr S Khan has failed to act with integrity in breach of Principle 2.

The Third Respondent's Case

127.6 Mr S Khan denied this allegation. He repeated the case detailed at allegation 5.1 above.

The Tribunal's Findings

127.7 The Tribunal repeated its findings at allegation 5.1 above. The Tribunal accepted that Mr Mazumder had sent the letters dated 22 May and 18 June 2019 to an old address of Mr S Khan's. He had done so, the Tribunal determined, so that Mr S Khan would not be aware of the proceedings and thus would be unable to attend court.

127.8 Accordingly, the Tribunal found that Mr S Khan had no knowledge of the Hamid hearing, nor did he know that a witness statement was being submitted to the High Court in his name. Mr S Khan was, the Tribunal found, in no position to contact the Court, as he did not know of the existence of the proceedings in circumstances where he was deliberately precluded from so knowing by the actions of Mr Mazumder.

127.9 Given those findings, the Tribunal found allegation 5.2 not proved.

Previous Disciplinary Matters

128. Mr Mazumder appeared at the Tribunal in 2015 (Case Number 11333-2015). He faced allegations relating to a failure to notify the SRA that the firm had entered into an Extended Indemnity Period, into the Cessation Period, to take steps to ensure the orderly wind-down and closure of the firm or to obtain appropriate insurance. The Tribunal, taking into account Mr Mazumder's experience and culpability imposed a fine in the sum of £2,000.00.

129. Mr N Khan and Mr S Khan had no previous matters before the Tribunal.

Mitigation

130. The First Respondent

130.1 Mr Abebrese submitted that Mr Mazumder had made admissions from the outset in his statement of 16 May 2019. These admissions were noted and referred to by Mr Collis on the first day of the hearing. At the conclusion of the Applicant's case, Mr Mazumder had admitted allegation 1.1.

130.2 Mr Mazumder recognised the seriousness of his lapse in complying with his duties. He had taken steps to put a robust system in place, however, it was now known that the systems were not robust enough. The Tribunal, it was submitted, should take into account Mr Mazumder's contrition and his acceptance of his failings when determining the appropriate sanction; Mr Mazumder accepted that he had failed to act in accordance with the standards expected of him as a solicitor and the Principal of the Firm.

130.3 Mr Mazumder had suffered financially as a consequence of the proceedings. He had not been able to earn a living or practise in the UK. He had been earning a living from his work in Bangladesh. Accordingly, he would have difficulty in meeting any financial penalty imposed. Mr Abebrese submitted that the Tribunal should consider imposing a serious reprimand. The Tribunal directed Mr Abebrese to its Guidance Note on Sanction and in particular to the appropriate sanction where dishonesty had been found proved.

130.4 Mr Abebrese referred the Tribunal to Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin, and submitted that there were exceptional circumstances such that to strike Mr Mazumder off the Roll would be disproportionate. Mr Mazumder had made a series of statements about cases that were within the Firm. The Tribunal, it was submitted, had found that Mr Mazumder had knowledge of those files and cases. Mr Mazumder had contested whether the statements were made in a false or misleading manner. It was important for the Tribunal to know that Mr Mazumder was not the caseworker on those files when considering the nature and scope of the dishonesty. As the Principal, Mr Mazumder was under a duty to ensure that those files were handled properly. Mr Abebrese submitted that Mr Mazumder had fallen short as regards his knowledge of the competent conduct of those files.

130.5 The dishonesty, it was submitted, did not continue for a long period of time. The Firm was established in January 2018. During the course of the hearing, Mr Mazumder stated that he had no knowledge of the files which had existed since September 2018.

130.6 Sharma stated that not only should the length of time be considered, but there should also be consideration of whether the dishonesty was of benefit to the solicitor. Mr Abebrese submitted that there was no benefit, either financially or in any other way, for Mr Mazumder. Whilst the files in question related to others (including Mr S Khan) there was no evidence that there was any adverse effects on those clients.

130.7 Mr Abebrese submitted that as regards culpability, Mr Mazumder had admitted allegation 1.1, thereby admitting that he had not properly supervised staff in the Firm.

With regard to motivation, it was not readily clear that Mr Mazumder had any motivation for his misconduct. His conduct, as regards the statements submitted to the Court, was not planned. Rather, it was closer to being spontaneous as he had failed to properly investigate the files within the Firm's system prior to making those statements. The files were handled by others. Mr Mazumder, it was submitted, should have taken more steps or more care in supervising those files.

130.8 As the Principal, it was accepted that Mr Mazumder was ultimately responsible; he fell short in not ensuring that there were robust systems in place.

130.9 Mr Mazumder was admitted in 2012 and had worked in more than one firm. He had appeared at the Tribunal previously where he had been found wanting and received a financial penalty.

130.10 Mr Abebrese submitted that there had been no concealment of any wrongdoing. He had admitted that he fell short of expected standards as regards supervision. Mr Mazumder had not deliberately sought to conceal or mislead.

130.11 As regards mitigating factors, there was evidence of Mr Mazumder being open and frank. His dishonesty had arisen as a result of incompetence and was not a deliberate attempt by him to behave in a dishonest manner.

130.12 Mr Abebrese submitted that to strike Mr Mazumder off the Roll would be disproportionate when considering the facts – it was not planned, was unsophisticated and had no financial benefit for Mr Mazumder.

131. <u>The Second Respondent</u>

131.1 Mr Fazli submitted that as regards any aggravating features, there was no abuse of power, violence, bullying or coercion. Mr N Khan had not attempted to blame others or conceal his conduct, nor had he taken advantage of a vulnerable person. No direct harm had been caused to anyone, although it was accepted that the general harm caused as a result of allegations 4.2 and 4.3 was reasonably foreseeable.

131.2 Mr N Khan, it was submitted, had no real motivation for his misconduct. There was no motivation to sign a contract which he knew contained clauses with which he could not comply. As regards his motivation in relating to the Client A matter, the only motivation was to recover a debt owed to him, of which both Client A and Mr Mazumder were aware.

131.3 Mr N Khan was an extremely inexperienced solicitor at the time of the conduct, having qualified in January 2018 and joining the Firm in March 2018. His misconduct was the result of a lapse in judgment in his previously unblemished career. Mr N Khan, it was submitted, had demonstrated insight and remorse. The challenge to the case did not relate to the facts, but to the alleged Principle breaches.

131.4 As regards allegation 4.1, Mr N Khan had showed insight. He accepted that he had not read the contract properly; he had learnt from that mistake. Mr N Khan had cooperated fully with the investigation and at the Hamid hearing. It was clear that Mr N Khan was inadequately supervised. He had no motivation for committing misconduct. The misconduct was not planned, was unsophisticated and was not intended to (nor did it)

mislead anyone. There was no harm caused by the misconduct; Mr N Khan could not supervise anyone as a matter of law. The signing of the contract was thus considered to be inconsequential. Accordingly, it was submitted, Mr N Khan's culpability was low.

131.5 As regards allegations 4.2 and 4.3, Mr N Khan wanted to recover monies that were due to him. Any breach of trust was minor. The personal bank details were sent in error. Mr N Khan had not sought to mislead anyone, nor had he attempted to conceal his conduct. No harm had been intended to Client A and the monies that were retained by Mr N Khan had been returned to Client A.

131.6 Mr N Khan, it was submitted, had suffered for 4 – 5 years in preparing for this matter. His wife was unwell, and he had two children who were both in full-time education. Mr Fazli referred the Tribunal to <u>SRA v Saleem</u> (Case No 12390-2022) in which Mr Saleem (amongst other things) was found to have improperly received monies into his account. In that case the Tribunal imposed a fine in the sum of £7,750.00.

131.7 Mr Fazli submitted that Mr N Khan's culpability was low. There was no individual identifiable harm and Mr N Khan had demonstrated genuine insight. The appropriate sanction was therefore a Reprimand. If the Tribunal did not agree that a Reprimand appropriately reflected the misconduct, it was submitted that the sanction should not be no more severe than a financial penalty that was proportionate to the misconduct, taking account of the very small amounts of money involved.

132. <u>The Third Respondent</u>

132.1 Mr S Khan submitted that he respected the Tribunal's findings. As a result of the allegations brought against him, he had suffered for a long time and in various ways. He was unable to work due to his physical health problems. As a result, he was living an inhumane life. His immigration status had been damaged as a result of Mr Mazumder hiding his permission to appeal. Mr S Khan asked the Tribunal to provide assistance with his immigration matter by communicating with the Home Office. The Tribunal confirmed that its jurisdiction was to consider whether there was misconduct and, having found misconduct, to impose a sanction that was appropriate and proportionate in all the circumstances. The Tribunal was thus not in a position to help Mr S Khan with his immigration case.

132.2 Mr S Khan submitted that in all the circumstances, the appropriate order was No Order.

Sanction

133. The Tribunal had regard to the Guidance Note on Sanctions (10th Edition – June 2022). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

134. <u>The First Respondent</u>

134.1 The Tribunal found that Mr Mazumder was motivated by his desire to protect himself and his firm, thereby protecting his income stream. His actions were planned. He made

a number of assertions to the High Court which he knew to be false and misleading. Further, he had coerced Mr S Khan into signing a statement in which he accepted the blame for the mismanagement of the Mahfuz claim. Mr Mazumder had breached the trust placed in him as a solicitor of the Supreme Court to provide accurate and truthful information to the Court in his witness statement. He was an experienced solicitor.

134.2 Mr Mazumder's conduct was aggravated by his proven dishonesty, which was in material breach of his obligation to protect the public and maintain public confidence in the reputation of the profession; as per Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin:

> *"34. There is harm to the public every time that 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"."*

134.3 His misconduct was deliberate, calculated and repeated, taking place over a period of time. He had targeted and taken advantage of Mr S Khan who, the Tribunal determined, was vulnerable by virtue of his immigration status and Mr Mazumder's position of authority over him. In placing Mr S Khan under duress, Mr Mazumder had abused that position of authority and power. Mr Mazumder had bullied Mr S Khan and had sought to place the blame for his misconduct onto Mr S Khan.

134.4 The Tribunal did not find any features that mitigated Mr Mazumder's conduct. The Tribunal did not accept that Mr Mazumder had made admissions from the outset as submitted. At the commencement of the proceedings, all allegations remained denied. It was not until the Applicant closed its case that Mr Mazumder admitted allegation 1.1.

134.5 Given the serious nature of the allegations, the Tribunal considered and rejected the lesser sanctions within its sentencing powers such as no order, a reprimand or restrictions. The Tribunal had regard to the case of Bolton v Law Society [1994] 2 All ER 486 in which Sir Thomas Bingham stated:

> *"….Lapses from the required standard (of complete integrity, probity and trustworthiness)….may….be of varying degrees. The most serious involves proven dishonesty….In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced by the solicitor, ordered that he be struck off the roll of solicitors."*

134.6 The Tribunal considered whether there were any exceptional circumstances that were enough to bring Mr Mazumder in line with the residual exceptional circumstances category referred to in the case of Sharma. The Tribunal did not find that the submissions made by Mr Abebrese amounted to exceptional circumstances. Mr Abebrese had made submissions as regards Mr Mazumder's supervisory failings. The Tribunal found that there was nothing in those submissions that touched upon Mr Mazumder's knowingly writing statements that he submitted to the Court which contained false and misleading statements and which he knew contained such statements.

134.7 The Tribunal decided that in view of the serious nature of the misconduct, in that it involved dishonesty, the only appropriate and proportionate sanction was to strike Mr Mazumder off the Roll of Solicitors.

135. The Second Respondent

135.1 The Tribunal did not find that Mr N Khan was motivated to sign a contract that contained clauses with which he could not comply. The Tribunal considered that he deliberately gave his own bank details in order to be repaid monies he said he was owed. Such conduct, the Tribunal found, was planned and was in breach of the trust placed in him by both the Firm and Client A. The Tribunal noted that Mr N Khan was an inexperienced solicitor at the time of the misconduct, having been admitted to the Roll in January 2018.

135.2 His conduct had caused harm to the reputation of the profession. The Tribunal accepted that any direct harm to Client A had been remedied by the return to him of the monies paid.

135.3 The Tribunal found that Mr N Khan's conduct was aggravated by its deliberate nature. He had abused his position as Client A's solicitor to retain monies. He had also sought to blame Client A and Mr Mazumder for his conduct for which he was solely responsible.

135.4 In mitigation, the Tribunal noted that Mr N Khan had returned the monies to Client A. his misconduct amounted to single episodes in an otherwise unblemished career. He had made open and rank admissions as to the facts. The Tribunal determined that the seriousness of his misconduct was such that sanctions such as No Order or a Reprimand were not proportionate to the level of his misconduct. The Tribunal determined that a financial penalty would adequately reflect the seriousness of the misconduct. The Tribunal assessed the misconduct as falling within the lower to mid-range of its Indicative Fine Band Level 3, as it assessed the misconduct as more serious. The Tribunal determined that a fine in the sum of £10,000.00 was appropriate and proportionate in all the circumstances. The Tribunal then considered whether there should be any reduction in the fine payable taking account of Mr N Khan's means. The Tribunal noted his limited means as evidenced by his statement of means and supporting documents. The Tribunal determined that it was appropriate to reduce the fine to be paid by 50% given Mr N Khan's means. Accordingly, the Tribunal ordered that Mr N Khan pay a fine in the sum of £5,000.00.

136. The Third Respondent

136.1 The Tribunal referred to its findings detailed above. Mr S Khan had been coerced into signing a statement by Mr Mazumder. He did not know what the statement said, did not know who the statement was for, and did not know that he had accepted the blame for the mismanagement of a case. Nor was he aware, due to Mr Mazumder's actions, that he was to appear at the Hamid hearing. Mr S Khan, it was determined, had not motivation to commit misconduct; he was coerced into doing so by Mr Mazumder. His actions were spontaneous. He had signed the statement under duress. He had no control over the circumstances.

136.2 The Tribunal concluded that, having regard to all the circumstances, the culpability of Mr S Khan was low. Given the particular circumstances, the Tribunal determined that it would be unfair and disproportionate to impose a sanction. Accordingly, the Tribunal made No Order in relation not Mr S Khan.

Costs

The Applicant's Submissions

137. Mr Collis applied for costs in the sum of £82,419-68. It was suggested that an appropriate apportionment of the costs would be 60%, 20% and 20% for Mr Mazumder, Mr N Khan and Mr S Khan respectively. The suggested apportionment was reflective of the scope and volume of the allegations together with the breadth of the evidence, the extent of the preparation required and the hearing time in considering the matters. It was submitted that a large proportion of the evidence, preparation and presentation of the matters related to the allegations faced by Mr Mazumder. The primary focus of the case related to Mr Mazumder's conduct and his lack of supervision of the Firm. His late admission to allegation 1.1 meant that the Applicant had to examine all of the JR claims that were criticised by the High Court. With regard to the reasonableness of the costs claimed, these were broken down into three parts:

- Part A Costs – these referred to the Applicant's internal costs in the sum of £7,572.80. That sum, it was submitted, was entirely reasonable.

- Part B Costs – this related to the fixed fee arrangement that was in place when Capsticks were instructed. The fixed fee was agreed in the sum of £48,500 + VAT. Mr Collis submitted that the fixed fee was based on an assessment of the size, complexity of the issues and the length of the hearing. The costs for the instruction of the interpreter for the first 10 days of the hearing were subsumed within the fixed fee. Accordingly, any calculation of the actual legal costs should be reduced by the £3,900 disbursement for the interpreter's fee. Capsticks had expended 557.5 hours in preparation and attendance for the first 10 days of the substantive hearing. This equated to a notional rate of £80 per hour. That rate, it was submitted was eminently reasonable taking into account the number of allegations, the number of Respondents, the cut-throat nature of their defences and the number of case management hearings before the Tribunal.

- Part C costs – this related to the costs incurred by Capsticks with effect from 1 November 2023, when the contractual arrangements between Capsticks and the SRA ended. The Part C costs amounted to £13, 872.40 + VAT. This included the interpreter's fee for attending the resumed hearing in the sum of £2,200. The hourly rate agreed with the SRA was £142 per hour. That rate was also eminently reasonable, given the nature of the work undertaken.

138. Mr Collis submitted that any reduction in costs unproven allegations was a matter for the Tribunal to assess, however, the Applicant's failure to prove allegations should not automatically result in a reduction in the costs claimed.

139. Mr Collis made the following observations as regards the statements of means submitted by the Respondents:

Mr Mazumder's statement of means

140. Mr Mazumder's statement expressed modest means. In response to the statement of means, the Applicant sent a number of queries, requesting clarification of information contained therein. Mr Mazumder had not supplied any evidence in support of the assertion that he was only in receipt of income in the sum of £1,000 per month.

141. Up to 16 November 2023, Land Registry documents suggested that Mr Mazumder was the part owner of a property in Southampton. A search valued the property at £310,000.00 - £379,000.00. Mr Mazumder provided a Trust Deed in relation to this property which purported to transfer his interest in the property solely to his wife. The Trust was dated 10 April 2012. The Land Registry documents showed that the Trust was only registered with the Land Registry on 16 November 2023, a short time after the first ten days of this hearing.

142. In his response to the queries, Mr Mazumder asserted that he had been working in Bangladesh earning £1,000 per month. Mr Collis noted that there had still been no documentary evidence in support of that assertion.

143. It had been submitted on behalf of Mr Mazumder that he had been unable to work in the UK since the allegations came to light. That was a surprise to the Applicant given that he held a current unconditional practising certificate which was renewed by Mr Mazumder in November 2023. Further, he continued to be registered with the SRA as a freelance solicitor since November 2020. He was also listed on the website of Simon Noble solicitors as a consultant.

Mr N Khan's statement of means

144. Mr N Khan expressed modest means. Queries were sent by the Applicant in relation to his means including questions as to why the bank statements supplied did not reflect the level of income received. There was also a query as to why there was a payment from Mr N Khan to Mr Mazumder in the sum of £400 on 14 August 2023.

145. Mr N Khan explained the income but did not explain why the income declared was not reflective of the income received into his account.

Mr S Khan's statement of means

146. Mr S Khan was the only one of the Respondents to have submitted his means statement in a timely manner. There was an expression of incredibly limited means. Queries were raised with Mr S Khan. He had declared an income of £500 per month, however the bank statements provided depicted over £6,000 entering his account which would equate to an income of £1,000 per month.

147. Mr Collis submitted that the Tribunal should factor into any costs award an assessment of the Respondents ability to pay. The Tribunal was entitled, pursuant to Rule 43 of the Solicitors (Disciplinary Proceedings) Rules 2019, to factor in the conduct of the parties when assessing the appropriate level of any costs award.

The First Respondent's Submissions

148. Mr Abebrese submitted that costs should not be an additional punishment levied against Mr Mazumder. Mr Mazumder had admitted allegation 1.1, albeit during the course of the proceedings. Were that to have been the only allegation he faced, that would have concluded the proceedings in his regard. The other Respondents had denied all the allegations they faced, defending those allegations to the bitter end. This was an important distinction making the suggested apportionment extremely unfair and disproportionate. The Applicant, it was submitted, had seemingly forgotten that it heard evidence from Mr N Khan and Mr S Khan that was not necessarily connected to Mr Mazumder.

149. The apportionment, it was submitted, was also demonstrably unfair when taking account of the failure of the Applicant to prove all of the allegations Mr Mazumder faced. This should be reflected in any apportionment of costs to Mr Mazumder. Mr Abebrese submitted that the issue was whether it was reasonable for Mr Mazumder to continue to defend the unadmitted allegations. It was reasonable as the matters flowed from his witness statement of 16 May 2019 and repeated in his 2 July 2019 statement. If he denied the initial statements, it was reasonable for Mr Mazumder to continue to contest them.

150. The manner in which the allegations were defended. It was noted that Mr N Khan and Mr S Khan had not managed to win their cases. Mr Mazumder, it was submitted, was right, in the circumstances to contest the matters.

151. As to the reasonableness of his contest of proven matters, there was no additional work for the Applicant in proving these matters due to the link between the 16 May and 2 July statements.

152. Mr Abebrese made no comment on the quantum claimed and the number of fee earners who were involved with the preparation of the case, save that it was incumbent on those fee earners to ensure that they were working efficiently, and that work was not being duplicated. Mr Abebrese submitted that the costs should be apportioned equally as between the Respondents.

153. Mr Abebrese submitted that the Trust was set up to give his beneficial interest in the property to his wife. He had no beneficial interest in the property. The relevance of the timing of the registration of the Deed was a matter for the panel.

The Second Respondent's Submissions

154. Costs, it was submitted, were discretionary. It was for the Tribunal to order costs that it considered to be fair, reasonable and proportionate. It was fair and right to look at the allegations and to assess the time it took, on the whole, to gather the evidence, investigate and present the allegations. Mr Mazumder, it was submitted, had faced considerably more allegations. The investigation and presentation of those allegations had occasioned more costs. Accordingly, it would be unfair to Mr N Khan for the costs to be split equally as between the Respondents.

155. Mr N Khan had made it clear in 2022 that he was open to resolving matters by way of an Agreed Outcome if possible. The Applicant considered that the matter was complex as a result of the multi-handed nature of the case.

156. As regards the paperwork, the documentary evidence in relation to allegation 4.1 was limited. The issues between Mr N Khan and the Applicant as regards allegations 4.2 and 4.3 were limited to the Principle breaches alleged; there was very little factual dispute on those matters. Accordingly, the preparation of the case against Mr N Khan was limited as compared to the cases of Mr Mazumder and Mr S Khan.

157. Not all of the allegations had been proved. That ought to be taken into account by the Tribunal in reducing the overall figure. Mr N Khan and Mr Mazumder should not be held liable for the costs of the interpreter who had attended the hearing for the benefit of Mr S Khan.

158. As regards the quantum claimed, Mr Fazli submitted that the hours claimed for drafting, reviewing and preparing the Rule 12 Statement were excessive and there should be a reduction. The space taken in the Rule Statement in relation to the case against Mr N Khan was limited. Further, the hours claimed for preparing for the resumed substantive hearing were also excessive. Further, notwithstanding the issues to be determined and the complexity of the issues, it may not have been necessary for a senior associate and a paralegal to be present during the hearing.

159. With regard to the costs claimed, the Tribunal should award costs at the rate of £80 per hour. Whilst the hourly rate of £142 per hour was considered to be reasonable, for the purposes of consistency, the initial arrangement of £80 per hour should be maintained.

160. The statement of means was an accurate reflection of the means received. He had declared income that derived from approximately £1,400 earning and a further sum in benefits. His income, because he is self-employed fluctuated monthly. The income he had declared was an average of his yearly income. Further, some of the monies received by him were loans from family members.

161. Mr N Khan did not own a property and had no other assets. He was of limited means and his wife was not in employment. Given his limited means, Mr N Khan had no reasonable prospect of paying any costs order. Accordingly, the appropriate order would be No Order as to costs. If the Tribunal considered there should be a costs order, then that order should not be enforced without the leave of the Tribunal.

<u>The Third Respondent's Submissions</u>

162. Mr S Khan submitted that he had limited means. He earned £500 per month and had been borrowing money to maintain the expenses of his immigration case. Mr S Khan considered that Mr Mazumder was wholly responsible for his current situation. Mr S Khan submitted that he should not be ordered to pay any costs. He had no income and as a result it was not possible for him to pay any costs.

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

163. The Tribunal did not accept that there should be any reduction in the costs following Mr Mazumder's admission of allegation 1.1. The Applicant had presented the case with regards to allegation 1.1 in full. This had included a lengthy analysis of the files criticised by the High Court. Mr Mazumder had admitted this matter at the close of the prosecution case. The time saved with regard to allegation 1.1 was the time it would have taken to cross-examine Mr Mazumder. The Applicant had fully prepared and presented its case on allegation 1.1. Additionally, whilst Mr Abebrese had referred to a seemingly partial acceptance of allegation 1.1 contained in Mr Mazumder's witness statement, Mr Mazumder had maintained a denial of that allegation until the conclusion of the Applicant's case. Accordingly, the Tribunal did not consider that as a result of his late admission, costs should be apportioned equally between the Respondents. Nor did the Tribunal consider that it was unfair for Mr Mazumder to be held liable for a higher proportion of the costs. It was plain that the vast majority of the time spent in the preparation and presentation of the case related to the misconduct that was alleged against Mr Mazumder.

164. The Tribunal noted the submission that Mr N Khan had been open to settling the proceedings by way of an Agreed Outcome. However, Mr N Khan had denied all allegations he faced. Accordingly, his willingness to enter into an Agreed Outcome was not a relevant factor for consideration when determining the appropriate proportion and level of costs that he should pay.

165. Furthermore, the Tribunal did not consider that it was appropriate to reduce the overall costs for allegations that had been found not proved. If there were to be any reduction in costs following the Applicant's failure to prove all of the allegations, that would be applied after the costs had been appropriately apportioned. It was neither fair nor just for a Respondent's costs to be reduced on the basis that allegations had been found not proved for another Respondent. The Tribunal had found all allegations proved against Mr N Khan. Accordingly, he should not and could not benefit from the Tribunal's finding some of the allegations against Mr Mazumder and Mr S Khan not proved.

166. As regards the submission that the hourly rate should be limited to £80 per hour as per the "initial arrangement", this was a misconstruction of the mode of charging. £80 per hour was a notional hourly rate calculated by dividing the number of hours spent into the agreed fixed fee. The Tribunal noted that Mr Fazli considered the £142 hourly rate imposed for the resumed hearing to be reasonable. When considering costs, it was the Tribunal's role to award costs that were reasonably incurred. The Tribunal agreed that the rate of £142 per hour was reasonable. It did not consider that that figure should be reduced "for consistency" or otherwise to the notional hourly rate.

167. The Tribunal considered the appropriate apportionment of costs as between the Respondents. It took into account the nature and complexity of the issues to be determined as well as:

(a) the conduct of the parties and whether any or all of the allegations were pursued or defended reasonably;

(b) whether the Tribunal's directions and time limits imposed were complied with;

(c) whether the amount of time spent on the matter was proportionate and reasonable;

(d) whether any hourly rate and the amount of disbursements claimed was proportionate and reasonable; and

(e) the Respondents' means.

168. The Tribunal considered that most of the time in the preparation, consideration and presentation of the case was related to the case against Mr Mazumder. Accordingly, was liable for the majority of the costs. There were a number of documents to be considered in relation to Mr N Khan's case. Accordingly, Mr N Khan should have the next largest apportionment of the costs. The case against Mr S Khan turned on the Tribunal's consideration of his purported witness statement dated 14 May 2019. Given the limited documentation and issues to be considered, the Tribunal apportioned the lowest level of costs to Mr S Khan.

169. Taking into account the matters detailed above, the Tribunal found that the fair apportionment was 80%, 15% and 5% to Mr Mazumder, Mr N Khan and Mr S Khan respectively.

170. The Tribunal apportioned the fixed fee in the percentages detailed. The Tribunal removed the interpreter's costs from the Part C fees so as to ensure that Mr Mazumder and Mr N Khan were not liable for those costs. The Tribunal then considered whether there should be any reduction in costs in light of the Respondents' means.

171. The Tribunal made no reduction in the costs for Mr Mazumder in light of his means. The Tribunal was extremely concerned about Mr Mazumder's conduct in registering the Trust which was purported to have been made in April 2012. That Trust had not been registered by either Mr Mazumder or his wife until November 2023, some 11years after it was made and during the course of the proceedings in circumstances where Mr Mazumder, the Tribunal found, anticipated that he would be liable for some of the Applicant's costs. Further, whilst Mr Mazumder stated that he had been unable to work, he had a valid practising certificate, which he had renewed during the course of the proceedings. He was also a registered freelance solicitor and acted as a consultant for Simon Noble. The Tribunal inferred that the registration of the Deed was a device by Mr Mazumder to avoid his liability for costs.

172. Accordingly, the Tribunal ordered that Mr Mazumder pay costs in the sum of £63,840.00

173. The Tribunal considered that Mr N Khan was liable for 15% of the costs. Having reduced the fine order in light of his means, the Tribunal did not consider that it was appropriate to make any reduction in the order for costs. Mr N Khan was still working and was able to continue doing so. The Tribunal noted his limited means and considered that it was appropriate to make an order for costs not to be enforced without leave. Accordingly, the Tribunal ordered that Mr N Khan pay costs in the sum of £11,970.00 in accordance with the 15% apportionment. Given his limited means, that Tribunal ordered that those costs were not to be enforced without leave of the Tribunal.

174. With regard to Mr S Khan, the Tribunal noted that he was of extremely limited means. The Tribunal found that on a reasonable assessment of his current and future circumstances there was no reasonable prospect of Mr S Khan being able to pay any costs. Accordingly, the Tribunal made No Order for costs against Mr S Khan.

Statement of Full Order

175. The Tribunal Ordered that the Respondent, MOHAMMED EKRAMUL HOQUE MAZUMDER, 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 £63,840.00.

176. The Tribunal Ordered that the Respondent, NASER KHAN, solicitor, do pay a fine of £5,000.00, such penalty to be forfeit to His Majesty the King, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £11,970.00, such order not to be enforced without leave of the Tribunal.

177. The Tribunal Ordered that there be NO ORDER for the Respondent SALAUDDIN KHAN and it further Ordered that there be No Order as to costs.

Dated this 24th day of March 2024
On behalf of the Tribunal

R Nicholas

R Nicholas
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
25 MAR 2024