SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12539-2024

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD Applicant

and

PHILIP JULIAN PAUL HYLAND Respondent

Before:

Mr E Nally (in the Chair)
Mr C Cowx
Mr G Gracey

Date of Hearing: 1-4 July 2024

Appearances

Mr Benjamin Tankel, counsel, of 39 Essex Chambers, 81 Chancery Lane, London WC2A 1DD, instructed by Capsticks Solicitors LLP, 1 St Georges Road, Wimbledon, London, SW19 4DR for the Applicant.

Dr Peter Fields, counsel, of The Barrister Group, IDRC, 1 Paternoster Lane, London EC4M 7BQ for the Respondent.

JUDGMENT

Allegations

1. It was alleged that, while working as a solicitor at PJH Law, the Respondent:

1.1 Sent correspondence on 3 and 11 December 2021 to the Blackthorn Health Centre (the 'Health Centre') which improperly threatened legal proceedings, in that:

1.1.1 The correspondence sought a form exempting Client A from a COVID 19 vaccine to which the Respondent knew or believed Client A was not entitled.

1.1.2 In default of that request, it threatened litigation where there was no proper legal basis for the claim.

1.1.3 The correspondence improperly aimed to intimidate a lay party in that:

1.1.3.1 It was excessively legalistic;

1.1.3.2 It was abusive, intimidating and aggressive in tone and language.

1.1.4 The correspondence sought to invoke the framework of a legal claim, and the Respondent's status and a role of a solicitor, to lend unjustified weight to Client A's meritless request.

And in so doing, the Respondent breached Principles 2 and 5 of the SRA Principles 2019, and paragraphs 1.2 and 2.4 of the SRA Code of Conduct for Solicitors, RELs and RFLs.

1.2 Sent a letter to the Chair of the Medicines and Healthcare products Regulatory Agency ('MHRA') dated 17 December 2021 which improperly threatened legal proceedings in that it:

1.2.1 Threatened litigation where there was no proper factual or legal basis for the claim.

1.2.2 Made allegations of bad faith on the part of public officials, without proper foundation.

1.2.3 Sought forms of relief which were unrelated to, and disproportionate to, the grievances of his clients.

1.2.4 Was for the ulterior purpose of promoting a campaign against the government's public health measures.

And in so doing, the Respondent breached Principles 2 and 5 of the SRA Principles 2019, and paragraph 2.4 of the SRA Code of Conduct for Solicitors, RELs and RFLs.

Executive Summary

2. The Respondent sent letters and emails in December 2021 threatening legal action to a GP surgery and to the Medicines and Healthcare products Regulatory Agency

("MHRA").

3. In the first allegation it was said the Respondent had sent a letter on behalf of his client ("Client A") requesting that the Medical Practice where Client A was registered provide him with an exemption from the vaccine mandate so he could travel to Brazil without self-isolating. The letter suggested that by following current government guidance the Medical Practice was guilty, amongst other things, of unethical and criminal conduct. The letter threatened legal proceedings should the exemption be refused and to that extent it was a letter before action.

4. In the second allegation it was said that the Respondent improperly threatened the MHRA with injunction proceedings on behalf of three clients, two of whom were medical students who had been unable to take work placements required in their studies because they refused vaccination. The correspondence accused the MHRA of unethical conduct, malfeasance, misfeasance and corporate manslaughter and made demands for certain undertakings to be given to avert legal proceedings being commenced.

5. The Respondent denied the allegations and gave evidence setting out his genuine belief in the matters advanced in his letters.

6. The Tribunal found all the allegations proved on the balance of probabilities. The findings included two breaches of Principle 5 of the Principles 2019 i.e. the Respondent had lacked integrity.

7. The Tribunal found that the letters before action had been a tactical device to draw the recipients into litigation and thereby allow the Respondent and his clients to present their cause in the public setting of the court room. The Respondent had not been open and transparent about his motives and the correspondence had set out confused and legally baseless arguments in an unduly aggressive and intimidating way.

8. This went beyond a mere mistaken approach as to wording and style and represented a level of disingenuousness and belligerence which was so disproportionate that it constituted professional misconduct.

Sanction

9. The Respondent was fined £15,000 and ordered to pay the Applicant's costs in the sum of £66,500.

The Facts can be found here
The Applicant's Case can be found here
The Respondent's Submission of No Case to Answer can be found here
The Respondent's Case can be found here
The Tribunal's Factual Findings can be found here.
The Tribunal's Decision on Sanction and Costs

Documents

10. The Tribunal considered all the documents in the case, which were contained within

an agreed electronic hearing bundle.

Witnesses

11. The written and oral evidence of 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 of all witnesses. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence. The following witnesses gave oral evidence:

- The Respondent

Factual Background

12. The Respondent was admitted to the Roll on 15 June 1998. In 2002, he set up PJH Law Solicitors, specialising in employment law. He holds a current practising certificate, with no practising conditions.

13. The events in question took place against the background of the COVID-19 pandemic and the Government's response to it.

14. **The Applicant's Case**

14.1 Allegation 1.1: B Health Centre and 'the Scorer letter'

14.1.1 In or around July 2021, Client A, a GP, instructed the Respondent to:

> *"1. Defend any regulatory action taken against you.*
>
> *2. Take legal action in connection with the vaccine passport.*
>
> *3. To halt the vaccine roll out to allow a review of adverse events and bad batches.*
>
> *4. To take appropriate action in respect of failures amounting to criminal conduct".*

14.1.2 On 3 December 2021, on Client A's behalf, the Respondent wrote a letter before claim to Mr Scorer of B Heath Medical Centre, seeking exemption from the need to be vaccinated. Mr Scorer was employed as the Business and Operations Manager (Practice Manager) at B Health Medical Centre. He was not a qualified clinician.

14.1.3 The exemption was said to be *"predominantly for the purposes of upcoming travel plans including a medical conference in South America in which he is a guest speaker."*

14.1.4 In summary, the legal arguments in the letter was that Client A did not consent to a COVID-19 vaccine; that he would be treated less favourably in his travel

arrangements if he did not have a vaccine; that this differential treatment involved *"undue influence"*; that the medical centre was responsible for this undue influence; that it should "grant an exemption"; and that a failure to grant such an exemption would amount to a tortious breach of the medical centre's duty to act in accordance with the law, discrimination on the grounds of religious belief contrary to the Equality Act 2010, and a breach of Client A's human rights.

14.1.5 The letter also made a number of assertions about the clinical merits of the COVID-19 vaccine in general. The letter asserted that the NHS guidance on exemptions did not comply with the law and that, where there was a conflict between guidance and law, the law should prevail.

14.1.6 On 10 December 2021, Mr Scorer replied seeking additional information regarding possible medical grounds for an exemption. By email dated 11 December 2021, the Respondent wrote to Mr Scorer, stating:

> *"You are not abiding by the law but are following inadequate and unlawful guidance. You have failed to address any of the points in my letter dated 3 December 2021. Instead, you have chosen to focus on the inadequacy of your own record keeping and require my client to provide evidence of clinical reasons. You have wilfully misunderstood your role and wilfully misunderstood the legal obligations you owe to Client A.*
>
> *Client A is your patient. If Client A does not consent to the vaccination Client A is free to do so without penalty. You are attempting to exert undue influence by stating in terms that Client A will only qualify for an exemption if he has certain clinical conditions. You need to understand your role here. You follow Client A's wishes. You do not exert undue influence by following unlawful guidance.*
>
> *There is a presumption of undue influence in a Doctor Patient relationship. That is why a Doctor needs to obtain consent from a patient. By stating that you do not acknowledge Client A's human right to decline treatment you are in gross breach of your legal duties. Doctors should not be blindly following guidance without considering the probability that the guidance is unlawful if it does not refer to human rights."*

14.1.7 The Respondent abandoned this challenge shortly thereafter. During the SRA's investigation, he said that this was because Client A separated from his partner in Brazil, and so no longer needed to travel.

14.1.8 Mr Tankel said the correspondence was misconceived in law. The basic structure of the statutory scheme was that, as at 3 December 2021:

a. Secondary legislation imposed a number of restrictions upon international travel, visiting care homes, and self-isolation following close contact with a person with a positive COVID test.

b. Those restrictions were relaxed for (i) those who were vaccinated, and (ii) those who "for clinical reasons" had been advised that they should not be vaccinated. There were no statutory exemptions for those who objected to the vaccine on

ideological, religious, philosophical, or other conscientious grounds.

c. An NHS exemption letter was deemed by statute to be sufficient evidence of exemption for the purposes of the relevant regulations. A vaccinated or exempt individual could also provide evidence of their status via the "NHS Covid Pass". The same pass was issued whether someone was vaccinated or certified as being clinically exempt.

Self-isolation following inbound travel

14.1.9 As at 3 December 2021, the Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 (SI 582/2021) provided as follows:

a. Regulation 9 set out the "default" self-isolation requirements which included, depending on the circumstances, a ten-day period of self-isolation and limits on the addresses at which a person could stay.

b. Regulation 3K set out the self-isolation requirements for "eligible travellers". Importantly, this included release from self-isolation upon receipt of a negative day 2 test result.

c. Regulation 3B provided that a person ("P") was an "eligible traveller" if (i) they had been in a "category 2 country" in the past 10 days; and (b) they met any of the conditions in Regulations 3C to 3H.

d. Finally, Regulation 3F provided:

"3F. Eligible travellers: UK clinical exemption conditions (1) P meets the conditions of this regulation if P— (a) has been advised by a registered medical practitioner that for clinical reasons P should not be vaccinated with an authorised vaccine; (b) is able to provide proof of that advice through a relevant document if required by an immigration officer or the operator of the relevant service on which P travels to England; and (c) has declared on the Passenger Locator Form that P meets the COVID-19 vaccination eligibility criteria. (2) In this regulation "relevant document" means— 6 (a) a letter issued by the NHS in response to an NHS COVID pass medical exemptions application."

Outbound travel

14.1.10 There were no restrictions on outbound travel under UK law. However, many countries and carriers operated their own restrictions. Some of these accepted the NHS Covid pass as proof of vaccination/exemption for the purposes of their own schemes: Brazil was such a country and from 18 December 2021, travellers from the UK to Brazil would either need to quarantine for 5 days, or produce an NHS Covid Pass.

Self-isolation following close contact

14.1.11 Regulation 2B of the Health Protection (Coronavirus, Restrictions) (Self-Isolation) England Regulations 2020/1045 required a person notified that they had been in close contact with a person who had tested positive for coronavirus to self-isolate, unless

they were "able to provide evidence that, for clinical reasons, [they] should not be vaccinated with any authorised vaccine."

Restricted entry to care-home premises

14.1.12 As from 11 November 2021, Regulation 12 of the Health and Social Care Act 2008 (Regulated Activities) Regulations was amended to provide that persons could not enter care home premises unless they provided evidence that either they were vaccinated with the complete course of doses of an authorised vaccine, or that "for clinical reasons [they] should not be vaccinated with any authorised vaccine."

Clinical reasons: definition

14.1.13 "Clinical reasons" was not defined in any of the Regulations. This was a matter of clinical judgement. As in many areas of medical practice, guidelines were available to help medical practitioners to exercise that judgement. The Department for Health and Social Care produced "Clinical Guidance on Exemption from COVID-19 vaccination or vaccination and testing".

14.1.14 The guidance was based upon the advice of senior clinicians using the government's "Immunisation Against Infectious Diseases" guidance (popularly known as "The Green Book"). The guidance provided "illustrations" of when exemption 7 may be justified for clinical reasons, but clarified that the list was "by no means exhaustive".

14.1.15 The illustrations were:

- Receiving end of life care where vaccination is not in the individual's interests.
- With learning disabilities or autistic individuals, or with a combination of impairments which result in the same distress, who find vaccination and testing distressing because of their condition and cannot be achieved through reasonable adjustments such as provision of an accessible environment.
- Those with medical contraindications to the vaccines such as:
  - severe allergy to all Covid-19 vaccines or their constituents (e.g. PEG).
  - those who have had adverse reactions to the first dose (e.g. myocarditis).

14.1.16 Mr Tankel said that contrary to the legal arguments in the Respondent's letter, the statutory scheme expressly did restrict doctors to issuing exemption letters only *"for clinical reasons."* The premise of Client A's letter was that he would not qualify for an exemption on this basis. Client A's grievance therefore did not lie with any individual doctor or health centre. Rather, it lay with the Secretary of State for Health and Social Care, for either or both:

a. Having enacted a statutory scheme which did not permit exemptions for conscientious objection.

b. Issuing guidance on the meaning of "clinical reasons", which did not extend to

the clinical reasons upon which Client A relied.

14.1.17 Alternatively, the question was ultimately one of clinical judgement. The registered medical practitioners at the Health Centre were lawfully entitled to exercise their own clinical judgement as to whether Client A had clinical grounds for not receiving the vaccine. It was not for Client A, or the Respondent, to seek to dictate to these professionals how they should exercise their judgement.

14.1.18 There had been no conflict between guidance and law as alleged. The statutory provisions contained no definition of "clinical reasons". The Government fleshed this out by providing guidance as to the meaning of "clinical reasons".

14.1.19 Accordingly, in Mr Tankel's submission the correspondence was wholly lacking in legal merit.

14.1.20 Further, the Respondent's letter in effect invited registered medical practitioners to dishonestly state that they believed that Client A had adequate clinical reasons for being exempt from COVID-19 vaccination, when they did not believe that Client A had any such reasons, in order that Client A could avoid statutory restrictions for his own benefit.

14.1.21 The language of the email dated 11 December 2021 was unduly aggressive in tone. In addition, it was sent to the Practice Manager rather than to a qualified clinician. This was intended to create even greater pressure. Alternatively, it risked creating even greater pressure.

14.1.22 Had Client A been issued with evidence of exemption for the purposes of travel, he would also have been able to avoid all the public health measures adopted by Parliament for those in his situation. He would have been able to enter care homes; avoid self-isolation upon close contact with someone with a positive test; and shorten self-isolation following international travel, despite not meeting the relevant criteria for being able to do so. Moreover, the authorities of other countries might have incorrectly relied upon Client A's status under their reciprocal arrangements with the UK, and thereby be deceived into believing that Client A had clinical reasons for being exempt from the COVID vaccine.

14.1.23 Mr Tankel said that the Respondent's correspondence with the Health Centre:

a. Was wholly lacking in merit.

b. Sought to subvert the statutory scheme, adopted in the public interest, for the Respondent's client's personal benefit.

c. Would have required registered medical practitioners to be dishonest and/or act contrary to their clinical judgment.

d. Was unduly aggressive.

e. Was intended to use the legal process, and thus the Respondent's standing as a solicitor, to give additional weight to an otherwise unjustified request.

Breaches

Breach of Principle 2: Public trust

14.1.24 In sending the correspondence to the Health Centre, the Respondent breached Principle 2.

14.1.25 This principle requires the Respondent to act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons. In a democratic society governed by the rule of law, all members of the public are required to abide by duly enacted laws whether or not they personally agree with them. During the COVID-19 pandemic in particular, all members of the public were expected to forego some ordinary freedoms in what was deemed by the democratically elected legislature to be the public good. Client A nevertheless wished to seek an unjustified exemption from these laws for his own personal convenience for a foreign trip. Members of the public would take exception to a solicitor who sought to assist a client in such a scheme.

14.1.26 Moreover, members of the public would have taken exception to:

a. A solicitor who advanced legal claims that he either knew were wholly lacking in legal merit, was careless as to whether they were lacking in legal merit, or failed to adequately assess whether they had legal merit.

b. The aggressive tone of the Respondent's email of 10 December 2021.

c. The attempt to pressurise a member of staff who was not a qualified clinician.

Breach of Principle 5: Integrity

14.1.27 The Respondent also breached Principle 5. This Principle required the Respondent to act with integrity. The concept of integrity was considered by the Court of Appeal in 2018 in Wingate and anor v Solicitors Regulation Authority [2018] EWCA Civ 266. The judgment states that integrity:

> *(a) "97….is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members….the underlying rationale is that the professions have a privileged and trusted role in our society. In return, they are required to live up to their own professional standards…." (b) "100…. connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty".*

14.1.28 The Approved Judgment of LJ Jackson also states (at [101]) *"The duty to act with integrity applies not only to what professional persons say, but also to what they do".*

14.1.29 The form of professional regulation under which the Respondent operates must be informed by objective criteria. However strongly he held his views, it was not open to the Respondent to threaten legal liability on the basis of a one-sided and therefore misleading picture of the science and the applicable legal principles: see by analogy

PSA v (1) GDC (2) Mohamed Amir [2021] EWHC 3230 (Admin) at [44]. Doing so involved moral turpitude, not least when one considers the harm that might have resulted (ibid. at [54]-[55]).

14.1.30 A solicitor of integrity, acting in accordance with the high ethical standards of the profession, would not actively seek to obtain an Exemption Certificate for his client to which he knew or suspected the client was not entitled. He would also respect the duty upon registered medical practitioners to act honestly and would not seek to pressurise them to act dishonestly or contrary to their clinical judgement by issuing an exemption letter to which Client A was not entitled. He would not target a member of staff without a medical qualification in order to exert additional pressure. Had the Health Centre recipients complied with the requests in the letters, then there would have been material risks of acting unlawfully and of causing harm to the public.

14.1.31 Further, given the lack of legal merit in the claim, the only explanation for it must be that the Respondent was using the framework of the legal process and thus his standing and role as a solicitor to lend additional weight to an otherwise unjustified personal request.

14.1.32 A solicitor with integrity, sharing the Respondent's views and seeking to promote them, would instead have done one or more of the following:

a. Participated in peaceful acts of protest.

b. Brought a judicial review claim against the appropriate defendant.

c. Acknowledged the full range of evidence that existed, including that which was contrary to his own case, and made clear that the relevant question was (at its highest) a matter of judgement for individual decision-makers as to which view to follow.

d. Given a balanced view of the legal risks, rather than making the bare assertion that civil and even criminal liability would ensue.

Breach of Rule 1.2 of the Code of Conduct for Solicitors, RELs and RFLs (you do not abuse your position by taking unfair advantage of clients or others).

14.1.33 The Respondent sought to use his role as a solicitor, the framework of a threatened legal claim, overly legalistic argument, and aggressive language, in order to threaten an unrepresented defendant.

Breach of Rule 2.4 of the Code of Conduct for Solicitors, RELs and RFLs (you only make assertions or put forward statements, representations or submissions to the court or others which are properly arguable).

14.1.34 The legal claims contained in the correspondence were misconceived in law for the reasons set out above.

14.2 Allegation 1.2: MHRA

MHRA authorisation of COVID-19 vaccine

14.2.1 Mr Tankel explained that the Medicines and Health products Regulatory Agency ("MHRA") is an executive body of the Department of Health and Social Care. It is responsible amongst other things for giving marketing authorisations for medicines in the UK. The MHRA's decision-making is subject to a highly detailed set of technical requirements as provided for in the Human Medicines Regulations 2012. Critically, Regulation 58(4) of the 2012 Regulations provides that:

> *"The licensing authority may grant the application [for a marketing authorisation] only if, having considered the application and the accompanying material, the authority thinks that –*
>
> *(a) The applicant has established the therapeutic efficacy of the product to which the application relates.*
>
> *(b) The positive therapeutic effects of the product outweigh the risks to the health of patients or of the public associated with the product."*

14.2.2 On various dates through 2021, the MHRA issued conditional marketing authorisations for four different COVID-19 vaccines.

14.2.3 The MHRA published "Public Assessment Reports" in respect of COVID-19 vaccinations. For example, in respect of the vaccine manufactured by Moderna, the report (originally published January 2021) stated amongst other things as follows:

> ***"Why was COVID-19 Vaccine Moderna approved?***
> *It was concluded that COVID-19 Vaccine Moderna has been shown to be effective in the prevention of COVID-19. Furthermore, the side effects observed with use of this product are considered to be similar to those seen for other vaccines. Therefore, the MHRA concluded that this medicine can receive a conditional marketing authorisation.*
>
> ***What measures are being taken to ensure the safe and effective use of COVID-19 Vaccine Moderna?***
> *All new medicines approved require a Risk Management Plan (RMP) to ensure they are used as safely as possible. An RMP has been agreed for the use of COVID 19 Vaccine Moderna in the UK. Based on this plan, safety information has been included in the Summary of Product Characteristics (SmPC) and the Package leaflet: Information for the user, including the appropriate precautions to be followed by healthcare professionals and patients. All side effects reported by patients/healthcare professionals are continuously monitored. Any new safety signals identified will be reviewed and, if necessary, appropriate regulatory action will be taken. The MHRA has also put in place an additional proactive safety monitoring plan for all COVID-19 vaccines to enable rapid analysis of safety information which is important during a pandemic"*

14.2.4 The MHRA also had a "Yellow Card" reporting system which allowed any member

of the public or health professional to submit suspected side effects on the Yellow Card scheme. As at December 2021, the scheme was publishing weekly updates under the scheme.

14.2.5 The same vaccines were authorised by comparable authorities around the world.

Client instructions

14.2.6 The Respondent was instructed by Clients A, B and C "*in connection with [the MHRA's] role in authorising"* COVID-19 vaccines in the UK. Their individual grievances were said to be that:

a. Client A, a GP, was unable to give his patients "effective" advice because the MHRA had not authorised alternative forms of treatment.

b. Client B, a second-year medicine student was required to face a Fitness to Practice Hearing at his University on 7 January 2022 on grounds of "serious professional misconduct" for refusing a COVID vaccination.

c. Client C was a podiatry student. She was unable to go on placement because she refused the COVID vaccination.

14.2.7 By letter dated 17 December 2021, the Respondent wrote to the Chairman of the MHRA on behalf of these three clients alleging that:

> *"Your failure to investigate known concerns amounts to gross negligence in office and renders you and the executive board liable for serious misconduct in office, mal or misfeasance in public offence and, or, rendering all the office holders potentially liable for corporate manslaughter in that you have been wilfully blind to the know harms of the SARS-CoV-2 injections.*
>
> *You have taken no action. You have a lawful duty to protect the public, and you have wilfully failed in that duty... All the claimants are owed a duty of care by you not to misconduct yourself in office. All the claimants are owed a duty of care by you to act on concerns raised. All the claimants are owed a duty of care by you to ensure safe and effective medicines are authorised All the claimants are owed a duty of care by you to suspend authorisation of the SARSCoV-2 injections and their clinical trials on evidence of material risk.*
>
> *By failing in your duty of care you have committed a tort. All of the claimants have suffered, and are about to suffer, immediate losses as a consequence of your tortious acts."*

14.2.8 The Respondent averred that the MHRA had *"knowingly omitted to take action to avoid the preventable and avoidable harms"* of COVID-19 vaccinations. The letter set out a series of *"known facts"*, which the Applicant considered were essentially one-sided arguments as to the clinical merits of the COVID-19 vaccination then available. In essence it was said that the Respondent asserted that authorised vaccines were risky, not properly tested, and based upon unreliable evidence, and that by contrast there was evidence to support the use of a drug known as Ivermectin. The

letter referred to a large number of witness statements that were to be provided in support of the application for an injunction.

14.2.9 The Respondent invited the MHRA to give the following undertakings, failing which he threatened to apply to the High Court for an injunction giving relief in the terms of the undertakings*:*

> *"1. Stop all clinical trials of the SARS-CoV-2 injections immediately.*
>
> *2. Suspend the conditional marketing authorisation [CMA] for all SARS-CoV-2 injections.*
>
> *3. Suspend June Raine MBE from her post and require her to disclose all her direct and indirect financial interests in all of the products she is regulating.*
>
> *4. During the suspension of the CMA require all CMA holders for SARS-CoV-2 injections to disclose the following:*
>
> *a. The isolated SARS-CoV-2 purified virus sample for independent analysis with gold standards chain of custody of the evidence.*
>
> *b. All safety and efficacy raw data from the start of the clinical trials to present.*
>
> *c. Disclose any bio-distribution studies undertaken.*
>
> *d. Publish all the ingredients of the injections.*
>
> *e. Have the ingredients checked by independent researchers for toxicity with criminal standards of evidence gathering regarding chain of custody of the evidence.*
>
> *5. Suspend the CMA for LFT and PCR tests.*
>
> *6. During the CMA suspension authorise the use of Ivermectin and other protocols shown to be safe and effective for SARS-CoV-2.*
>
> *7. Take steps to bring to the attention of NICE and all NHS Trusts concerns over any treatment protocols involving the use of Remdesivir and Midazolam in treating UK patients for SARS-CoV-2. ...Such an undertaking should also be announced at a special Christmas evening television broadcast by you as Chair of the MHRA, accompanied by an announcement published on your website and press-released to all media."*

14.2.10 The effect of these undertakings would have been to:

a. Halt all COVID-19 vaccinations in the UK, including for the tens of millions of members of the public who wanted it.

b. Halt all rapid testing and PCR testing. Such tests were an essential ingredient of the government's measures for controlling the spread of COVID-19. c. Authorise for nationwide use a medication (Ivermectin and zinc) that the MHRA had not assessed the safety or efficacy of (because no application for its authorisation had been made).

14.2.11 The letter sought a response within seven days i.e. by 24 December 2021. The timescale was unrealistically short for relief on such a scale, not least considering the length of time for which vaccines had already been available.

14.2.12 In the event, the witness statements referred to in the letter were not provided until 22 December 2021, creating even greater pressure of time. Even then, not all of the statements were made available.

14.2.13 In instructions to leading counsel dated 24 December 2021, the Respondent sought advice on the following issues:

> *"1. Whether the evidence supplied meets the threshold for an injunction being granted. And if not, what further evidence is required*
>
> *2. Whether the claimants have locus standi to bring the application and in particular whether their losses are sufficiently connected to the alleged breaches by the MHRA and their office holders. a. If not, what claimants would be more closely causally connected."*

14.2.14 The Respondent recalls that during conference with leading counsel, counsel advised that an injunction application would be *"difficult"*.

14.2.15 Mr Tankel said that the Respondent was not able to provide the Applicant with any attendance note of that conference call and said that no written advice was given.

14.2.16 Notwithstanding this negative advice from leading counsel, on 7 January 2022 the Respondent went to different counsel saying that the Clients had instructed him *"to apply for an injunction to obtain a court order against the MHRA to withdraw all SARS-CoV-2 injections from the market."* Counsel was instructed to *"be available for strategic and tactical advice for achieving our objective"* and to draft an application for pre-action disclosure. In an email to Client A and others about these instructions, the Respondent wrote *"[Counsel] is very awake (in fact he's never been asleep!)"*.

14.2.17 Counsel was a Northern Irish barrister with no rights of audience in England and Wales and so he would only have been able to provide assistance with drafting applications and advice.

14.2.18 At some point in or around January 2022, the Respondent abandoned the proposed injunction application. During the SRA's investigation, he sought to explain that:

> *"The police issued a [Crime Reference Number ("CRN")] and we therefore did not progress as a priority. We did press for June Raine's arrest though... By the time the CRN was lifted the students had had their mandate lifted and lost victim status.*

14.2.19 Similarly:

> *"From memory Clients B and C were permitted to do their work placements unvaccinated and Client A split up with his girlfriend in Brazil so all lost their victim status in early 2022. Gathering evidence for the Police overtook the injunction and having spoken to Mr Leibenberg from [the Government Legal Department] on or around 24 December 2021 I was satisfied that he was aware of the issues as he had Peter McCullough's book and he suggested a zoom/teams meeting in early 2022 which did not happen. In early 2022 the mandates were not imposed and the travel restrictions were lifted."*

14.2.20 Mr Tankel submitted that these would not have been sufficient explanations for the abandonment of properly brought litigation. Rather, they tended to suggest that the threatened claim against the MHRA was part of a wider, scattergun, campaign to halt the COVID-19 vaccine.

14.2.21 A legitimate challenge to the MHRA's decision would have had to analyse the decision-making process of the MHRA, the compliance of that decision-making process with the relevant legal framework and consider in particular whether the test in Regulation 58(4) had been made out. It would have been brought by way of application for judicial review. The letter did not grapple with any of this this at all. It was silent as to the balancing exercise required to be carried out by the MHRA pursuant to Regulation 58(4) of the 2012 Regulations. The fact that there might have been risks associated with COVID-19 vaccinations did not necessarily mean that they had been ignored and Mr Tankel said it was realistically far more likely to mean that the MHRA had taken them into account but had decided that they were outweighed by the benefits.

14.2.22 As to the claims that the letter did threaten, they were wholly misconceived.

14.2.23 First, the Clients' grievances did not give them standing to bring a generalised challenge to the MHRA's decision to give market authorisation to COVID-19 vaccines. None of the Clients had received any authorised COVID-19 vaccination or had any intention to do so. As such, their relative clinical merits, and the risk of harm they were alleged to pose in individual cases, were of no direct relevance to them.

14.2.24 None of the Clients' grievances had anything to do with MHRA's role in authorising COVID-19 vaccines in the UK:

a. Client A did not appear to have been suffering any harm at all. No prescription was required for COVID-19 vaccines but, in any event, he could conscientiously object to prescribing or administering COVID-19 vaccines. As with any medical treatment, his professional role was to prescribe that which was authorised, and not prescribe that which was not authorised. It is the role of the MHRA, not any individual GP, to decide which medications should be available for use in the UK.

b. As for Client B, their grievance was that in order to progress in the second year they were required to undertake a hospital placement, and that all of the hospital placements available via his university required personnel to be vaccinated. That

combination of factors jeopardised Client B's ability to progress on the course in that year. The ensuing debate then escalated to the point that Client B's university raised issues as to Client B's professionalism and fitness to train to be a doctor. This was a dispute between Client B and the university and, to the extent that he had any legal claim, it lay against the university either in contract or by way of judicial review: Clark v University of Lincolnshire and Humberside [2000] EWCA Civ 129.

c. The harm suffered by Client C also appeared to have related to their inability to undertake a podiatry placement without being vaccinated and presumably, any claim they might have had would have been similar to that of Client B.

14.2.25 Second, the causes of action relied upon were diffuse. It was unclear whether the Respondent was alleging tortious liability, criminal liability, or both. It was also unclear whether the allegations were advanced against individuals (and if so which individuals), the MHRA as a whole, or both. The letter did not set out any of the relevant legal tests or explain how those tests were said to be satisfied on the facts of the case.

14.2.26 Third, the specific causes of action alleged were also inapt. The test for "misfeasance in public office" was articulated in Three Rivers District Council v Bank of England (No.3) [2001] UKHL 16 as comprising two limbs as follows: *"First there is the case of targeted malice by a public officer, i.e. conduct specifically intended to injure a person or persons. This type of case involves bad faith in the sense of the exercise of public power for an improper or ulterior motive. The second form is where a public officer acts knowing that he has no power to do the act complained of and that the act will probably injure the plaintiff. It involves bad faith inasmuch as the public officer does not have an honest belief that his act is lawful."*

14.2.27 The Respondent's letter made no attempt to explain how either of these limbs were satisfied by any individual within MHRA by reference to the specific facts. There was no analysis of how any individual within the MHRA had personal knowledge of Client A, B, or C or had deliberately intended to injure them or knew that their conduct would probably do so.

14.2.28 It was outlandish and far-fetched to suggest that MHRA officials had deliberately sought to cause the particular injuries that Clients A, B and C said they had suffered by providing conditional marketing authorisations to COVID-19 vaccinations approved by similar agencies around the world, as part of a public health measure during a global pandemic.

14.2.29 In subsequent correspondence with the SRA, the Respondent sought to explain that he believed the conduct of the MHRA amounted to the tort of negligence because the MHRA had a duty to keep the public safe, citing Robinson v Chief Constable of West Yorkshire [2018] UKSC 4.

14.2.30 It was unclear whether the Respondent had this in mind at the time he wrote his letter to the MHRA or whether this had been ex post facto rationalisation. No case law is cited or referred to in the letter to the MHRA. Either way, reliance upon Robinson was misconceived in that that case concerned the principle of liability in private law rather

than liability as a result of the exercise of a purely public law function.

14.2.31 The allegation of corporate manslaughter was impossible to understand. None of the Respondent's clients had died as a result of a COVID-19 vaccine or were claiming on behalf of someone who had.

14.2.32 Further, the offence of corporate manslaughter could not in principle have applied to the decision of the MHRA to give COVID-19 vaccinations a marketing authorisation.

14.2.33 The offence of corporate manslaughter is defined by the Corporate Manslaughter and Corporate Homicide Act 2007. Section 3 of the 2007 Act excludes from the offence all acts carried out by a public authority in respect of a decision as to matters of public policy (including in particular the weighing of competing public interests); and those done in the exercise of an exclusively public function, meaning a function that is by its nature exercisable only by or under a statutory provision.

14.2.44 A decision as to whether or not to authorise a medication for marketing is an exclusively public function: a private entity could not in its capacity as such provide authorisation for medication to be used in the UK. It was also a decision made under a statutory provision pursuant to the statutory scheme regulating the marketing and use of medications in the UK. Nonetheless, the letter did not cite the 2007 Act at all, let alone make any attempt to show how its provisions were engaged in light of the foregoing.

14.2.45 In subsequent correspondence with the SRA, the Respondent sought to explain why the offence of corporate manslaughter was made out. The explanation failed to engage with any of the above points.

14.2.46 The Respondent also sought to explain the basis of his allegation of *"bad faith."* However, his explanations were in broad terms and did not provide any foundation for the allegation that the MHRA had wilfully ignored evidence of harm.

14.2.47 Misconduct in public office is a common law offence. The threshold is a high one. The offence is committed when (Attorney General's Reference No.3 of 2003 [2004] EWCA Crim 868 at [61]):

a. A public officer acting as such;

b. Wilfully neglects to perform his duty and/or wilfully misconducts himself;

c. To such a degree as to amount to an abuse of the public's trust in the office holder;

d. Without reasonable excuse or justification.

14.2.48 The letter made no attempt to grapple with limbs (b), (c) or (d) of the test. The letter listed a number of alleged risks associated with the COVID-19 vaccine. Whether or not those allegations of risk were correct, the key point was whether individuals within the MHRA had knowingly failed to take them into account, the circumstances in which they were alleged to have done so and, if not, then whether or not there was

reasonable excuse for leaving these factors out of account.

14.2.49 Mr Tankel submitted that the fact that there might have been risks of the COVID-19 vaccine did not, as the letter presumed, mean that such risks had been deliberately ignored. Alternatively, the Respondent was simply second-guessing the MHRA's decision as to the merits.

14.2.50 Fifth, the allegation that the MHRA had *"wilfully ignored"* evidence was inherently unlikely and was contradicted by publicly available information about its approval process, the Yellow Card reporting scheme, and the fact that comparable authorities around the world were making similar decisions. The letter did not grapple with any of these facts.

14.2.51 Sixth, as this was a threatened claim for an injunction, the American Cyanamid test would apply i.e.:

a. Whether there was a sufficiently serious matter to be tried;

b. Whether damages were an adequate remedy for the claimant if an injunction was not granted;

c. If damages would not be an adequate remedy, whether the claimant would be able to give a cross-undertaking in damages to the defendant;

d. If it was considered that there was any difficulty regarding the availability of damages on either side, the court should consider the balance of convenience between the parties. In the instant case, that would involve amongst other things consideration of the public interest: see Detention Action v Secretary of State for the Home Department [2020] EWHC 732;

e. If these factors were evenly balanced, the court should consider maintaining the status quo.

14.2.52 The Respondent did not seek to grapple with these principles at all.

14.2.53 Finally, there was no properly arguable basis for any of these undertakings to be given. No court would ever have ordered them in that:

a. The relief sought did not relate to any of the Respondent's clients' individual issues. Rather, his clients' issues were being used as a springboard for a root and branch attack upon the UK government's response to the COVID-19 pandemic;

b. Even if there were a connection, the harm being suffered by these three Clients was *de minimis* by comparison with the harm that would have been suffered by the public by unilaterally ceasing at 7 days' notice both the vaccination programme and the testing programme;

c. The Respondent had demanded that the MHRA approve the use of Ivermectin. However, no court would ever have required the MHRA to authorise a medication that it had not authorised, given the risks to the public of placing an

unassessed medication on the market.

14.2.54 In any event, the manufacturers of Ivermectin had not applied for a marketing authorisation in the UK. The Respondent had no standing to seek authorisation on behalf of the manufacturers of Ivermectin.

14.2.55 The proposal that all this would have been announced on a special Christmas evening television broadcast made it clear, if it was not already clear, that this was more a political campaign than a legitimate legal claim.

14.2.56 From the context, Mr Tankel said that it could be inferred that together with his clients the Respondent was in reality pursuing a campaign against the COVID-19 vaccination, in the guise of legal claims.

14.2.57 Whilst the Applicant accepted that legitimate legal claims may sometimes be brought in pursuit of political goals, these were not such claims:

a. The claims were wholly lacking in merit and no attempt was made to analyse the legal basis for the threatened claims or who the relevant defendants should be;

b. The letters contained many contentions about the substantive clinical merits of the COVID-19 vaccine that were of no relevance to the legal claims being advanced. They were a means of conveying a particular point of view about the merits of the COVID-19 vaccine;

c. In the case of the MHRA letter, the undertakings sought had an obviously political element, including the dismissal of a senior employee and a special televised broadcast on Christmas evening;

d. The Respondent took a scattergun approach to claims. He jumped from claim to claim, and to police reports. This was especially surprising given the serious allegations he was making and wide-ranging relief he was seeking;

e. After he received negative advice from leading counsel, the Respondent sought out counsel that had the same view on the merits of the COVID-19 vaccine, even though that counsel did not even have rights of audience in England and Wales.

14.2.58 Further, it was said by Mr Tankel that the Respondent's correspondence with the MHRA:

a. Was wholly lacking in merit;

b. Made serious allegations of bad faith about the MHRA and its employees, without proper foundation;

c. Sought undertakings which were unrelated to the harm alleged to have been suffered by his Clients;

d. Further and alternatively, sought undertakings which were wholly disproportionate to the harm alleged to have been suffered by his clients. The Respondent's request was that, in order that Clients B and C could progress through their university courses in that year, nobody in the country would be able to receive a COVID-19 vaccine; the government's key measures for controlling the spread of the disease would come to a halt; and an untested medication be released to the general market. All within a seven-day timeframe;

e. Was improperly using the framework of a legal claim to lend additional weight to the ulterior purpose of promoting a particular view as to the merits of the COVID-19 vaccination programme and the testing programme.

Breaches

Breach of Principle 2: Public trust

14.2.59 In sending the correspondence to the MHRA, the Respondent breached Principle 2:

a. The policies in question were national responses to a public health emergency. If a challenge was to be brought to those policies, the public was entitled to expect that these would be properly rooted in fact and law. The public would be alarmed by a solicitor who improperly used the framework of a legal claim to make unmeritorious challenges for the ulterior purpose of promoting a particular view as to the government's public health measures;

b. The public would not expect a solicitor to make, without foundation, serious allegations of bad faith against defendants, let alone defendants who were public officials trying to deal with an emergency;

c. The public would also lose confidence in a solicitor who made requests for such outlandish and irresponsible forms of relief.

Breach of Principle 5: Integrity

14.2.60 The Respondent also breached Principle 5. In addition to the above, the Applicant relies here upon the facts that:

a. The Respondent was seeking to promote the relatively minor interests of his two clients in progressing their courses in that year, over the interests of tens of millions who wished to receive the vaccine and to avail themselves of testing. This demonstrated a skewed moral picture;

b. The Respondent made allegations of bad faith without adequate foundation.

Breach of Rule 2.4 of the Code of Conduct for Solicitors, RELs and RFLs (you only make assertions or put forward statements, representations or submissions to the court or others which are properly arguable)

14.2.61 The legal claims contained in the correspondence were misconceived in law.

15. **Respondent's Submission of No Case to Answer**

15.1 Dr Fields submitted at the close of the Applicant's case that there was no case for the Respondent to answer as the Applicant had failed to establish a prima facie case against him, and it would be an abuse of process to require the Respondent to give evidence in his defence.

15.2 The Applicant had not called any witnesses. Mr Tankel, as the Applicant's representative, was not permitted to give evidence or introduce any opinion or speculation regarding facts that was not contained within the bundle and as such, the Applicant case had to prove its case based on the Rule 12 statement and the evidence in the supporting bundle.

15.3 Dr Fields submitted that, applying both limbs of the test for no case to answer as set out in R v Galbraith [1981] 1 WLR 1039; (1981) 73 Cr.App.R. 124 (CA), the Applicant had failed to adduce sufficient evidence to establish a prima facie case against the Respondent on either allegation and/or that their evidence was so tenuous or inconsistent in nature to allow the case to continue.

Allegation 1

15.4 In its Rule 12 statement, the Applicant stated that the Respondent improperly threatened legal proceedings on the basis of an exemption for Client A from a COVID 19 vaccine to which the Respondent knew or believed Client A was not entitled; that his letter threatened litigation where there was no proper legal basis for the claim; the correspondence improperly aimed to intimidate a lay party in that it was excessively legalistic; abusive, intimidating, and aggressive in tone and language and that the correspondence sought to invoke the framework of a legal claim, and the Respondent's status and a role of a solicitor, to lend unjustified weight to Client A's meritless request.

15.5 However, Dr Fields said that in reality the *'Scorer Letter'* clearly set out why the Respondent believed that Client A was entitled to exemption and the basis for legal sanction. The burden had been on the Applicant to prove that Client A had not been entitled to clinical exemption and the Applicant had not demonstrated that the Respondent's correspondence with the Medical Centre had been improper or without a legal basis.

15.6 The *'Scorer letter'* clearly outlined the Respondent's legal arguments and sought to protect Client A's rights within a flawed exemption process.

15.7 Dr Fields referred to the Employment Tribunal judgment in Trotman v Royal Star & Garter Homes [ET 2301025-2022] wherein Judge M Aspinall determined the timeline of the regulations governing Covid vaccinations at work which confirmed that the guidelines referred to by the Applicant for determination of clinical exemption were only guidelines and secondary to the statute or regulations. Therefore, *per* Trotman, the Applicant's submissions in its Rule 12 Statement about the efficacy and impact of the regulations had been fundamentally incorrect.

15.8 With regard to the significance of religious or philosophical belief, the Tribunal's

attention was drawn by Dr Fields to another and recent Employment Tribunal judgment in the case of Bailey v WMAS University NHS Foundation Trust [1302139/2022] in which Employment Judge Harding determined that: *"a philosophical belief, namely a belief in living a homeopathic lifestyle and having bodily autonomy, in particular having the right to determine what medications/vaccinations he should have, which qualifies as a protected belief within the meaning of Section 10 of the Equality Act 2020"*.

15.9 Dr Fields said this finding supported the submission that the Applicant had no foundation for its assertion that Client A, and therefore the Respondent's claims, had had no basis.

15.10 As to the Applicant's assertion that the Respondent's correspondence improperly aimed to intimidate a lay party and allege that the wording was *"excessively legalistic"* and that it was abusive, intimidating, and aggressive in tone and language Dr Fields said that by using the phrase *"excessive"*, this could only be taken to be a reference to standard of *"tone"* that was acceptable.

15.11 In considering whether the Respondent's tone had been excessively legalistic, Dr Fields asked the Tribunal to consider, by comparison, the tone that most solicitors use when writing a strong letter before action and he submitted that the Applicant had failed to prove that the tone of the Respondent's letter had been excessively legalistic as there was no evidence to support such a contention.

15.12 As to whether the letter had been abusive, intimidating, or aggressive, the Applicant had underlined certain sentences in the 'Scorer Letter'. The offending words comprised: *"you have chosen to focus on the inadequacy of your own record keeping"* "*You have wilfully misunderstood your role and wilfully misunderstood the legal obligations you owe to Client A" "You are attempting to exert undue influence" "You need to understand your role here. You follow Client A's wishes. You do not exert undue influence by following unlawful guidance." "By stating that you do not acknowledge Client A's human right to decline treatment you are in gross breach of your legal duties"*

15.13 Dr Fields submitted that, by the standard of any letter before claim written by a solicitor on the instructions of a client, the above words could not be described as abusive, intimidating, or aggressive and the Applicant had failed to prove its allegations with reference to any acceptable standard.

15.14 Dr Fields said that the Applicant had concluded Allegation 1 by writing that the Respondent *"sought to invoke the framework of a legal claim [ ] to lend unjustified weight to Client A's meritless request"*. However, the Applicant had presented no evidence to support its submission that the Respondent's letter had been meritless. Whilst the letter and any subsequent action may not have ultimately succeeded was irrelevant. All that was necessary was that it had had a legal basis. If this was, otherwise, no solicitor could ever accept a case nor send a letter before action from a client whose claim might appear to be weak.

15.15 Dr Fields said it was not the Applicant's role to challenge Client A's instructions to the Respondent to make any application asserting *'clinical exemption'* and it had

provided no factual evidence to support its assertion that the Respondent knew or believed that Client A was not entitled to obtain clinical exemption. The burden was on the SRA to prove such an assertion and it had failed to do so.

Allegation 1.2

15.16 Dr Fields said the Applicant had not provided evidence to substantiate its claim that the MHRA letter lacked a factual or legal basis. The Applicant had said that the Respondent's letter threatened litigation where there was no proper factual or legal basis for the claim; made allegations of bad faith on the part of public officials, without proper foundation; sought forms of relief which were unrelated to, and disproportionate to, the grievances of his clients and it was for the ulterior purpose of promoting a campaign against the government's public health measures.

15.17 Dr Fields submitted that the letter had in fact set out a credible factual and legal basis for the claim (in that it was more than fanciful or merely arguable). The letter was based on substantial evidence raising legitimate concerns about vaccine safety and efficacy. Acting on the instructions of his clients (a practicing Doctor and medical students), the Respondent had set out the legal basis in his letter.

15.18 In its Rule 12 statement the Applicant had attempted to dismiss the arguments set out by asserting that they were *"essentially one-sided arguments as to the clinical merits of the COVID-19"*. Dr Fields stated that if this was accepted as a basis for disciplinary sanction, it would lead to the conclusion that any solicitor who did not present both sides of an argument in a letter before action would risk proceeding being brought against them by the Applicant.

15.19 Dr Fields submitted that the Tribunal should take note that the Covid Enquiry had heard from many authoritative witnesses that the government ignored or overrode scientific advice when formulating its policies (e.g. delaying lockdown, implementing Eat-Out-To-Help-Out) and that the Respondent's letter drew the MHRA's attention to the fact that it was not taking into account, and not communicating to the public, the full extent of scientific concerns which were manifest at that time.

15.20 Dr Fields said that the Applicant had failed to prove that if the MHRA had acted on the letter, it would have put the public health at risk. In doing so, the Applicant had strayed over the line and was, in effect, endorsing government policy, whilst permitting no criticism of it.

15.21 The letter was clearly described as a *"letter before action"*. The Respondent made no *"submissions"* as he was not in court. The matters which the Respondent had set out in the letter were not in a claim form that had been filed in court with a statement of truth. As with the first Allegation the Respondent was setting out his clients' case as instructed. As per CPR PD PACP, the normal response is for the potential defendant to respond detailing which parts of the letter they dispute and identifying any facts that are wrong. This is exactly what the MHRA did (through the Government Legal Service, ("GLS")) in their letter of 21 December 2021. At no point in their response did the GLS complain about the tone of the Respondent's letter. The GLS responded to each point and set out the reasons why it was not going to do what the Respondent had asked. This was the normal procedure for any claim.

15.22 The Applicant appeared to have substituted itself into the shoes of a potential defendant. In its Rule 12 statement, it repeated the legal and factual arguments made by the GLS in the reply to the letter before action. Dr Fields submitted that it was not the Applicant's role to make legal arguments in support of a potential defendant to a claim. The Applicant went further, having adopted the role of the Defendant, it extended the response by making a Rule 12 statement proposing sanction against the solicitor who, acting on instructions, had sent the letter before action.

15.23 Dr Fields said that by simply parroting the GLS legal response, and providing no further evidence, the Applicant had failed to prove the alleged breaches. Also, given that the GLS did not complain to the Respondent, it could be inferred that, for some reason, the Applicant had been encouraged to act in support of government policy.

15.24 Dr Fields asserted that it could not be the case that a solicitor who provides public support against public policy deserves sanction. If this were the case, then no solicitor could ever attend a demonstration or publicly declare their support e.g. against war, in support of striking doctors, against cuts in education etc.

15.25 The Applicant did, however, acknowledge that a legitimate legal claim could be brought in pursuit of political goals but without proving that the Respondent was pursuing a *"political goal"*, it went on to say that, if he were, his goal could not be legitimate because it was wholly lacking in merit. Dr Fields said this opened up the Applicant's position to suggesting that a political goal of an anti-vaccine policy could not be valid because it had no merit. Such view was, in Dr Fields' estimation, subjective opinion which had no place in an action against a solicitor for breach of the SRA code or principles.

15.26 The Applicant had also submitted that the scientific basis for the Respondent's assertions in his letters had no relevance to the legal merits, yet, by its own evidence, the Applicant had established that if the assertions in the letters were correct, this could lead to a claim for damages.

15.27 Dr Fields said that it was not the Respondent's submission that his letter before action would have succeeded and the Applicant was clearly taking a position that the restriction on freedom, imposed by government, was for the public good. This, in effect represented the Applicant itself taking a position on the integrity of government policy with the corollary that, by going against government policy, the Respondent acted in contravention of Principle 2 of the Principles 2019.

15.28 Dr Fields submitted that the Applicant had failed to prove that the action of any solicitor who objects to government policy must be in contravention of Principle 2. The fact that there were some 7 million people who were *"vaccine hesitant"*, including some 80,000 care workers, supported a submission on behalf of the Respondent that the content of the *'Scorer Letter'* could not be argued to be a breach of Principle 2 simply because it went against government policy and may not be supported by some members of the public. This was in complete contrast to a solicitor who had, for example, used client money, practised without insurance, failed to act on instructions.

15.29 The Applicant had also asserted that the Respondent had breached Principle 5 by

acting without integrity. When considering if the Applicant had proved its case, Dr Fields asked the Tribunal to consider what a breach of this test normally comprised of and to take into account that all Tribunal judgments in the last 300 published judgments (going back to 2020), where *"acting without integrity"* had been found, involved matters relating to Misuse of Client Funds; False information to clients or court about qualifications; Unauthorised Practice; Misappropriating funds and falsifying records; Misuse of Client Information; Conflict of Interest; Financial Misrepresentation; or Lack of Professional Indemnity Insurance.

15.30 The Applicant pursued the line that the Respondent had acted without integrity because he did not provide a balanced view of the scientific argument and, therefore, he was misleading the reader. However, Dr Field said that the Applicant had failed to provide any scientific evidence to rebut the Respondent's assertions and, therefore it had failed to support its own assertion that his communications had actually been *"misleading"*. Dr Fields reminded the Tribunal that the Covid Enquiry had determined that government policy itself misled people and failed to act on scientific advice.

15.31 Given that the Respondent provided authorities for all his assertions, it was submitted by Dr Fields that the Applicant had failed to prove that the Respondent did not have a reasonably held belief in what he wrote and, as such, independent of whether his beliefs were 'right or wrong' the Applicant had failed to prove that the Respondent had acted without integrity.

15.32 Dr Fields said that the Tribunal was not being asked to make any determination on the science or safety of vaccines by the Respondent but simply being asked to accept the submission that his actions were based on his genuine and reasonably held beliefs which could not be argued to be a breach of Principle 5 and upon which it was submitted the Applicant had failed to provide any proof that the Respondent had been in breach of Principle 5.

15.33 For the reasons given above, Dr Fields said the Applicant had also failed to prove that the Respondent abused his position (Rule 2.1) *"by taking unfair advantage of clients or others"* as the Applicant had provided no evidence of the Respondent *"taking unfair advantage"* of anyone and it was submitted that the Tribunal should assess any evidence the Applicant may claim they have within the context of historic determinations by the Tribunal and that there were no prior examples of pre-action correspondence giving rise to a determination of *"taking unfair advantage"*.

15.34 Regarding Rule 2.4 *("only putting forward statements which are properly arguable"*), the Applicant made assertions as to the weaknesses of the Respondent's legal arguments, but it was submitted by Dr Fields that the Applicant failed to prove that any of his arguments were fanciful.

15.35 The relevant letter was a letter before action. As per the CPR Practice Direction Pre-Action Conduct and Protocols, a potential claimant should write to the defendant with concise details of their claim. The letter should include the basis on which the claim is made, a summary of the facts, and what the claimant wants from the defendant. (CPR PD PACP 6(a)).

15.36 The purpose of this is to satisfy the requirement (PACP 3) that, before commencing proceedings, the parties (a) understand each other's position; have enough information to make decisions about how to proceed; and try to settle without proceedings.

15.37 According to PACP 6(b), the potential defendant is then expected to respond including confirmation as to whether the claim is accepted and, if it is not accepted, the reasons why, together with an explanation as to which facts and parts of the claim are disputed.

15.38 Given that the letter was a letter before action (as per CPR PD PACP), Dr Fields submitted that, in making such assertions the statements it contained were not properly arguable, the Applicant had also failed to recognise that the purpose of a letter before action is for the Defendant to respond setting out their position and, if any of the statements are not arguable, to highlight these and explain why they are disputed. It was submitted that, for the Applicant to effectively assert that all statements in a letter before action must be arguable and based on fact, ignored the purpose of a letter before action and it could not be the basis for any assertions of a breach of Rule 2.4.

15.39 Further, the Applicant had not disputed that, in writing the letter, the Respondent was acting on instructions from client(s) and there would be significant issues if the Tribunal determined that Rule 2.4 was breached if a solicitor acted on instructions in support of a weak case.

15.40 Dr Fields said the Applicant had presented a case which was fundamentally flawed, relying on a narrow and incomplete interpretation of the law and facts, and demonstrating a lack of independence from government influence. Whilst it was accepted that the Applicant is a "public interest" regulator, it was ultra vires for it to act in support of a transient government policy or to suggest that disagreement with government policy is any way "misleading."

15.41 The Applicant had submitted that, in sending the correspondence to the MHRA, the Respondent breached Principle 2: *"a. The policies in question were national responses to a public health emergency. If a challenge was to be brought to those policies, the public was entitled to expect that these would be properly rooted in fact and law. The public would be alarmed by a solicitor who improperly used the framework of a legal claim to make unmeritorious challenges for the ulterior purpose of promoting a particular view as to the government's public health measures. "*

15.42 This was another clear statement by the Applicant in support of government policy. In stating that the challenge should be properly rooted in fact and law, it effectively repeated the government policy but ignored the fact that the government policy itself was not rooted in "fact" (per the Covid enquiry). There had been many legal challenges to public policy that were not rooted in fact and law and which sought to overturn the law. It was submitted that this assertion by the Applicant had no place in determining whether the Respondent was in breach of his obligations.

15.43 The Applicant also made a bland assertion that *"the public would not expect a solicitor to make, without foundation, serious allegations of bad faith against defendants, let alone defendants who were public officials trying to deal with an emergency."* Again, this appeared to Dr Fields to be a condemnation of the Respondent because the officials of which he was critical *"were trying to deal with an emergency"*. This was

effectively the Applicant parroting the government line for explaining everything that the Covid enquiry had uncovered and reported including wasting billions of pounds on unused PPE.

15.44 Dr Fields submitted that the Applicant had have failed to prove that *"the public would not expect a solicitor to make serious allegations of bad faith"*. In addition, it omitted the fact that the Respondent had set out the foundations for his allegations. Dr Field said that the Applicant had failed to prove that these 'foundations' were baseless.

15.45 Dr Fields reminded the Tribunal that when considering whether the Applicant had provided enough evidence to support continuing the case, the Applicant had not challenged that the Respondent was acting on instructions and it would therefore be dangerous territory to suggest that a solicitor cannot act on instructions if they involve unproven allegations of bad faith.

15.46 The Applicant maintained that the requests made by the Respondent in his letter had been 'outlandish' and 'irresponsible'. In doing so, it again referred to public policy and suggested that what was being asked for was unreasonable. Dr Fields said that the Applicant had ignored the fact that a lot of letters before action contain requests or demands that are unreasonable or unworkable. In the context of the decisions being made and the threats perceived by those instructing the Respondent in this context, Dr Fields said that the Applicant had failed to prove that the requests in the letter before action were either *'outlandish'* or *'irresponsible'* and that the public would lose confidence in a solicitor who made such requests on instructions from their clients.

15.47 In repeating the *"integrity"* allegation, the Applicant referred to the Respondent promoting the relatively minor interests of his two clients over the tens of millions who wished to receive the vaccine. However, the Applicant had provided no evidence to support the assertion that tens of millions wished to have the vaccine at the time of the Respondent's letters. By making such statement Dr Fields submitted that the Applicant was stating in terms that before pursuing any instructions from a client, a solicitor must weigh up the impact on other parties and make a moral judgment as to whether to proceed and indeed the Applicant had used the wording "skewed moral picture" to refer to the Respondent's actions.

15.48 Dr Fields asserted that it was not the Applicant's place to make moral judgments on the merits of a claim and the relative benefit to clients who instruct a solicitor versus the benefits to society and that in this context, the Applicant had failed to provide any evidence to support its assertion that the Respondent had acted without integrity and instead it had replaced "evidence" with its own moral judgment.

15.49 The Respondent's conduct had been consistent with the SRA Principles 2019 and the Code of Conduct for Solicitors, RELs, and RFLs. His actions were motivated by a genuine concern for public safety and the upholding of the rule of law in the face of unprecedented circumstances surrounding the COVID-19 pandemic and the UK government's response to it.

15.50 In conclusion, Dr Fields said that the Applicant had failed to provide any reasonable basis for continuing with the case and requiring the Respondent to give evidence in his defence would be an abuse of process in the circumstances. The SRA has not met

the burden of proof required to establish a prima facie case and, as such, the case should be dismissed without the need to consider the evidence provided by the Respondent.

SRA Submissions in Opposition

15.51 Mr Tankel reminded the Tribunal of the test set out in Galbraith as to a finding of no case to answer.

15.52 Mr Tankel disputed Dr Field's contention that there was no evidence or no sufficient evidence upon which the Tribunal could make findings. In the present matter the factual context was a narrow one and there was no dispute between the parties that the two letters which formed the basis of the allegations had been written and sent by the Respondent. The case therefore required an evaluative judgment by the Tribunal as to whether the facts represented a breach of the rules of conduct as alleged by the Applicant. This could only be achieved through hearing the full evidence.

15.53 With respect to first allegation 1 and the *'Scorer Letter'* the facts were straightforward, Client A applied for an NHS exemption letter because he had wanted to travel. The case on this allegation had nothing to do with preventing letters before action or endorsing government policy.

15.54 With respect to MHRA letter in the second allegation the Respondent had set out that the public required information about the vaccine, however, the relief sought by the Respondent went far wider than this request. The letter had asserted without any evidential basis bad faith and gross misconduct on the part public officials, in particular, Ms June Raine.

15.55 Further, Dr Fields had not been correct to state that in its reply the GLS had taken no issue with the Respondent's letter, as it had described the Respondent's demands as *'wholly unrealistic'* in the timescale given for reply and *'wholly unwarranted allegations.'* The GLS also stated that:

> *"Any such application will be robustly defended. The Secretary of State will further seek his costs of defending such an application on the indemnity basis.*
>
> *The Secretary of State will endeavour to provide a substantive response once all the witness statements and exhibits are made available to be shared. The wide-ranging issues raised by your letter will require input from a large number of staff who are otherwise engaged in, among other matters, combatting the spread and effects of the SARS-CoV-2 coronavirus."*

15.56 The reference to claiming costs on an indemnity basis was a clear indicator that the GLS did not consider the claim to be reasonable.

15.57 The case raised legitimate and serious issues relating to a solicitor's conduct, including matters of integrity, and it required the Respondent to provide his account to the Tribunal.

The Tribunal's Decision

15.58 The Respondent's application was dismissed.

15.59 The Tribunal reminded itself that the test for a submission of no case to answer is based on the test in Galbraith as follows:

> *"(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case.*
>
> *(2) The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence.*
>
> *(a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case.*
>
> *(b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness' 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 upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury"*

15.60 This test has been applied, with appropriate adaptation, by the Tribunal when considering submissions of no case to answer. In doing so the Tribunal does not assess whether it would find an allegation proved against the Respondent, only whether it could find it proved on the balance of probabilities.

15.61 The application of Galbraith was affirmed in Solicitors Regulation Authority v Sheikh [2020] EWHC 3062.

15.62 In the present matter the Tribunal noted that the Applicant had chosen not to call live evidence. The Applicant had instead relied upon the two letters which the Respondent accepted he had written and sent to the recipients and upon the supporting material exhibited to the Rule 12 Statement.

15.63 The Tribunal did not accept the proposition presented by Dr Fields that there was no evidence in this case justifying a finding of no case to answer on the first limb of the Galbraith test. There was evidence, namely two letters and subsequent e-mail correspondence.

15.64 On its face the correspondence, taken individually and collectively had unusual features which, arguably had the characteristics ascribed to them by the Applicant in that it was arguable that the letters went well beyond that which a recipient would expect in a letter before action.

15.65 The question was whether the evidence was of such a weak and tenuous nature that, taken at its highest, a Tribunal which had properly directed itself could not make a

finding of professional misconduct upon it.

15.66 The Tribunal could not answer this question in the affirmative. The correspondence had had a distinct tone, style and 'edge' which, along with the submissions each letter had contained with respect to, alleged bad faith, misfeasance in public office and various statements on substantive law, called into question the underlying conduct of the Respondent and his motivation for writing the letters in the way that he did.

15.67 There was clearly a case to answer, and Tribunal considered that the Respondent should be granted the opportunity of responding to the allegations.

15.68 The Tribunal noted the authorities to which its attention had been directed by Dr Fields. It was not persuaded that it was bound by any findings made by the Employment Tribunal whose jurisdiction covered an area which was different to those issues which fell to be determined by the Tribunal, namely matters of professional conduct and the protection of the reputation of the profession in the eyes of the public.

15.69 The Tribunal noted that many of the submissions made by Dr Fields had the appearance of matters which could be set out in closing, and it would bear in mind such points at the time when the Respondent closed his case.

15.70 Having decided there was a case to answer by the Respondent the Tribunal invited Dr Fields to present the Respondent's answer to the allegations and to call the Respondent, if he so wished, to give evidence.

16. **The Respondent's Case**

Respondent's Submissions

16.1 In his evidence in chief the Respondent relied on his statement dated 18 June 2024, the contents of which he which confirmed to be true. He was cross-examined on his evidence by Mr Tankel.

16.2 The Respondent denied all the allegations, stating that all times, he had adhered to the SRA Principles and Codes of Conduct. He said that his writing style was direct and to the point and he accepted that the letters in each allegation lacked nuance, and both could have been better written. However, they were the best he could do with his skills at the time.

16.3 His intention had been to draw a distinction between the rule of law and unlawful guidance issued by the Government. His actions had not been intended nor did they undermine trust and confidence in the profession, and he had not lacked integrity.

16.4 The Respondent set out as a general principle that the SRA, the Applicant in this case, should allow free speech as a fundamental tenet of the rule of law and support solicitors acting on instructions and upon the evidence. The SRA should adopt no position, or at least be neutral on such matters and should certainly not be adopt the government's position without question.

16.5 The Respondent said that he initially supported the government's anti-covid measures

but later changed his mind when he reviewed the data. This was because throughout 2020 and 2021 there was evidence emerging that not only was the government's response harmful, disproportionately to the young, the disabled and children, there was also evidence that the government knew or must have known that the harm outweighed the good.

16.6 The Respondent studied Lancet reports in February 2020 from Wuhan and noted subsequently that the NHS adopted a different approach. Vitamin C IV at 1500 was a successful intervention in Wuhan. Mechanical ventilation had very poor outcomes. Smokers were a lower risk than non-smokers.

16.7 As to the risk/benefit analysis of vaccination, in particular to younger age groups the Respondent said there was a near-unanimous scientific body indicating that the younger a person is, the lower the risk of any serious impact of harm upon them from the Covid virus, whilst the risks of harm upon them from the vaccine increased.

16.8 The Applicant's position failed to recognise the precautionary principle and failed to recognise the asymmetry of the risks. SARS CoV2 posed a low risk for people of working age in good health. The risks from vaccination were far greater the younger a person was in age. The risk of dying from Covid increased almost exponentially as age increased. Whilst it was up to individuals to make their choices, based on the risk/benefit analysis, there was a good case that no-one under 18 should ever have been vaccinated and, even at age 40, the risk/benefit was still very borderline.

16.9 There was evidence of bad faith on the part of public officials throughout 2020 and 2021 in not presenting the true information to the public. Such officials said one thing in public and did another in private. Politicians stood to gain and there were examples of this including David Cameron and Matt Hancock as well as others with conflicts of interest regarding certain investments they had made and, in the funds, the MHRA received.

16.10 There was evidence that government data was unreliable. There was a build-up of systemic failures of which the MHRA had had notice from 2020 onwards. The exemptions process was clearly outside what Parliament had legislated upon and doctors were involving themselves in matters without any parliamentary approval and which had a detrimental impact on staffing in care homes. The NHS, as a whole, faced a loss of staffing capability.

16.11 There was, to the Respondent's mind, evidence that the government was issuing guidance without parliamentary scrutiny and about which Parliament had concerns. The government guidance had been misleading and it had been used for non-pharmaceutical interventions and there was a real risk at that time the misleading guidance may be used for pharmaceutical interventions, which could have had a far greater impact.

16.12 The Respondent maintained that the public had been entitled to reliable public information on material risk. The evidence had been that information on risk was not being gathered efficiently. The adverse event reporting processes had not been systematic, and no training had been provided.

16.13 The Respondent said that the Applicant's position appeared to be that public office holders determine risk and benefit at an aggregate level and that anyone who did not accept that determination at an individual level could have rights and privileges withdrawn. The Applicant had adopted an ideological position in support of the government.

16.14 However, it was not the Applicant's role to form a judgment about the risk/benefit analysis of any specific individual having the vaccine including any of his clients. Free and informed consent is about an individual determining what risks are material to them. Risk, perception of risk and appetite for risk vary from person to person and are heavily age related. Decisions on medical intervention depend on protected characteristics such as age, sex, disability and fertility. None of this was recognised by the Applicant in its case.

16.15 Unlike the picture presented by the Applicant the picture was not obvious and clear at the time. It was in fact confusing, unclear and unprecedented. There was a heady mix of ever-changing regulations such as the travel regulations which went through around 40 amendments often at short notice and guidance which could not be reconciled with the wording of the regulations. There was therefore plenty of ambiguity and picking one's way through it was not an easy task and applying the law to the evidence was likewise not easy.

16.16 There was no consensus either on the facts or interpretation of the law and solicitors disagreed on interpretation. It was tricky and it was against this factual and legal backdrop that the Respondent said he had written and sent the letters.

16.17 The Applicant's position appeared to be that Government and Doctors 'know best'. However, it had always been the case that 'Doctors advise, patients decide'. This is the fundamental principle of informed consent.

Allegation 1: *'The Scorer Letter'*

16.18 The Respondent said he had had acted on instructions from Client A, a regulated medical professional. The process of obtaining a form, filling it in and submitting it was not prescribed by law or in accordance with the law and the Respondent considered that relying on discriminatory, non-human rights advisor guidance was tortious activity. It was clear to the Respondent that the Health Centre relied on advisory, non-binding guidance which did not align with the law, and which was an impermissible interpretation of clinical reasons by the DHSC and the secretary of state.

16.19 The tortious activity was the medical practice's reliance on guidance where that guidance impermissibly fettered free and informed consent, breaching the duty of care and led to a denial of Client A's legal right to be an autonomous decision maker resulting in a breach of legal rights and discrimination. Client A and the Respondent had a good understanding based on experience that reliance on guidance could lead to a prima facie breach of human rights.

16.20 The Respondent said that Parliament had not given a role to doctors to determine whether the evidential requirements of *"clinical reasons"* had been met under the care

home regulations or the self-isolation regulations, however, advisory and non-binding guidance purported to give doctors that role and in the Respondent's opinion the fault here lay with the advisors of the Health Centre.

16.21 Parliament, under the travel regulations, had given a limited role to registered medical practitioners to produce a relevant document. There was no case law about the process and caution was required about the guidance. Further, Parliament had not written out existing legal rights for the protection of sensitive data or the patient's right not to be discriminated against by those performing services.

16.22 Both Client A and the Respondent had had reasonable grounds for believing that any entitlement under a defective scheme was warranted and there were no grounds for the Applicant believing that the letter had overstepped the mark. The Applicant had not set out the law correctly within its own Rule 12 Statement and it had not undertaken any factual enquiry into whether the scheme was in accordance with the law. The Respondent had been astonished that no contact appeared to have been made by the Applicant to the Medical Centre or its legal advisers during its investigation.

16.23 At the point the letter was written the facts and law substantially overlapped with the care home workers' cases (many of whom were represented by the Respondent) which made the same points as those in Client A's letter. The care home workers' cases involved an allegation that publication of the guidance breached section 112 of the Equality Act 2010, an alleged criminal offence, and reliance on it by registered managers amounted to unjustified indirect discrimination.

16.24 The Respondent said that an injunction was plainly available under common law or the Equality Act 2010 under section 114.33 and both Client A and the Respondent had a well-founded belief that what was happening was wrong and discriminatory.

16.25 The Applicant could have had no reasonable belief in the truth of the allegations, and it was the Applicant which was making unarguable points.

16.26 The Respondent did not accept that his letter to the Medical Centre had been aggressive and inappropriate in tone. There was no evidence that the recipient found the tone unusual and no evidence that anyone other than three members of SRA staff found the tone inappropriate, whilst one member of SRA staff, namely the Adjudicator, Ms Forbes, had found it appropriate in her two determinations with respect the Applicant's application to impose conditions on his Practising Certificate. Ms Forbes found the letter did not warrant any conditions being imposed upon his practising certificate and prima facie that it had not breached the SRA Principles which were said to have been breached by him.

16.27 Ms Forbes, refused the SRA's application stating:

> *"The SRA acknowledges that solicitors have a right to an opposing view. Mr Hyland has an opposing view to the vaccine roll out. He has not been convicted for his views and has not himself encouraged criminal behaviour or encouraged anyone to engage in any unlawful behaviour. At present there is no viable condition that adequately targets the risk, which would be proportionate in the circumstances. However, Mr Hyland should be aware that should this*

change, the SRA can investigate the matter."

16.28 Additionally, Ms Forbes also stated:

> *"Having read both pieces of correspondence I am of the view that while Mr Hyland could have adopted a more amenable tone* [however] *the letter and email are insufficient to warrant the imposition of conditions. This is because there is little evidence that Mr Hyland has been 'predatory', or 'abused the litigation process', or 'misled the court' or taken advantage of an unrepresented third party.' These are some of the factors named in the guidance which can lead to allegations of misconduct and on the facts presented to me, there is little evidence of their existence.*

16.29 The Respondent said that this was a strong indication from an important component of the regulator that his alleged conduct did not cross the threshold of professional misconduct or at least none which was sufficient to merit referral to the Tribunal.

16.30 In cross-examination the Respondent accepted that he had sent his letter to the Medical Practice within three weeks following receipt of the order of Mostyn J dated 24 November 2021 with respect to a judicial review the Respondent had submitted on behalf of Client A and others. In granting leave on one-point Mostyn J had stated amongst other things:

> *"I am satisfied that the article 14 sub-ground is arguable, and is not out of time. I am not going to hazard any kind of probabilistic assessment of its likelihood of success at trial. Suffice to say that the claimant faces a formidable case against the claim both as to status and proportionality."* (para.3).

And:

> *"I am not satisfied that any of the stand-alone article 8 sub-grounds is arguable. The argument that the claimants are being coerced to receive medical treatment is completely untenable. It is the stuff of fantasy to portray the arrival of the exception as giving rise to a state of affairs where the refusers are going to be marched off to be compulsorily injected. As the defendant rightly says: individuals are not forced to obtain a vaccination."* (para.6).

And:

> *"Finally, I make it clear that there is no question of the substantive hearing being expedited at the expense of other important cases which have been waiting patiently in a queue to be heard for a long time. The alleged hardship suffered by the claimants by virtue of their unequal treatment is in reality of a very minor nature; it is arguably not hardship at all. There is no question of them jumping the queue at the expense of other cases."* (para.9).

16.31 The Respondent said that Mostyn J's order related to a public law matter whereas the letter to the Medical Practice had been a letter before action and he had been under no duty to set out an exact and balanced argument. Although Mostyn J had said there was no coercion to be vaccinated there had, to the Respondent's mind and that of Client A,

been undue influence placed upon individuals to be vaccinated. The guidance had caused clinicians to misunderstand their role and powers.

16.32 The Respondent accepted that he had not sent the exemption application prior to sending the letter before action as he had not believed it would have been granted although he accepted that the application he had sent on his own account to his own doctor had been granted.

16.33 With respect to the travel regulations/exemption the Respondent did not accept that a *'clinical decision'* necessarily meant a *'medical decision'* as *'clinical'* has a wider meaning than *'medical'*.

16.34 The Respondent did not accept that the decision on whether to grant an exemption for the purposes of travel was a matter for a doctor given that '*clinical reasons'* had not been defined so such reasons could have also related legitimately to philosophical and religious reasons upon which a doctor could not have made a decision. Therefore, it was for the patient to give the clinical reason and for the doctor to respect such reasons and grant the requested exemption. For the doctor to have done otherwise would have been contrary to substantive law. The Respondent, however, accepted that a patient could not present any reason to obtain an exemption e.g. a stubbed toe, and that a clinical reason needed to be more substantive in nature.

16.35 The Respondent said he drafted the letter to the Medical Practice in conjunction with Client A, who had tweaked the draft.

16.36 Mr Tankel asked the Respondent why he had stated that he would apply for an *ex-parte* injunction, which on the face of it appeared an aggressive and disproportionate move, particularly as the letter had been addressed to a lay person. There were added threats about tortious activity and sentences such as *"The legal position should be known to you… a gross breach of your legal duties."*

16.37 In response the Respondent said he may have been wrong to mention an *ex-parte* injunction and the wording of the letter could have been set out in a better way, however, at the time there was urgency because what was happening to Client A was also happening to many other NHS and health workers and the Respondent's thinking at the time was that these workers were being subject to undue influence to become vaccinated. Medical practices and hospitals were all arms of the NHS and those who ran them should have been aware of the legal position.

16.38 Mr Tankel said that when, on receipt of the letter, the Medical Practice wrote back asking Client A to provide more information regarding his medical history (as it was not in his record) this request for information was declined by Client A. On the face of it this had been an unreasonable position to take when the Medical Practice was trying to assist. The Respondent said that in his view this information had not been needed as Client A had provided all the information necessary to obtain the exemption as the letter had included clinical reasons. In his view and that of Client A the Medical Practice should not have been blindly following the guidance and it should have been treating Client A as an individual and upon his individual needs both clinical and spiritual, the latter included a person's deeply held beliefs and values.

16.39 Mr Tankel put it to the Respondent that his follow up e-mail to the Medical Practice had also been written in an aggressive and intimidatory way in which he stated that the recipient and his employer would be taken to court and held personally liable for a number of matters none of which appeared to relate directly to the Medical Practice.

16.40 Mr Tankel said that this did not fit with the arrangements regarding exemptions to permit travel and which required clinical reasons for the exemption to be granted. The Respondent said this was precisely the reason why they were questioning the guidance which they considered to be wrong and contrary to the common law and medical ethics. The letter had not intended to have been an *'angry'* letter but one in which his client's frustrations were manifest. The Respondent accepted that he could have written the letter differently though with the danger of bad batches of vaccines in the system there was a sense of urgency to get things done.

Allegation 1.2 etc., '*The MHRA Letter'*

16.41 The Respondent did not accept the Applicant's position, which he considered to be an implicit assertion that official information from government is factual and inherently unlikely to be unreliable.

16.42 He said that facts had been found in the US courts which subsequently supported the evidence he had put in the MHRA letter to the extent that the vaccine could not be properly described as a vaccine as it did not prevent disease, disease prevention being part of the Regulation 8 definition in the Human Medicine Regulations 2012. Disease prevention was relevant to risk.

16.43 The Respondent said the letter to the MHRA was temporally linked to the letter the Medical Practice as well as being factually linked. The claimants had faced a choice of taking a vaccine they had already decided they did not wish to take or losing their vocation and or other rights. The narrow interpretation of clinical reasons led to that forced choice.

16.44 The claimants represented the position faced by over 100,000 NHS workers and many clinical students and it was in the public interest to have the clients as claimants and the Respondent had acted on instructions to write a letter before action to prevent avoidable harm, with an injunction if a resolution could not be received. The Respondent said that many letters before action result in resolution and compromise.

16.45 By the time the letter was written, everyone who had wanted a vaccination had had one. By December 2021 those who had not had a vaccine had made their choice based on risk and benefit and age was a dominant factor as were protected beliefs. The three claimants were in their 20s, 30s and 40s. The risk profile was against vaccination and their position was mirrored by 100,000 NHS workers.

16.46 There was evidence to support the allegations made by the Applicant. In particular there were no robust systems in place for adverse event reporting and there was a failure to act on signals being received. This had been prima facie grounds for suspension of the CEO, Ms June Raines and grounds for an injunction on the basis of tortious liability owed to the claimants.

16.47 With regard to bad faith in 2020 and 2021, there was ample evidence that public officials were telling the public one thing but doing another in private.

16.48 Further there was evidence that conflicts of interest were present. The allegations of criminality were subsequently put to the Metropolitan Police and two crime reference numbers issued. The Respondent said that he subsequently took a judicial review as a private citizen on alleged failings by the Police to carry out an investigation. If he had had no reasonable belief in allegations of criminality, then he and his client would not have made a Police report.

16.49 There was also evidence of reckless indifference to three issues:

a. The reliability of the adverse event reporting systems which were known to under-report;

b. The evidence of whether bad batches were circulating and whether those bad batches were harming people given previous bad batch issues and capacity constraints in the supply chain. Further, storage at the required temperature may have been an issue which could have impacted efficacy as well as mixing at the vaccination centre. There were plenty of links in the supply and distribution chain which could have become 'uncoupled';

c. Whether those issues were evidence of avoidable death and injury to members of the public who were predominately low risk given their age and whether continued use could be justified given the risk benefit matrix had changed.

16.50 The Respondent said that the Applicant had not addressed its mind to weighty questions as to what amount of collateral death and injury was acceptable, ethically or legally, where those impacted were young, and where the vaccine did not prevent disease.

16.51 The Respondent said that he was the one of first officers of the court at two alleged crime scenes. Up to 40,000 care home workers were being dismissed from their jobs via guidance alleged to be unlawful and discriminatory, the publication of which by the DHSC and Secretary of State was alleged to be a criminal offence under section 112 of the Equality Act 2010. Those dismissals were alleged to be unfair and discriminatory causing care homes to be inadequately staffed and causing a real risk to the well-being and safety of vulnerable residents.

16.52 By December 2021 those who had declined a vaccine were at risk of losing vocation or job. There was evidence of a reckless indifference to the risks and no evidence of any action being taken. The evidence the Respondent had gathered to support the MHRA letter was unprecedented.

16.53 There was no factual precedent that was similar, given the roll out of the vaccine was international and accompanied by restrictions and potential loss of vocation, the adopted definition of *"clinical reasons"* had added to the complexity as many clinicians were facing the binary choice of vocation or vaccination. People were not being allowed to make their own decisions on medical intervention freely or with adequate or reliable information. Further, by the time of the letter there was evidence

that the vaccine was negatively efficacious and was all risk with little to no benefit.

16.54 It had been unclear to the Respondent what other approach should have been taken given the unprecedented nature of the evidence.

16.55 The claimants had real grievances and locus standi: a doctor is under an ethical oath to do no harm; a trainee doctor and clinician have similar ethical obligations. Further a doctor has a duty of candour and a doctor faced being unable to work in the NHS, as the very narrow definition of clinical reasons was widely adopted. Client A therefore represented the predicament 100,000 NHS workers had found themselves in, a predicament not recognised by the Applicant in bringing the allegations before the Tribunal.

16.56 The Respondent said that to be instructed by a doctor and trainee clinicians to apply for an injunction to stop the roll out temporarily to enable the issue of bad batches and adverse events to be investigated could not be imputed to demonstrate any lack of integrity particularly as there was more risk to young people. Both of the student claimants faced losing their vocational courses to which each had been devoted and in which each had invested considerable sums of money in course fees.

16.57 Many students were in a similar predicament and the Respondent considered, in his legal analysis that the MHRA had owed the claimants a duty of care.

16.58 The Applicant had been incorrect to suggest that the appropriate route would have been for the student medics to take it up with their university. They had both done that. It was therefore a matter of judgment and ethics as to whether the factual issues should be a private matter or a public matter, given that there were many medical students and indeed many doctors facing the decision of remaining on a course (or keeping their job) by potentially receiving a product they saw as harmful or losing their vocation or job by prioritising their health.

16.59 Mr Francois Liebenberg at the Government Legal Service in a call with the Respondent on 24 December 2021 inferred he did not dispute the evidence. He suggested an off the record meeting after Christmas but would need to speak to people more senior. Mr Liebenberg had no issue with the letter, locus standi or anything else. His call was to warn the Respondent that a letter of denial would be received. As it materialised the suggested meeting did not take place. The Respondent said that Mr Liebenberg did not comment on the tone of the letter or raise any criticism of its tone.

16.60 In cross-examination the Respondent accepted the proposition that medication could have harmful side-effects and that it was a matter of risk versus benefit, based on reliable data. The Respondent said that the level of harm caused by the vaccine had not been correctly reported and that there had been some element of fraud in the testing, manufacturing and distribution of the vaccine in which bad batches had been allowed into the system. The Respondent stated that he had researched the facts and the law and he had considered the allegations he had made in the letter regarding gross negligence, misfeasance in public office and corporate manslaughter to have been justified in the public interest.

16.61 Mr Tankel put it to the Respondent that the allegations raised by the Respondent

against the MHRA and its CEO were without any firm foundation in the relevant legislation and general law. The Respondent had been so blinded by his own opinions and that of his clients that he had lost a sense of proportion and he read into the legislation, for example relating to corporate manslaughter, what he had wanted to see. The Respondent denied this assertion and stated that there had been over 1,300 deaths related to the vaccine as a plausible mechanism for the deaths: 'red lights were flashing' so urgent and bold action was required.

16.62 Mr Tankel said that the Respondent had adduced no evidence to show that the MHRA would have been aware of the wider information he had referred to in his letter. The Respondent considered that the MHRA would have been so aware. The Respondent disputed that in the case of the two student clients the more sensible approach would have been to pursue the university, which had had direct control over their courses rather than a wholesale and wide-ranging challenge to the MHRA.

16.63 Mr Tankel asked the Respondent how he thought the relief he sought would have assisted his clients e.g. the suspension of all testing of vaccines and its roll out, and the MHRA CEO giving an announcement acceding to all the Respondent's demands in a Christmas Eve broadcast and then being removed from her job?

16.64 It was not obvious to Mr Tankel how such demands would have ensured that the two student claimants could continue with their degree studies. The Respondent denied that his letter was an attempt to 'steam-roll' over the views of others and prevent vaccines being given to those who needed it.

16.65 Mr Tankel noted that having sought advice on the proposed action against the MHRA from John Cooper KC, counsel with much experience in corporate manslaughter and environmental law the Respondent then proceeded to seek a second opinion from counsel of much less experience and who was not qualified to practise in England and Wales. On the face of it this appeared to be strange thing to do.

16.66 The Respondent said he had been entitled to seek a second opinion. Mr Cooper had advised that the endeavour would be difficult, however, he had not said that it would be impossible. Counsel to whom he turned thereafter was aligned with the Respondent's views and those of his clients.

16.67 In answer to a question from Mr Tankel as to why the Respondent had not pursued the MHRA once he had had some engagement from the GLS the Respondent said that this action was superseded by the police complaint he had made to the Metropolitan Police which changed the dynamics of the process and took precedence over obtaining an injunction. In the event, the police closed its investigation of his complaint, marking its file as 'No Further Action.'

16.68 The Respondent denied that the unusual relief sought had been a vehicle to embarrass the MHRA. The Respondent accepted that he may have acted with some naivety and that there may have been some gaps in his thinking, but he had acted with the best of intentions.

Closing Submissions

16.69 In addition to matters set out by Dr Fields in the submission of no case to answer he made the below points on the Respondent's behalf.

16.70 The burden of proof remained squarely upon the Applicant which had to satisfy the Tribunal on the balance of probabilities. The Respondent did not have to prove anything in his defence.

16.71 The Respondent was a seasoned solicitor with a robust and commendable career in law, marked by a consistent display of integrity, dedication, and professional excellence. Over his 24-year career, he maintained an impeccable regulatory record. His Firm had had very few complaints, no Ombudsman referrals, and no professional negligence claims.

16.72 His career had been founded on working against corruption and he had a deep commitment to justice, morality, and human rights. The Respondent devoted considerable time to legal research, writing, and challenging decisions he deemed unfair. His successful cases included work on race discrimination and the successful claims regarding sexual harassment. He had also authored books on redundancy ("A Practical Guide To Redundancy", 2019) and harassment and bullying ("A Practical Guide to the Law of Bullying and Harassment in the Workplace", 2020).

16.73 In his time the Respondent had often received negative advice from Counsel. In one case prospects were assessed at 25% by Counsel but the Respondent persevered and the case was won. Advice is not a science; it is a judgment call, and different solicitors and counsel may come to differing views on prospects without being in breach of discipline.

16.74 The Respondent had set out in his evidence how he came to hold his beliefs. Contrary to the impression given of him by the Applicant, the Respondent was not a fanatical activist with no regard for the science or public health. Nothing could be further from the truth.

16.75 Having initially supported the Governments measures to deal with Covid the Respondent reviewed the data and he began to observe inconsistencies and issues with the Government's response, which planted seeds of doubt about the overall management of the pandemic. By mid-2020, the Respondent's support started to wane as he witnessed the disproportionate impact of government measures on various demographics, especially the young, disabled, and children.

16.76 In late 2020, the Respondent deepened his understanding of the issues by reviewing Randomised Control Trial (RCT) protocols. He became concerned about the exclusion criteria in these trials, which he believed skewed the safety and efficacy results. This period marked a significant shift as he started to actively question the narrative around the pandemic response and its legal implications.

16.77 Throughout early 2021, the Respondent took a more proactive role. He was involved in drafting letters and Freedom of Information (FOI) requests to key figures, including the CEO of the NHS and the MHRA, challenging the lack of rigorous adverse event

reporting systems and transparency. He also began representing clients affected by COVID-19 measures, highlighting issues with informed consent and human rights breaches.

16.78 Mid-2021 saw the Respondent deeply involved in gathering and presenting evidence from various experts and whistleblowers. He connected with international professionals and organisations, such as HART, BIRD, and the World Council of Health, to build a substantial body of evidence questioning the safety and efficacy of the vaccines. This period also included significant meetings, such as the one with Sir Graham Brady, where the Respondent and others presented their concerns about vaccine harm and regulatory failures.

16.79 Towards the end of 2021, Mr. Hyland continued his advocacy by participating in judicial review applications and further meetings with professionals globally. He was actively involved in the preparation of legal documents and represented various groups and individuals, including care home workers, pilots, and students facing mandates and other COVID-related measures. His efforts were often met with resistance, but he persisted in his legal challenges. His actions were driven by a growing body of evidence and a commitment to upholding legal principles, particularly in areas of informed consent and human rights.

16.80 It had been impermissible of the Applicant to characterise the Respondent's actions as immoral. This was not a case where the Respondent had chased fee income, nor had he pursued the litigation in a predatory way or for an improper purpose. The Respondent had acted to a high moral standard. In relation to each separate allegation, Dr Fields' submissions are detailed below.

Allegation 1

16.81 No improper threat of legal proceedings: the Respondent's correspondence with the Health Centre was not an improper threat of legal proceedings. It was a legitimate letter before action written in attempt to advocate for Client A's rights. Behind this had been a flawed and potentially discriminatory exemption process. The letter clearly outlined the legal basis for the request, citing relevant legislation and case law.

16.82 In any event, for the same reasons as set out in the half-time submissions, this was a preliminary letter before action. Following the CPR Pre-Action protocol, if the recipient rejected the assertions, their response should have been to send a letter explaining which of the points they disputed. This would have allowed the Respondent to explain the response to his clients and for a decision to be taken as to whether to proceed with the claim. It is submitted that, by taking the action it did, the Applicant acted in ultra vires in that, at a high level, its Rule 12 statement amounted to a response to the letter before action.

16.83 If the *'Scorer Letter'* was aggressive and intimidatory (which was denied) that was surely a matter for the recipient to determine. 'Tone' is subjective. What tone should a solicitor adopt on behalf of a frustrated client, a regulated professional, when a regulated practice ignores reasoned points? The Respondent had not crossed any line and the tone he adopted expressed his client's frustrations.

16.84 As to 'excessively legalistic' the Applicant had not stated where the legal statements made were excessive. Where does excess begin and end? The statements of law set out the legal principles relied on together with any relevant cases as well as factual references to support the stated clinical reasons. The suggestion made in the covering email was to seek legal advice. The law was put in a straightforward way and should have been well known to a regulated professional such as a doctor or regulated practice. If writing legalistic letters was enough to have a solicitor disciplined, the queue of solicitors awaiting disciplinary proceedings would probably include many solicitors involved in litigation and dispute resolution.

16.85 Clinical Reasons Encompass Personal Beliefs: the Applicant's contention that *"clinical reasons"* for vaccine exemption were limited to medical grounds was overly restrictive. A broader interpretation, encompassing personal beliefs and informed consent, was consistent with human rights law and medical ethics.

16.86 The Applicant made the assertion that the Respondent must have known that the claimant did not have a clinical reason. With reference to the decision in Trotman, the Respondent cannot be asked to justify why his client had clinical reasons. The letter was being written to the Medical Centre putting forward why Client A should receive a clinical diagnosis. In the event, the government proved that the entire "no jab, no job" scheme was poorly founded when it abandoned the requirements for a vaccine in January 2022, around 6 weeks after the letter was written.

16.87 Dr Fields submitted that the Respondent held a genuine and reasonably held belief that his client had a legitimate clinical reason for not having a vaccine. The burden of proof was on the Applicant to prove that his client did not have such a reason. In the absence of a clear regulations defining what *"clinical reason"* meant, Dr Fields said that the Applicant had provided no evidence to support its assertions within Allegation 1.

16.88 No Requirement for Clinician Involvement: the regulations did not mandate the involvement of clinicians in determining vaccine exemptions. The exemption process, as implemented, was arguably unlawful and discriminatory, denying individuals their right to informed consent and potentially violating their human rights.

16.89 No Tortious Breach of Duty: the Applicant's claim that the Respondent induced medical practitioners to act dishonestly is unfounded. Acting under instructions, his letter merely sought to set out Client A's rights and to ensure that, from his client's perspective, the exemption process was conducted lawfully and fairly.

16.90 No Breach of Principles 2 and 5: the Respondent's actions were entirely consistent with Principles 2 and 5 of the SRA Principles 2019. He acted in good faith to uphold the rule of law and protect the public interest by challenging a potentially unlawful and discriminatory policy. There was no evidence that the Respondent's actions undermined public trust in the legal profession, rather they demonstrated a commitment to justice and individual rights.

Allegation 1.2

16.91 Dr Fields said that the MHRA letter was based on substantial evidence raising

legitimate concerns about the safety and efficacy of COVID-19 vaccines. This evidence included witness statements from medical experts, data analysts, and concerned members of the public, detailing adverse events, potential manufacturing issues, and lack of transparency in the regulatory process.

16.92 In contrast, the Applicant provided no evidence to counter any of the allegations set out by the Respondent. Effectively, all the Applicant had done was to say, "*This is against government policy"* and *"there are systems in place to check for safety issues ... it is inconceivable that systems can fail."* Dr Fields submitted that, in failing to prove that the Respondent's allegations were wrong, the Applicant had failed to prove that they were "misleading."

16.93 Good Faith Allegations of Bad Faith: the allegations of bad faith against public officials were made by the Respondent in good faith based on the available evidence. The MHRA's failure to adequately address these concerns, despite repeated warnings and mounting evidence of harm, could be seen as a reckless disregard for public safety. In any event, it was submitted that the Applicant had failed to prove that the Respondent's actions would result in causing the public to lose trust and confidence in the profession or to doubt his integrity.

16.94 Proportionate Relief Sought: the relief sought in the MHRA letter was proportionate to the gravity of the concerns raised. The requested suspension of the vaccine rollout and investigation into potential wrongdoing were necessary steps to protect public health and ensure the integrity of the regulatory process.

16.95 No Ulterior Motive: the allegation that the MHRA letter was motivated by a political campaign against government health measures was false. The Respondent's actions were driven by a genuine concern for public safety and a commitment to upholding the rule of law, not by any political agenda. However, the Applicant's conduct throughout this process could be considered an abuse of process. The timing of the investigation, the nature of the allegations, and the Applicant's apparent bias raised serious questions about the fairness and legitimacy of the proceedings.

16.96 No Breach of Principles 2 and 5: the Respondent's conduct in sending the MHRA letter was entirely consistent with Principles 2 and 5. He acted in the public interest to raise legitimate concerns about a matter of significant public importance. His actions did not undermine public trust in the legal profession but rather demonstrated a commitment to accountability and transparency. His letter was a letter before action. The purpose of sending such a letter is clear. This is to provide a potential defendant with enough detail of the possible claims and what is required of them to do and to give the recipient a chance to respond.

16.97 Dr Fields submitted that the content of the letters could not be viewed as taking unfair advantage or making a case that is not properly arguable and he contended that if its policy was to pursue every solicitor who writes a letter before action containing legal submissions or factual assertions that were not arguable, every solicitor who did write such a letter under the instructions of a client would be at risk of prosecution before the Tribunal.

16.98 The Tribunal could not reasonably find that the content of a letter before action which

contains tenuous legal arguments or disputed facts is in breach of Principle 1.2 or 2.4 of the SRA Code of Conduct for Solicitors, RELs and RFLs.

16.99 Lack of Independence and Bias: the Applicant's investigation and prosecution of the Respondent raised serious concerns about its independence and impartiality. Dr Fields maintained that the Applicant appeared to have uncritically adopted the government's position on the COVID-19 vaccine rollout whilst ignoring evidence of potential harm and failing to adequately investigate the Respondent's concerns.

16.100 Misleading Statements and Non-Disclosure: the Applicant's Rule 12 statement contained misleading statements and it omitted crucial information, including the fact that the Department of Health and Social Care (DHSC) was the complainant in this case. This non-disclosure was a significant breach of the Respondent's right to a fair hearing.

16.101 Dr Fields asserted that the Applicant could have had no reasonable belief that the letter was manifestly incompetent, as this would have been added to the allegation. The corollary of the Applicant's case against the Respondent was that the running of difficult cases to stop death and injury was a disciplinary issue when in fact it should be an issue of public interest.

Conclusion

16.102 For the reasons set out above, Dr Fields urged the Tribunal dismiss the SRA's allegations of professional misconduct.

- The Respondent's actions were lawful, ethical, and motivated by a genuine concern for public safety and the upholding of the rule of law.

- The Applicant's case was fundamentally flawed, demonstrating a lack of independence, bias, and a failure to properly investigate the evidence.

- Dr Fields referred the Tribunal to the *Bolam Test* as set out in Bolam v Friern Hospital Management Committee [1957]. The case concerned the tort of negligence and it set a rule for assessing the appropriate standard of reasonable care involving skilled professionals such as doctors. The *Bolam Test* states that if a doctor reaches the standard of a responsible body of medical opinion, they are not negligent.

- Dr Fields stated that by analogy the test was applicable to the position of the Respondent and the decision made by Ms Forbes that the Respondent's conduct had not been predatory or deserving of conditions being placed upon his practising certificate.

- The Tribunal should consider the wider implications of this case for the legal profession and the public interest. It is crucial that solicitors can advocate for their clients without fear of reprisal, especially when raising legitimate concerns about matters of public health and safety.

Applicant's Response on matters of Fact and Law

16.103 Mr Tankel made the following points:

- That at the time of the substantive hearing the Covid Enquiry had reached no conclusions.
- The Tribunal, as a matter of law, was not bound by the decisions, observations and/or conclusions of Ms Forbes, the SRA Adjudicator.

- The *Bolam Test* had no application to proceedings of regulatory/disciplinary conduct before the Tribunal.

- As to the Clinical Guidance on Exemption from COVID-19 Vaccination or Vaccination and Testing, it was an impermissible reading of that document to substitute philosophical or religious belief for the exemption which had been set out relating to *"learning disabilities or autistic individuals".*

17. **The Tribunal's Findings**

17.1 The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under, respectively, Articles 6 and 8 of the ECHR.

17.2 The Tribunal applied the civil standard of proof, as it was required to do. The burden of proof lay entirely with the Applicant. The Tribunal carefully considered the evidence it had heard and read. The Tribunal also noted there is no 'sliding scale' with respect to the standard of proof and the balance of probabilities always meant "*more likely than not*."

Observations on the Tribunal's Role

17.3 The Tribunal first made the following below observations.

17.4 The underlying facts of the case touched upon events taking place during the Covid 19 pandemic, the Government's response to it and the actions of individuals in understanding, following, questioning and rejecting, ultimately, aspects of government guidance.

17.5 The matters for the Tribunal to consider did not extend to wider issues of the merits or de-merits of government policy and/or the rights and wrongs of the vaccination programme and the underlying scientific knowledge known or unknown at the time.

17.6 Neither did it stretch to encompass counter allegations of corruption and conspiracy nor the actions of unregulated individuals who sought to challenge Government policy and/or excessive governmental zeal when framing policies.

17.7 It was not a case about restricting freedom of thought and conscience or restricting the ability of a solicitor to put their client's case in a forthright manner when drafting a letter before action.

17.8 The case brought before the Tribunal related solely to allegations of professional

misconduct and breaches of the SRA Principles and Code of Conduct by the Respondent. The jurisdiction of the Tribunal was therefore a very narrow one concerning the actions of a solicitor operating within a regulated framework of activity, the protection of the public and the reputation of the profession.

17.9 The Tribunal directed itself that other than those decisions with which it was bound by the doctrine of precedent, it was not bound by any prior decision, observation or comment made by any other like Tribunal, adjudicator or fact-finder.

17.10 As to the allegations, it was common ground between the parties that in each the Respondent drafted and sent the letters, as he did subsequent correspondence.

17.11 The Tribunal noted that the Applicant had called no live evidence and that it had relied solely on the style, tone, content and context of the correspondence.

17.12 The letters were characterised by the Respondent as 'letters before action' and as such it was submitted on his behalf that there had been no obligation upon him, as a solicitor, representing the interests of a client/s to present a carefully balanced document weighing up legal and factual nuances as perhaps would have been appropriate in an undergraduate essay or a legal thesis. The letter before action was not the start of proceedings and the Respondent had been entitled to set out his clients' claims robustly and in a forthright way.

17.13 In his evidence the Respondent said that he and his clients' views on the subject of vaccinations had been in alignment and essentially, he approached the execution of his instructions with a vigour and sense of urgency proportionate to the magnitude of the problem as he and his clients perceived it to be.

17.14 In cross-examination the Respondent said in hindsight, his style of writing may have been strident and he could have perhaps phrased the correspondence differently, however, this did not mean he had fallen foul of the conduct rules in writing as he did, given that he was carrying out his clients' instructions and putting forward a legitimate case whilst abiding by the Civil Procedure Rules and the Practice Direction on Pre-Action Conduct.

<u>Introductory Observations on Findings</u>

17.15 The Tribunal had no doubt the Respondent was a passionate, committed and determined solicitor who had been deeply attuned to the cause and issues upon which his clients had sought his help. He was steeped in the subject knowledge regarding the vaccination programme and the Government's response to Covid -19.

17.16 In his evidence to the Tribunal, he had not presented as a dishonest man but one very fixed in his view and when questioned he focussed on his beliefs and the wider issues as he saw them rather than providing direct responses to the questions put to him..

17.17 The Respondent said in his evidence that the difficult time of the pandemic had provided a '*heady mix'* of changing regulations and the impression the Tribunal had was that the depth of his involvement in the cause blinded him somewhat to deficiencies in his approach which went beyond mere inadequacies of expression and

style but which, in the Tribunal's judgment, caused the Respondent to transgress professional rules of conduct.

Detailed Reasons

Allegation 1: 'The Scorer Letter'

17.18 The correspondence on 3 and 11 December 2012, accepted to have been written by the Respondent on Client A's instructions, was found by the Tribunal, as a matter of primary fact, to have improperly threatened legal proceedings. The matters set out in the sub-allegations were linked inherently by this underlying finding.

17.19 The Tribunal rejected the Respondent's evidence that the correspondence, said to have been commenced with a letter before action dated 3 December 2021, had been compliant with the "CPR and the Practice Direction Pre-Action Conduct".

17.20 The Pre-Action Conduct sets out, amongst other things, the following:

> *"1. Aims*
>
> *1.1 The aims of this Practice Direction are to –*
>
> *(1) enable parties to settle the issue between them without the need to start proceedings (that is, a court claim); and*
> *(2) support the efficient management by the court and the parties of proceedings that cannot be avoided.*
>
> *1.2 These aims are to be achieved by encouraging the parties to - (1) exchange information about the issue, and*
>
> *(2) consider using a form of Alternative Dispute Resolution ('ADR').*
>
> *6. Overview of principles*
>
> *6.1 The principles that should govern the conduct of the parties are that, unless the circumstances make it inappropriate, before starting proceedings the parties should –*
>
> *(1) exchange sufficient information about the matter to allow them to understand each other's position and make informed decisions about settlement and how to proceed;*
>
> *(2) make appropriate attempts to resolve the matter without starting proceedings, and in particular consider the use of an appropriate form of ADR in order to do so.*
>
> *6.2 The parties should act in a reasonable and proportionate manner in all dealings with one another. In particular, the costs incurred in complying should be proportionate to the complexity of the matter and any money at stake. The parties must not use this Practice Direction as a tactical device to secure an*

unfair advantage for one party or to generate unnecessary costs.

17.21 In contra-distinction to these aims the Tribunal found that the letter and following e mail were designed:

- not to exchange information;
- not to settle the issue between them without the need to start proceedings;
- not to allow each party to understand the other's position;
- not to make an informed decision on settlement.

17.22 Contrary to the Practice Direction on Pre-Action Conduct the Respondent had used his letter of 3 December and e-mail of 10 December 2021 as a *"tactical device to secure an unfair advantage for one party or to generate unnecessary costs."*

17.23 The Tribunal took support for this finding in its reasoning outlined below.

17.24 The letter of 3 December took an immediately aggressive stance without any prior request from Client A for an exemption. It was fair to say that it must have come as a 'bolt from the blue' to the Medical Practice which had not been provided with a prior opportunity to consider the exemption application in any way other than with the threat of legal proceedings hanging over it.

17.25 The letter, addressed to Mr Scorer personally, was written in the knowledge that it was to be read by a lay person who it was to be presumed had little or no legal knowledge. Whilst the Tribunal found the letter could not be described as abusive *(as alleged in Allegation 1.1.3.2)* it was aggressive and intimidating as it threatened Mr Scorer with personal liability.

17.26 The letter, running to 10 pages, was a battery of alleged wrong-doing on the part of the Medical Practice, set out in an objectively generic, legalistic and overbearing way with the inclusion of references to breaches of *'Tort'*; *'aiding and abetting'* (which usually implies assisting in the commission of a crime) along with claims of breaches of the ECHR and Equality Act 2010 and alleged failures to follow correct ethical practice for a doctor.

17.27 The law as set out in the letter was confused, distorted and wrongly applied. The Tribunal had no doubt that the weight of the presumed legal wrongdoing set out in the lengthy letter was a thought-out construction on the Respondent's part to ensure that the matter was escalated immediately by the Medical Practice, indeed, the Respondent had said in evidence that he had expected the addressee to refer the letter directly to a lawyer and he expected the granting of the exemption or a full written response within the short period of 7 days.

17.28 A solicitor's letter to a lay person, making allegations on the face of it, of very serious and worrying breaches of the law was not conducive to settling matters without the need to go to court or avoiding the generation of unnecessary costs.

17.29 It was to be reasonably inferred that the letter had been a vehicle to move an issue of individual importance to Client A at speed towards a court hearing so that matters of presumed wider importance could be played out on a more public stage for reasons which had nothing to do with the individual Medical Practice and which had all to do with challenging the *vires* of government guidance.

17.30 The fact that the Respondent knew of the occluded and underlying purpose of the correspondence and that the Medical Practice had not, had placed the latter, as a potential opponent in legal proceedings, at an unfair advantage. The letter had clearly been a tactical device for a wider purpose.

17.31 The Tribunal found therefore that the correspondence threatening legal proceedings had been improper *from the outset.*.

17.32 Further, the fact that the Respondent knew or believed that Client A was not entitled to the exemption could reasonably be inferred from the follow up e-mail sent on 10 December 2021.

17.33 Following the receipt of the Respondent's initial letter the Medical Practice sought more information as to Client A's medical history stating:

> *"Once we have clarification of the above, the clinical team will be able to review your NHS COVID Pass: Medical Exemptions application."*

17.34 In response, to what appeared to be a reasonable next step on the part of the Medical Practice to avert escalation and unnecessary costs, the Respondent would have none of it and closed the door upon this request:

> *"I am in receipt of your email to my client dated 10 December 2021.*
>
> *You are not abiding by the law but are following inadequate and unlawful guidance.*
>
> *You have failed to address any of the points in my letter dated 3 December 2021. Instead, you have chosen to focus on the inadequacy of your own record keeping and require my client to provide evidence of clinical reasons. You have wilfully misunderstood your role and wilfully misunderstood the legal obligations you owe to [Client A]."*

17.35 The Respondent doubled down on matters set out in the earlier letter, conflating Client A's right not to be vaccinated with the issue of the exemption certificate for travel purposes. Essentially, he did nothing in furtherance of the aims of the Pre-Action Conduct, which he said he had abided by and instead threatened some element of criminal conduct on the part of the Medical Practice. He also pushed the Medical Practice to "*[give] the name and address for service of any retained solicitors or confirming that you accept service via your email address."*

17.36 The fact that the Respondent avoided the provision of any clinical reasons why the exemption should be granted and/or the information sought by the Medical Practice as to Client A's medical history was strongly indicative to the Tribunal that the

Respondent likely knew or believed that his client had not been entitled to the exemption, again rendering the threat of legal proceedings improper.

17.37 The Tribunal was satisfied that the Respondent had used his status and role of a solicitor, to lend unjustified weight to Client A's meritless request as alleged by the Applicant.

17.38 The Tribunal therefore found all pleaded facts in Allegation 1.1 to 1.1.4 proved (save for the allegation that the correspondence was abusive) to the requisite standard, namely the balance of probabilities.

17.39 Having done so, the Tribunal next considered whether the proved facts represented the alleged breaches of Principle and the Codes of Conduct.

Breach of Principle 5 of the Principles 2019 (integrity)

17.40 Whilst a solicitor writing a letter before action would not be expected to present arguments contra to his client's case or undermining of it, a solicitor would be expected to be open with a potential opponent regarding the reasons for the letter and not commence their interactions in bad faith and for the purpose of fuelling an ulterior motive not explained or made known to the other side.

17.41 Contrary to his contention that he had followed the CPR and the Practice Direction Pre-Action Conduct he had not done so. His letter had been crafted to be disingenuous and it had incorrectly stated the law.

17.42 The Respondent had treated the Medical Practice as an unwitting pawn in a wider game and in accordance with the Tribunal's factual findings the Respondent knew or believed that Client A was not entitled to the exemption, yet he pressed ahead with his goal of pushing the Medical Practice into court or otherwise causing it to 'cave in' and thereby establish a precedent by granting an exemption certificate based upon a spurious premise.

17.43 A solicitor acting with integrity does not follow the adage that *'the ends justify the means.'* In this case the Tribunal was satisfied on the balance of probabilities that this was exactly what the Respondent did and that his conduct in doing so represented a lack of integrity for all the reasons it had stated.

Breach of Principle 2 of the Principles 2019 (public trust and confidence in the profession)

17.44 Given its factual findings and the findings with respect the breach of Principle 5 the Tribunal was content to adopt the reasoning articulated by the Applicant in also finding that there had been a breach of Principle 2:

> *"Members of the public would have taken exception to:*
>
> *a. A solicitor who advanced legal claims that he either knew were wholly lacking in legal merit, was careless as to whether they were lacking in legal merit, or failed to adequately assess whether they had legal merit.*

b. The aggressive tone of the Respondent's email of 10 December 2021.

c. The attempt to pressurise a member of staff who was not a qualified clinician."

17.45 A letter before action may need to be robust on occasion, however, even an experienced lawyer would have found the Respondent's letter inappropriately calibrated, too long, excessively legalistic and aggressive. The recipient was berated for their mistakes and wrongdoing over 10 pages of the letter. The public would expect a letter before action to be clear, to the point and accurate and the public would be dismayed if solicitors were writing letters of this nature to a lay person.

17.46 Principle 2 was found to have been breached by the Respondent.

Breach of Rule 1.2 of the Code of Conduct for Solicitors, RELs and RFLs (you do not abuse your position by taking unfair advantage of clients or others) and Breach of Rule 2.4 of the Code of Conduct for Solicitors, RELs and RFLs (you only make assertions or put forward statements, representations or submissions to the court or others which are properly arguable).

17.47 Again, on the basis of its factual findings and its findings on breaches of Principles 5 and 2 the Tribunal found that the Respondent sought to use his role as a solicitor, the framework of a threatened legal claim, overly legalistic argument, and aggressive language, in order to threaten an unrepresented defendant. His submissions had been unarguable.

17.48 Rule 1.2 and 2.4 of the Code was therefore found to have been breached by the Respondent.

17.49 The Tribunal found Allegation 1 to 1.1.4 proved in full on the balance of probabilities save that in Allegation 1.1.3.2 the Tribunal did not find the Respondent's letter to have been abusive.

Allegation 1.2: "The MHRA letter"

17.50 The Tribunal noted that this letter, which it was accepted had been written by the Respondent, had been of a different character to the letter in Allegation 1.

17.51 The recipient was not a small medical practice but a government agency with recourse to greater resources and appropriate legal assistance.

17.52 As to factual findings the Tribunal studied the Respondent's letter closely and it noted that it ran to 18 pages. It presented assertions on the science and references to countervailing expert opinion along with supporting statements. Irrespective as to whether one agreed or disagreed with those matters no reasonable objection could be made to this aspect of his letter, and he had been at liberty to make the points he did, based on the body of evidence he had assembled.

17.53 However, to elevate the letter from a document setting out an alternative view on vaccine testing and the vaccination programme to the status of a letter before action the Respondent required complainants and a cause of action. It was at this point the

letter took an extraordinary turn.

17.54 The Tribunal could determine no close or indeed rational nexus/locus standi between the claims made by the Respondent on his clients' behalf and the MHRA as the identified respondent. There were also significant lapses in reasoning.

17.55 Two of his clients were students who claimed that they were being unfairly prohibited from completing their courses because they had refused to be vaccinated. It was difficult to see how a body whose primary duty was to ensure medicines meet applicable standards of safety and quality and secure a safe supply chain for medicines could be held accountable in this regard. The MHRA was too remote to be a legitimate respondent and in such circumstances the more appropriate respondent would have been his clients' educational establishments which had actual control over their course requirements.

17.56 The third client was a medical doctor who the Respondent claimed was impacted because the MHRA had failed to authorise safe and effective treatments other than Budesonide for use by the over 50's. The Respondent also said that his client to was suffering the loss of being unable to prescribe alternative safe and effective medicines which thereby placed his patients at risk and finally that his client had his human rights curtailed as an unvaccinated individual.

17.57 However, the Respondent's demands that the MHRA:

- *Stop all clinical trials of the SARS COV2 injections immediately.*
- *Suspend the EUA/CMA for LFT and PCR tests.*

17.58 Appeared to be counter to his client's interests and if acceded to by the MHRA would have closed down the options available to his client' patients and also prevented the detection of the virus in individuals generally.

17.59 Further, his call to suspend clinical trials would have resulted in no vaccines being tested and brought into service.

17.60 Be that as it may, the letter reached a more troubling level in the allegations it made:

> *"Your failure to investigate known concerns amounts to gross negligence in office and renders you and the executive board liable for serious misconduct in office, mal or misfeasance in public office and, or, rendering all the office holders potentially liable for corporate manslaughter in that you have been wilfully blind to the known harms of the SARS-CoV-2 injections. You have taken no action."*

17.61 The allegations of very serious wrongdoing were widely cast, and, as it appeared to the Tribunal, lacking in any clear evidential basis. The representation of the legal principles supposedly in play were dubious, misconceived or plainly wrong. The Respondent's letter had, for example, not grappled with the tests relevant to misfeasance in a public office or corporate manslaughter.

17.62 Further, there appeared no logical or causal link between the claims made on his clients' behalf against the MHRA and the allegation of corporate-manslaughter, misfeasance and malfeasance in a public office.

17.63 This was not a letter before action, but a confused and unrealistic set of demands accompanied by references to any legal concept the Respondent could bring to mind, irrespective of relevance and accuracy. Therefore, the Tribunal found as a fact that the Respondent's letter had threatened litigation in circumstances where there was no proper factual, legal basis or proper basis for any part of the claim.

17.64 The allegation of misconduct in public office, a criminal offence, clearly had had no basis and the later complaint the Respondent had made to the police to investigate resulted in no action being taken.

17.65 The letter then shifted towards the fantastical with respect to demands it made as to undertakings the MHRA was expected to give to prevent proceedings being issued. Of particular note in this regard was the demand for Ms Raine to make a live television broadcast on Christmas Eve.

17.66 The Tribunal found as a fact that the forms of relief the Respondent had sought were unrelated to, and disproportionate to, the alleged grievances of his clients. The Respondent had demanded that the MHRA approve the use of Ivermectin, an antiparasitic drug, as an alternative treatment for COVID-19, despite the fact that the manufacturer of the drug had not applied for a UK licence.

17.67 The timescale the Respondent expected for a response was wholly unrealistic and the supporting witness statements were not served until 22 December 2021. That said, Mr Liebenberg for the Treasury Solicitor did prepare a holding response on Christmas Eve.

17.68 The Tribunal rejected Dr Fields' suggestion that there was nothing in Mr Liebenberg's reply which would indicate that he had considered the Respondent's letter to be ludicrous. Mr Liebenberg had naturally been confined in his response by the protocols of procedure, professionalism and courtesy, however, his letter left the reader in no doubt of the view he took on the merits of the Respondent's claim and the undeliverability of the relief sought.

17.69 Given the nature of the relief sought and the timescale set out in the letter the Tribunal was doubtful that even the Respondent considered the MHRA would have acceded to his demands and it was more than likely than not, as with the letter to the Medical Practice, his aim had been to provoke court proceedings rather than finding a way of avoiding them.

17.70 As a finding of fact, the Tribunal considered that the Respondent had sent his letter with the ulterior purpose of promoting a campaign against the government's public health measures and it had therefore been a tactical device, contrary to the true purpose of a letter before action.

17.71 The Tribunal found the pleaded facts presented in Allegation 1.2 to 1.2.4 proved to the requisite standard, namely on the balance of probabilities.

17.72 Having done so, the Tribunal next considered whether the proved facts represented the alleged breaches of Principle and the Codes of Conduct.

Breach of Principle 5 of the Principles 2019 (integrity)

17.73 The Tribunal considered that many of the points it had made with respect to Allegation 1 were applicable to Allegation 1.2.

17.74 Whilst the Respondent may have had a genuine attachment to his clients' cause his letter had, in effect, been a disingenuous tactic to lure and provoke legal proceedings and he had known or believed this to be the case. This wasted time and cost the public purse at a time of a national health emergency.

17.75 His actions, perversely, therefore lacked the moral compass required of a solicitor when drafting and sending a letter before action and the Tribunal was satisfied to the requisite standard that he had breached Principle 5.

Breach of Principle 2: Public trust

17.76 With respect to this breach of the Principles the Tribunal adopted the reasoning set out by the Applicant:

> *"In sending the correspondence to the MHRA, the Respondent breached Principle 2:*
>
> *a. The policies in question were national responses to a public health emergency. If a challenge was to be brought to those policies, the public was entitled to expect that these would be properly rooted in fact and law. The public would be alarmed by a solicitor who improperly used the framework of a legal claim to make unmeritorious challenges for the ulterior purpose of promoting a particular view as to the government's public health measures.*
>
> *b. The public would not expect a solicitor to make, without foundation, serious allegations of bad faith against defendants, let alone defendants who were public officials trying to deal with an emergency.*
>
> *c. The public would also lose confidence in a solicitor who made requests for such outlandish and irresponsible forms of relief."*

Breach of Rule 2.4 of the Code of Conduct for Solicitors, RELs and RFLs (you only make assertions or put forward statements, representations or submissions to the court or others which are properly arguable)

17.77 By its findings on the breaches of Principles 5 and 2 the Tribunal found that the Respondent had also breached Rule 2.4 of the Code of Conduct.

17.78 The Tribunal found Allegation 1.2-1.2.4 proved in full on the balance of probabilities.

Previous Disciplinary Matters

18. None.

Mitigation

19. Dr Fields reminded the Tribunal of the matters he had raised in the course of the hearing with respect to the Respondent's good character.

20. The Respondent had a previously unblemished regulatory record, no Ombudsman referrals, and no professional negligence claims. This case had, in its essence, concerned the writing of two letters before action and this was to be measured against 24 years of excellent conduct.

21. Dr Fields asked the Tribunal to consider the context in which the Respondent had drafted and sent his letters. The Respondent had acted under the instructions of his clients. A solicitor had the right to advance a client's case and assert minority interests and there was no requirement that a letter before action need only advance matters which were totally arguable, if this was so then many solicitors would find themselves before the Tribunal.

22. Dr Field urged the Tribunal to bear in mind the principled stance the Respondent had adopted. He was not an aggressive militant and not an anarchist.

23. Although it had made findings of lack of integrity this case was to be distinguished from the cases usually seen by the Tribunal relating to misuse and/or theft of client funds, fraudulent conduct and deliberate misrepresentations. The Respondent had not taken advantage of a vulnerable client. This case was a world away from such matters and the harm, if any, had been minimal. There had been no impact on the Medical Practice, MHRA or its CEO.

24. The Respondent had co-operated fully with the SRA in its investigation and handed over all his documents to the SRA, which included the MHRA letter. He had genuine remorse and he had been prepared to accept in his evidence that he could have handled the drafting of the correspondence in a better way. However, at the time the world was facing a health emergency unprecedented in in recent times, and he believed that he was doing the right thing.

25. The Tribunal could be satisfied that there would be no recurrence. The Respondent had made no financial gain and he had suffered professional, personal and financial harm and he now risked losing his home. His confidence in his regulator had been damaged.

26. There had been no dishonesty and the Respondent had acted with good intentions on an issue which he and his clients viewed with the utmost seriousness.

27. Dr Fields said that when considering sanction, strike off and suspension were disproportionate and a fine, likewise, would not be justifiable.

28. The Tribunal was asked to consider a sanction of the lowest possible level, with 'no

order' being the most appropriate sanction for the Respondent.

Sanction

29. The Tribunal first had regard to the observation of Sir Thomas Bingham MR (as he then was) in Bolton v Law Society [1994] 1 WLR 512 that the fundamental purpose of sanctions against solicitors was:

> *"to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth".*

30. The Tribunal considered the Guidance Note on Sanction (10th Edition, June 2022) ("the Sanctions Guidance"). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed to impose a sanction that was fair and proportionate in all the circumstances.

31. In assessing culpability, the Tribunal found that the Respondent had been strongly motivated by his own sense of what he thought was right. It was an attempt to change government policy. However, he had lacked the objectivity which had been required of him as a solicitor to the extent that he blinded himself to the shortcomings of his approach which included disingenuousness, lack of transparency, factual inaccuracies and lapses in reasoning.

32. His actions had not been spontaneous but planned, albeit he may have been swept along on the tide of campaigning zeal.

33. However, he had had complete and direct control over the matters he had set out in his correspondence.

34. The Respondent had been very experienced with over 24 years' experience in the law and he would have been expected to have brought to bear the objectivity that had been required to manage his clients' expectations and to calibrate his letters before action in a measured way.

35. His letters were too widely cast, overbearing, and unrealistic in what he may have believed they could achieve. He had not been open with the recipients and the letters had been a tactical ruse to ensure proceedings could be issued. There had been no meaningful adherence to the letter or the spirt of the CPR and pre-action conduct and professional conduct.

36. There had been no breach of trust.

37. To his credit the Respondent had cooperated fully with the Regulator in its investigation.

38. In practical terms the direct impact of his misconduct was difficult to gauge. The clinical staff at the Medical Practice may have been shocked to have received a letter of such ferocity and without any notice. Mr Scorer, the practice manager, would no doubt have been upset and worried by being threatened with personal liability for reasons which would not have been entirely clear to a legally trained person let alone

a lay person.

39. The MHRA CEO would also no doubt have been shocked to be accused of criminal behaviour and impropriety in carrying out her role, all without any evidence provided by the Respondent and based upon the whim of his clients in the expectation of matters playing out on the public stage of the court.

40. The Respondent had wasted the recipients' time and money in having to respond.

41. The harm to the reputation of the profession by a solicitor using such tactics was high and the extent of the harm that was intended or might reasonably have been foreseen to be caused by the Respondent's misconduct was self-evident.

42. The Tribunal next considered aggravating factors. The Tribunal acknowledged that whilst there had been a strong element of disingenuousness matters had not arisen from dishonesty but from a hubristic mindset of the *'ends justifying the means'* and one pitched at a level constituting lack of integrity.

43. There was no evidence of any sort which indicated that the misconduct had involved the commission of a criminal offence. However, the Respondent's conduct had been deliberate, repeated and calculated, albeit over a relatively short but intensive period. The correspondence showed the same methodology representing an unwarranted *'weaponisation'* of the law by the Respondent who used the badge of solicitor to add to the intimidatory effect of the letters.

44. Save for the observation the Tribunal had made regarding the recipients, it did not find that the Respondent had taken advantage of a vulnerable person/s and his conduct had not been motivated by hostility, nor had it been based on a protected characteristic of any person. That said his letters had been bullying and intimidatory in tone and content and had been designed to be so by the Respondent .

45. The Respondent would have known or ought reasonably to have known that the conduct complained of was in material breach of his obligations to protect the public and the reputation of the legal profession.

46. The Respondent had no previous disciplinary findings recorded against him and this was to be viewed as a short pattern of misconduct in a hitherto unblemished career. He had not concealed his conduct and he had not sought to place blame on others.

47. Although the Respondent had not voluntarily notified the Regulator, he had co-operated with it. However, apart from stating that he had worded his letters clumsily and that he could have done better in their production the Tribunal found that the Respondent's insight was not at a level commensurate to the seriousness of the misconduct.

48. The Tribunal found that the Respondent's misconduct was such that he had fallen far short of the standards of integrity and probity expected of a solicitor .

49. The Tribunal found that in the circumstances of this case the level of seriousness of the misconduct was high.

50. As to sanction, the Tribunal adopted a *'bottom up'* approach. The Tribunal was careful not to place too much weight upon the seriousness of two separate findings of lack of integrity in order to avoid double counting.

51. The Tribunal took into account the positive references included within the trial bundle, attesting to the Respondent's good character and everything which had been said attesting to his personal and professional qualities. A risk of recurrence was accepted to be low.

52. However, the Tribunal decided that to make no order or to impose a Reprimand would not be appropriate. These had not been minor breaches of a minor nature. The Respondent's conduct had gone beyond a mere stylistic slip as had been suggested on his behalf. It had been so wrong- headed as to amount to professional misconduct and lack of integrity.

53. Nevertheless, neither the protection of the public nor the protection of the reputation of the legal profession justified Suspension or Strike Off. There had been no dishonesty but an unchecked campaigning fervor depriving the Respondent of his objectivity and sense of proportion. The Tribunal found that the most appropriate sanction would be a fine set at the top end of the range of Level 3 of the Indicative Fine Bands, namely £15,000.

[Note: the Tribunal had already been addressed on the Respondent's means as set out in the Costs section below and it found that the level of the financial resources open to him was sufficient to permit the Tribunal to make its order]

54. As a final observation the Tribunal reminded all solicitors, and others working under a solicitor's supervision, that it is an essential part of a solicitor's role in a free and democratic society to represent, when called upon, the interests of the minority against the majority and to fight cases which may seem unpalatable to the wider public.

55. Whilst this may include drafting letters and correspondence that are robust and forthright, perhaps even advancing a weak case this must be done with care, precision and courtesy.

56. A solicitor must maintain objectivity and a sense of proportion in furtherance of their clients' instructions. The more the solicitor becomes excessively preoccupied with the underlying cause espoused by their clients the greater the danger of moving beyond the limits of their role as a legal advisor.

Costs

57. The Tribunal, having announced its decision on sanction, next considered the question of costs.

<u>The Applicant's Application for Costs</u>

58. Mr Tankel submitted that as a matter of principle the Applicant was entitled to its proper costs. It had proved its case on all allegations to the requisite standard.

59. The quantum of costs claimed by the Respondent was set out in its itemised statement of costs dated 21 June 2024 in the total sum of £69,499.96.

60. Mr Tankel submitted that this was a reasonable and proportionate sum given that the Respondent had made serious and unfounded allegations against individuals and organisations. It had been a factually dense case and a complex one with documentation running to over 6,000 pages. It had raised issues of public importance impacting directly upon the reputation of the profession and matters regarding the nature of the solicitor's role. It was a case that touched directly upon the difficult times of the Covid -19 health emergency, and it was the first case of its kind in this respect.

61. The Applicant had pursued its case in a measured way and it had trimmed its case to the bare essentials, namely the two letters and accompanying correspondence set out in the two allegations. However, the case had required two CMH's and a two-day abuse of process argument called for by the Respondent and in which had made very serious and unfounded claims against the SRA and which had required a detailed response.

62. The Applicant had followed all the directions set by the Tribunal and conducted itself responsibly and appropriately. The case had merited the harnessing and utilisation of a legal team and the skills each member had brought to bear. The time each member had taken on case preparation had been commensurate to the complexity of the case.

63. Due to changes in which Capsticks costed their SRA cases the case had straddled two cost regimes used by the SRA and Capsticks namely the fixed fee and hourly rate regimes. Under the first regime there had been a notional hourly rate of circa £100 and in the second, later regime an across-the-board hourly rate of £142 per hour, applied to all fee earners irrespective of their level and grade. In the circumstances of the case neither of the hourly rates, whether notional or actual, could be considered excessive.

64. Mr Tankel said that when considering the making of a costs order the Tribunal had also to consider the paying person's means. In this case the Respondent had submitted a statement of means with supporting evidence. This information showed that the Respondent possessed a net worth of £685,000 comprised of cash in the bank, property and pension. The outstanding mortgage on the Respondent's primary residence was £314,000. Mr Tankel said that the Respondent's level of means should have no bearing on sanction (see above) and costs.

65. It was right that the Respondent be ordered to pay the costs in full. However, whilst the case had been set down for 5 days it had concluded in 4 days, albeit those days were intensive, and this represented a saving of £3,000 of hearing costs which could be deducted to leave a total of £66500 with rounding up.

<u>The Respondent's Submissions</u>

66. Dr Fields said that the Respondent had filed a statement of means with comprehensive supporting evidence. He had limited resources, and any significant costs order would have serious impact upon him, his family and business.

67. Dr Fields said that he did not dispute the hourly rates set out in the Applicant's costs schedule. However, he questioned why it had been necessary to have a qualified person present throughout the hearing when the Applicant had very experienced instructed counsel to present the case. The presence of this person did not add any value to the presentation of the case other than to raise costs and he submitted that these costs should be disallowed.

68. Dr Fields said that the impact of costs upon Respondent would have been very serious for him even if he had succeeded in withstanding the allegations and he feared he was at risk of losing his home. The making of a costs order would represent another punishment for the Respondent and the Tribunal should carefully consider the proportionality of its decision if decided to make a costs order in this case.

69. As to the Respondent's means Dr Fields said that the Respondent had a monthly income of £4,500, yet he had a substantial mortgage outstanding on his home as indicated by Mr Tankel. The Respondent therefore still required money to pay for the living costs of his family and home and when these were factored in, he had a surplus of only £50 per month.

70. Dr Fields said that the Respondent owned a business property valued at £350,000 and cash potentially available but this was in the property. The Respondent employed staff who needed to be paid.

71. The bulk of the Respondent's assets was in his pension and this was not readily available to him.

72. Dr Fields submitted that the Tribunal should consider making no order for costs or if a costs order was to be made then it should be one commensurate to the Respondent's financial resources, which were limited.

The Tribunal's Decision on Costs

73. The Tribunal noted that under Rule 43 (1) of The Solicitors (Disciplinary Proceedings) Rules 2019 it has the power to make such order as to costs as it thinks fit, including the payment by any party of costs or a contribution towards costs of such amount (if any) as the Tribunal may consider reasonable. Such costs are those arising from or ancillary to proceedings before the Tribunal.

74. By Rule 43(4), the Tribunal must first decide *whether* to make an order for costs and when deciding whether to make an order, against which party, and for what amount, the Tribunal must consider all relevant matters such as:

- The parties' conduct.
- Were directions/ deadlines complied with?
- Was the time spent proportionate and reasonable?
- Are the rates and disbursements proportionate and reasonable?

- The paying party's means.

75. The Tribunal found the case had been properly brought by the Applicant and that both parties had complied with the directions and deadlines set.

76. The public would expect the Applicant to have prepared its case with requisite thoroughness and, in this regard, it had properly discharged its duty to the public and the Tribunal. The Tribunal considered that given the volume of material and the facts of the case the time spent in preparing the case had been proportionate and reasonable as had been the rates and disbursements outlined by Mr Tankel.

77. The Tribunal also noted the following factors:

- The substantive hearing had taken a day less than anticipated.

- This had been a complex case to prepare and present, and as it had raised serious and complex issues regarding the conduct of a regulated professional when acting upon their clients' instruction and drafting letters before action.

- The Applicant had trimmed its case appropriately.

- The Respondent had requested the matter to be set down for a two-day abuse of process argument.

78. As was usual in dealing with costs applications the Tribunal adopted a 'broad brush' approach to the costs and looked at matters in the round.

79. The Tribunal found that the costs claimed by the Applicant were on the whole reasonable and proportionate and that in principle the Applicant's costs should be paid by the Respondent in full and not borne by the profession.

80. However, the Tribunal considered very carefully the Respondent's statement of means and his supporting evidential material.

81. The Tribunal, in considering the Respondent's liability for the costs of the Applicant, had regard to the following principles, drawn from R v Northallerton Magistrates Court, ex parte Dove (1999) 163 JP 894:

- it is not the purpose of an order for costs to serve as an additional punishment for the respondent, but to compensate the applicant for the costs incurred by it in bringing the proceedings and

- any order imposed must never exceed the costs actually and reasonably incurred by the applicant.

82. Whilst the Tribunal noted what Dr Fields had had to say it was clear that the Respondent was not without means. The Respondent had assets to draw upon as set out in the evidence he had provided to the Tribunal.

83. The Tribunal was mindful that it should not make an order for costs where it is unlikely

ever to be satisfied on any reasonable assessment of the respondent's current or future circumstances as per Barnes v SRA Ltd [2022] EWHC 677 (Admin).

84. The Tribunal considered that the Respondent's case was not analogous to Barnes and that the Respondent was not impecunious. He was in receipt of a good income and had two properties. There were no persuasive factors to divert the Tribunal from the normal course involving costs.

85. The Tribunal would set the costs at a level to take account that the hearing had taken less Tribunal time than originally envisaged.

86. The Tribunal ordered that the Respondent should pay the Applicant's costs in the sum of £66,500.

Statement of Full Orders

87. The Tribunal ORDERED that the Respondent, PHILIP JULIAN PAUL HYLAND solicitor, do pay a fine of £15,000.00, 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 £66,500.00.

Dated this 16th day of September 2024
On behalf of the Tribunal

E. Nally

E Nally
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
16 SEPTEMBER 2024