SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11618-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

DILAOR MIAH Respondent

Before:

Mr A. Ghosh (in the chair)
Mr P. Lewis
Mrs L. McMahon-Hathway

Date of Hearing: 21-23 March 2018 and 29 March 2018

Appearances

Andrew Bullock, Counsel employed by the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

Linda Lee, Solicitor of RadcliffesLeBrasseur, 85 Fleet Street, London EC4Y 1AE for the Respondent.

JUDGMENT

(N.B. PARTS OF THIS HEARING TOOK PLACE IN PRIVATE)

Allegations

1. The allegations against the Respondent, Dilaor Miah, made by the SRA were that:

1.1 On dates unknown between 12 March 2012 and 26 November 2012, he created false documents (telephone attendance notes; full attendance notes; letters and/or invoices) on 6 separate client files thereby breaching Principles 2 and 6 of the SRA Principles 2011 ("the SRA Principles").

1.2 On dates unknown between 11 October 2012 and 17 June 2013 he provided misleading information to the National Taxing Team thereby breaching Principles 2 and 6 of the SRA Principles.

1.3 On dates unknown between 19 December 2012 and 13 December 2013 he caused or permitted the payment of invoices from monies received from central funds, for purposes and/or to recipients other than those authorised by the National Taxing Team. In doing so, he breached Principles 2 and 6 of the SRA Principles.

2. In respect of all of allegations 1.1 – 1.3 above, the Applicant also alleged that the Respondent acted dishonestly. However, dishonesty was not an essential an ingredient to sustain the respective allegations.

Documents

3. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 28 February 2017 with exhibit KMS1
- Supplemental bundle of papers
- Email dated 14 February 2018 from Mr Robin Horton of the Applicant to the Respondent regarding Civil Evidence Act notice and case of Ivey (see below)
- Civil Evidence Act notice dated 14 February 2017
- SRA Statement of Costs as at date of issue 28 February 2017
- Applicant's Response to Answer dated 19 May 2017
- SRA Statement of Costs for hearing on 5-7 March 2018 with covering email dated 26 February 2018
- Copy of Royal College of Psychiatrists Grades of Membership
- Extracts from Pocket Guide to the ICD-10 Classification of Mental and Behavioural Disorders: 132-137 and 164-173
- Extracts from ICD-10: Chapter V F10-F19, F14 and F41
- Memorandum from PM of Thompsons to the Respondent dated 6 August 2012
- Letter dated 30 August 2017 incorporating certificate as expert dated 28 August 2017 by Dr T Garvey
- Email from Dr Garvey to Mr Bullock dated 22 March 2018
- Judgment in SRA v Sharma [2010] EWHC 2022 (Admin)
- Judgment in SRA v Imran [2015] EWHC 2572 (Admin)
- Judgment in Ivey (Appellant) v Genting Casinos (UK) Ltd t/a Crockfords (Respondent) [2017] UKSC 67

- Judgment in SRA v Farrimond [2018] EWHC 321 (Admin)
- Judgment in Wingate and Evans v SRA, SRA v Malins [2018] EWCA Civ 366

Respondent

- Bundle of character references
- Certificate as expert dated 5 March 2018 by Dr R Hussain
- Witness statement of Mr Rofik Ali dated 26 February 2018
- Bundle of appraisal documents
- Respondent's Personal Financial Statement dated 2 March 2018
- Wasted Costs –Schedule 5 March 2018

Preliminary and Other Issues

4. For the Applicant, Mr Bullock applied for permission to adduce additional documents comprising a printout from the Royal College of Psychiatrists Grades of Membership, which he submitted would be relevant when assessing the relevant expertise of the experts in this case; and extracts from the Pocket Guide to the ICD-10 Classification of Mental and Behavioural Disorders and ICD-10 itself, classifications from which were referred to in the reports of both the experts and which classifications were in the public domain. He also wished to place the judgments in 5 cases before the Tribunal. The Tribunal gave its permission for the documents to be admitted. A copy of each of these documents was provided to the Respondent's solicitor.

5. The Tribunal referred to a direction made on 5 March 2018 that if a particular sensitive matter were to be discussed, then at that point, and for the duration of the submissions/evidence concerning it, the hearing would take place in private. This direction was implemented at various points during the hearing. In this judgment the sensitive matter is generally referred to as "the trigger event" or "index event" for the mental health issues which the Respondent asserted he was suffering from at the material time.

6. Part way though the presentation of the Applicant's case, Ms Lee applied for permission to introduce other appraisal forms than the one dated June 2013 which the Applicant had included in its bundle. She submitted that it had not been realised to what extent the Applicant would rely on that document. She wished to have the opportunity to explain how the appraisal process worked and would submit that no appraisals were carried out in the crucial time period in 2012. Mr Bullock did not object, although he could not see where the documents would lead. Permission was given after Mr Bullock had had the opportunity to review the additional documents. Subsequently Mr Bullock was given permission to introduce an internal memorandum to the Respondent dated 6 August 2012 concerning salary review arrangements.

7. The Respondent had not filed a witness statement and Ms Lee applied for permission for him to give evidence in spite of that. Mr Bullock did not oppose the application, but indicated that it meant his cross examination would be in uncharted territory and he might need to ask for adjournments so that he could go to the documents. As to why the Respondent had not filed a witness statement, he had had various representatives and was then between representatives and had not finalised a

statement. The Tribunal granted permission for the Respondent to give evidence while noting Mr Bullock's situation.

Factual Background

8. The Respondent was born in 1975 and admitted in 2004.

9. The Respondent had a current practising certificate free of conditions.

10. At all relevant times, the Respondent carried on practice as an employee of the Birmingham branch of Thompsons Solicitors LLP ("the firm"). The Respondent was employed as a senior fee earner with the firm on 2 April 2007 and was suspended on 10 November 2014 pending the firm's investigatory process. He subsequently resigned from the firm on 8 January 2015.

11. On 8 September 2015, a duly authorised officer of the Applicant commenced an inspection of the books of account of the firm. That inspection culminated in a Forensic Investigation Report dated 1 July 2016, (the "FI Report").

12. On 11 May 2015, a member of the firm wrote to the Applicant raising concerns in relation to the Respondent. He reported that the Respondent worked in the firm's Criminal department and that the firm's head of Criminal work, Ms PP, was appointed to investigate issues initially surrounding the Respondent's timekeeping and unauthorised absences. Ms PP gave a witness statement for these proceedings.

13. As a result of the firm's early investigations, concerns were raised in relation to a series of irregular payments made to a solicitor, Mr AH of H Solicitors, for court attendances. The firm's records confirmed that the Respondent, or counsel whom he had instructed, had attended Court on the dates concerned, yet sums had been paid to AH in relation to his attendance as agent for the Respondent, having been claimed from central funds, following applications made to the National Taxing Team ("NTT").

14. Ms PP's investigation in relation to the financial irregularities encompassed a review of all the Respondent's files where account ledgers indicated that payment had been made to AH. Her investigations findings were set out in a report dated 11 March 2015.

15. Ms PP's report identified 6 cases in which claims were submitted against central funds for work undertaken by AH (and invoices purportedly raised by AH for such work) yet evidence suggested that such work had not in fact been undertaken. On each of those files documents had also been created which purportedly evidenced attendances by the Respondent on AH or the firm of H Solicitors in relation to their appearance as his agents for the Respondent.

Allegation 1.1

File of JG

16. This case was listed for a court hearing on 18 September 2012. The firm's department diary indicated that the Respondent was allocated to attend at the hearing. Travel expenses for the attendance at court on 18 September 2012, namely mileage and car parking, were claimed by the Respondent from the firm.

17. A copy of the "preparation for trial" form completed on 18 September 2012 naming the Respondent as the representative was located on the client file.

18. In Ms PP's report, she identified that the client file contained a copy of a letter addressed to the client in terms which suggested that the Respondent had attended the hearing and met with the client himself.

19. A different version of this letter appeared on the firm's case management system ("TCMS"). The alternative version merely referred to the client's attendance at court and remained neutral as to the identity of the person providing court representation.

20. A telephone attendance note was located on the client file timed and dated as 12.00pm on 17 September 2012. The note referred to a telephone call from the Respondent to H Solicitors instructing them for the court hearing the following day. Also located on the file was a further telephone attendance note timed and dated as 4.00pm on 18 September 2012. The note referred to a telephone discussion between the Respondent and AH by way of verbal update from AH as to the outcome of the hearing that he had dealt with that day as agent for the firm on the JG matter.

21. In addition to the firm's diary information, the mileage and parking claim submitted by the Respondent, the two alternative versions of a letter addressed to the client post hearing and the trial preparation form located on the file, a Tribunals clerk from the court also confirmed the Respondent's attendance at the hearing on 18 September 2012.

22. During the investigation, Ms PP identified an invoice purporting to have been sent to the firm from AH, indicating that he attended the hearing on 18 September 2012. The fee claimed for this attendance was £950.00 and the invoice was paid on 23 September 2013.

23. A further hearing took place in this case on 26 November 2012. The diary entry indicated that counsel was booked to attend at the hearing. A letter addressed to counsel dated 26 November 2012 was located on the TCMS in which it was confirmed by the Respondent that counsel was instructed for the hearing. A hard copy of that letter was not located on the client file.

24. Neither the attendance note relating to that hearing nor the fee note from counsel could be found upon the file. However the matter ledger indicated that counsel was paid the sum of £100.00 plus VAT on 21 February 2013 for his attendance on 26 November 2012.

25. Ms PP's enquiries with counsel's clerk also confirmed that counsel had attended. The firm's TCMS also contained a copy of the instructions to counsel yet a copy was not located on the file.

26. Despite evidence to show that counsel attended at the hearing on 26 November 2012 the client file contained two telephone attendance notes. The first was timed and dated 2.00pm on 23 November 2012 and referred to the Respondent instructing H Solicitors as agent for the hearing on 26 November. The second telephone attendance note was timed and dated as 11.20am on 26 November 2012. The note referred to a discussion between the Respondent and AH by way of update from AH in respect of the hearing that morning.

27. An invoice in relation to AH's purported attendance at the hearing on 26 November 2012 was also located on the JG file. The fee claimed for the attendance was £750.00.

28. The Rule 5 Statement contained details of the cases of JG, HP, PM, JR, LM and IM.

29. On all 6 files submitted to the NTT, invoices in the name of an entity LS had been forwarded by the Respondent in place of genuine invoices received from counsel and/or AH. None of the invoices specified the name of the person who attended court hearings.

Allegations 1.2 and 1.3

30. Within her statement dated 2 February 2016, Ms PP set out the process in relation to claiming costs from the NTT. She set out that the individual fee earner was responsible for the completion of paperwork and they would then send the completed bill and file to the NTT to review and assess costs.

31. In the case of JG, the bill was submitted by the Respondent on 17 June 2013 and the total amount claimed on this form was £10,575.60 and the NTT agreed to pay £7,918.32 of that amount. Disbursements were claimed which related to agents fees in the sum of £1,440.00 for the hearing on 18 September 2012. The NTT agreed to pay £849.60.

32. For the court hearing on 26 November 2012, the Respondent claimed £1,200 and the NTT agreed to pay £637.20.

33. Of those amounts, AH was paid £950.00 for his alleged attendance on 18 September 2012 and £750.00 for his alleged attendance on 26 November 2012. He did not attend either hearing. In addition counsel who did attend at the hearing on 26 November 2012 was paid £120.00.

34. The ledger for this matter confirmed that both invoices relating to AH were paid on 30 September 2013. Ms PP confirmed that he was paid by office account cheque, payable to AH, which was cashed on 23 October 2013.

35. Invoices relating to AH and counsel were not sent to the NTT, only two invoices from LS which suggested that it had acted as agent for both hearings and essentially amalgamated the payments to two separate agents for the hearing on 26 November 2012.

36. Ms PP reported her findings to the NTT and the firm refunded an amount of £7,382.60 relating to the expenses claimed and payments received in relation to the work purportedly carried out by AH on the 6 client matters.

37. On 2 April 2015, the Respondent met Ms PP and a transcript of the meeting was prepared. During the meeting, the Respondent accepted that there were irregularities and did not challenge the findings of Ms PP's report.

38. The Respondent stated that he had been experiencing problems about 3 years earlier during which time his wife had left him. He said that he was not thinking straight and had made silly mistakes to include the double booking of counsel to attend court hearings. He said that he was embarrassed to say anything at the time which resulted in 6 to 7 months of serious errors.

39. The Respondent agreed that he should have said something to Ms PP about his problems at the time. He maintained that he bottled up his problems and made mistakes and then made more to try to cover up.

40. The Respondent also said that he wanted to maintain and build on the relationship with H Solicitors so wanted to keep them happy.

41. In relation to the IM matter, the Respondent was asked why the fee was paid to AH personally if WG of H Solicitors had purportedly attended court. The Respondent maintained that he had double booked both of them by mistake.

42. The Respondent subsequently sent representations to the IO by way of his response to Ms PP's report. Further queries were also responded to by the Respondent thereafter.

43. Within his response, the Respondent again referred to double booking agents. He stated that errors occurred because during this period of double booking he was going through a protracted and emotionally draining separation from his wife and children. Consequently he was in a depressed state and referred to a breakdown. He maintained that this directly impacted on his functioning within the office. He stated that he had booked counsel or an agent knowing he was lacking in confidence and mental agility to do the advocacy work himself but then, at the last minute, he would do the hearing and forget that he had booked alternative representation or cancel the agent at the last minute. Consequently agency fees would be submitted for aborted hearings and the invoices placed on the file. Once the file was concluded, the initial errors were brought to the Respondent's attention again, this being too late to negotiate a reduction in fees.

44. The Respondent stated that, as the firm would still be liable to pay the invoices, he accepted that he did amalgamate the invoices into the bill by amending the invoices or attendance notes. He stated that the amendment of the invoices took place over a

specific period of time, March to September 2012, this being the period of time when he was not in a proper and lucid frame of mind.

45. The Respondent subsequently confirmed in written correspondence with the Applicant dated 6 September 2016 that he created inaccurate attendance notes; he amended or altered invoices; he sent 6 amended invoices to the NTT, and that he knew he should not have done so; his marriage broke down around February 2012 and he rapidly descended into depression; he used anti-depressants as a coping mechanism and drank alcohol on a daily basis; he lost the ability to think rationally; he readily admitted what had happened to Ms PP when approached about it in April 2015; and in his confused state, his intention had been to try and sort out the errors and shortcomings.

46. The Respondent provided the Applicant with a psychiatric report prepared by Dr Razia Hussain which referred to the Respondent suffering from severe depression at the time of the conduct in 2012.

47. The Applicant obtained a psychiatric report from Dr Tim Garvey. He described the Respondent's symptoms as being depression of a mild to moderate nature.

Witnesses

48. The following gave evidence:

- Dr Tim Garvey
- Dr Razia Hussain
- Mr Rofik Ali

Finding of Fact and Law

49. The Applicant was required to prove its allegations beyond reasonable doubt. In arriving at its decision the Tribunal gave due weight to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent's rights to a fair trial and to respect for his private and family life under, respectively, Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

50. **Allegation 1.1 - On dates unknown between 12 March 2012 and 26 November 2012, he created false documents (telephone attendance notes; full attendance notes; letters and/or invoices) on 6 separate client files thereby breaching Principles 2 and 6 of the SRA Principles 2011 ("the SRA Principles").**

Allegation 1.2 - On dates unknown between 11 October 2012 and 17 June 2013 he provided misleading information to the National Taxing Team thereby breaching Principles 2 and 6 of the SRA Principles.

Allegation 1.3 - On dates unknown between 19 December 2012 and 13 December 2013 he caused or permitted the payment of invoices from monies received from central funds, for purposes and/or to recipients other than those authorised by

the National Taxing Team. In doing so, he breached Principles 2 and 6 of the SRA Principles.

Allegation 2 - In respect of all of allegations 1.1 – 1.3 above, the Applicant also alleged that the Respondent acted dishonestly. However, dishonesty was not an essential an ingredient to sustain the respective allegations.

50.1 For the Applicant, Mr Bullock submitted that Principle 2 of the SRA Principles required a solicitor to act with integrity. Principle 6 required a solicitor to behave in a way that maintained the trust the public placed in them and in the provision of legal services. An allegation of dishonesty also attached to each of allegations 1.1, 1.2 and 1.3. In his Response to the Allegations dated May 2017, the Respondent admitted the facts of each of allegations 1.1-1.3 but denied lack of integrity and dishonesty. (The Respondent did not refer in that document to the allegation of breach of Principle 6.) The basis of the Respondent's denial was his state of mind at the relevant time. Mr Bullock submitted that the Tribunal had to apply as the test for lack of integrity what was set out in the recent Court of Appeal case Wingate and Evans, SRA v Malins [2018] EWCA Civ 366 ("Wingate and Evans"). At paragraph 95 onwards Lord Justice Jackson stated:

> "Let me now turn to integrity. As a matter of common parlance and as a matter of law, integrity is a broader concept than honesty. In this regard, I agree with the observations of the Divisional Court in Williams and I disagree with the observations of Mostyn J in Malins.
>
> Integrity is a more nebulous concept than honesty. Is it is less easy to define, as a number of judges have noted.
>
> In professional codes of conduct, the term "integrity" is useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. See the judgment of Sir Brian Leveson in Williams at [130]. The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards.
>
> I agree with Davis LJ in Chan that is not possible to formulate an all-purpose comprehensive definition of integrity. On the other hand, it is a counsel of despair to say "Well you can always recognise it, but you can never describe it."
>
> The broad contours of what integrity means, at least in the context of professional conduct are now becoming clearer. The observations of the Financial Services and Markets Tribunal in Hoodless have met with general approbation.
>
> Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is

> expected to be even more scrupulous about accuracy than a member of the general public in daily discourse.
>
> The duty to act with integrity applies not only to professional persons say, but also to what they do. It is possible to give many illustrations of what constitutes acting without integrity. For example in the case of solicitors:
>
> (i) …
>
> (ii) recklessly but not dishonestly, allowing a court to be misled (Brett);
>
> (iii) subordinating the interests of the client to the solicitors' own financial interests (Chan);
>
> (iv) making improper payments out of the client account (Scott);
>
> (v) …
>
> (vi) making false representations on behalf of that client (Williams)."

The reference to Hoodless paragraph 19 was quoted at paragraph 66 of the Wingate and Evans judgment:

> "It may be asked whether the combined test is really appropriate in the present context, where one of the statutory objectives is the protection of consumers. It might be thought that the purely objective test would be a better protection. But we think it right to adopt the approach urged upon us, since it was not in dispute that we were required, as an additional matter, to consider the applicants' integrity, which both sides accepted involved the application of objective ethical standards. In our view "integrity" connotes moral soundness, rectitude and steady adherence to an ethical code. A person lacks integrity if unable to appreciate the distinction between what is honest or dishonest by ordinary standards. (This presupposes of course, circumstances where ordinary standards are clear. Where there are genuinely grey areas, a finding of lack integrity would not be appropriate.)"

Mr Bullock submitted that that required the Tribunal to ask did the Respondent adhere to the standards of the solicitors' profession; did he display moral soundness, rectitude and steady adherence to an ethical code? The Tribunal might think that presented some difficulty regarding the defence concerning the Respondent's mental state. The question to be considered regarding Principle 2 was an objective one; not a question which fell to be answered by reference to the Respondent's own state of knowledge. It fell to be answered by reference to the accepted standards of the profession. On that point, Mr Bullock reminded the Tribunal of what was said by the President of the Queen's Bench Division Sir Brian Leveson in SRA v Farrimond [2018] EWHC 321 (Admin) regarding the ability of a solicitor to withstand stress and the expectations of the public and the profession:

> "Furthermore, the work of a solicitor, in whatever field he or she practises, inevitably involves a degree of stress and the public must be able to expect

> that those whom they consult are not so susceptible to mental ill-health that they are at risk of behaving as Mr Farrimond did, however difficult the work might become."

A similar comment was made by Mr Justice Graham referring to the psychiatric defence advanced in Farrimond: and limited weight was to be given to it in respect of mitigation:

> "In my view, the commission of an offence of attempted murder, on the facts such as these, is wholly incompatible with remaining on the Roll of Solicitors or remaining an officer of the Court."
>
> The need to maintain among members of the public "a well-founded confidence that any solicitor they instruct will be a person of unquestionable integrity, probity and trustworthiness" is the paramount consideration for the Tribunal and this court. In my view, that objective would be undermined by an order that had the effect of keeping Mr Farrimond's name on the Roll during the currency of a term of imprisonment for an offence of attempted murder…"

In assessing what the ethical standards of the solicitor's profession were, regard had to be had to that expectation that they could withstand the stress of practice and their personal life and comport themselves in accordance with those standards. These were the battle lines between the parties in this case and what the Applicant relied on.

50.2 Mr Bullock pointed out that a Civil Evidence Act notice had been given regarding the documents in the bundle and cross examination upon the witness statements and so the documents could be given full evidential weight at this hearing. There was a lacuna in that no notice to admit documents had been served under regulation 13(6) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR") but no indication had been given by the Respondent that any of the documents in the bundle were controversial regarding their authorship or authenticity.

50.3 At the time of the facts giving rise to the allegations the Respondent was aged around 36 years and had around 7 years' experience in practice. On 10 November 2014, the Respondent was suspended from his employment because of concerns about allegations regarding his attendance at work and was advised that a formal disciplinary process was about to be commenced. On 8 January 2015, he was notified that he would be interviewed as part of the disciplinary process and was asked for dates convenient for him to attend and resigned on that day by e-mail to the branch manager who had notified him of the investigation on the 8 January 2015 citing ill-health reasons. The investigation nevertheless continued. On 11 March 2015 an investigation report was prepared by Ms PP. The mischief at the heart of the case was described in the investigation report:

> "Financial irregularities
>
> I have established that in a number of cases, claims have been submitted to Central Funds for work undertaken by [AH]. [AH] is an employee of [H] Solicitors and is a Higher Court Advocate. From the evidence available, it appears that personal invoices have been received from Mr [AH] for work

> undertaken on the file. However, I have located fee notes from Counsel or expenses claims from [the Respondent] relating to the hearing allegedly attended by Mr [AH] and to which the invoices relate. TCMS diary entries confirm that Mr [AH] was not in attendance at the hearings, for which claims have been made. I have identified this as an issue in the following cases:"

Ms PP went on to describe the 6 cases. After the initial report the firm reported its concerns about the Respondent to the Applicant. The report appeared to be dated 11 March 2015. On 8 September 2015, an Investigation Officer ("IO") employed by the Applicant commenced an inspection. The focus was on the Respondent's conduct as identified in the internal investigation report. The IO produced an FI Report. It referred to documentation which showed that the Respondent had made improper claims for expenses on Central Funds.

50.4 There were irregularities on 6 files but they related to 8 separate court appearances on dates between 13 March 2012 and 26 November 2012. In each case they involved a supposed attendance at court by a solicitor advocate Mr AH or Mr WG another solicitor at H Solicitors. Each claim concerned an interim hearing before a magistrates' court at either a first appearance or committal proceedings where the work had actually been done by junior counsel or by the Respondent himself. The way of operating on each of the 8 occasions was always the same and involved 5 distinct steps.

- A fictitious invoice was purportedly raised by Mr AH. It was identical in content with a genuine invoice raised by Mr AH. As to why he raised a genuine invoice, AH had been instructed on each of the 8 occasions to appear as agent for the Respondent who cancelled his attendance at short notice. The false invoice being identical in amount with the genuine invoice raised but the biggest difference from the genuine invoice was that rather than referring to a cancellation fee it referred to a false narrative regarding the work that Mr AH had supposedly undertaken at court on the relevant date.

- The second stage of the process was to substitute the narrative with the false invoice and for a further document or documents which invariably included a telephone attendance note saying that AH had been instructed but generally the document went beyond that and had a supposed report by Mr AH as to the outcome of the hearing and application and there were other documents too – written reports. On some occasions documents which the Respondent created and which were held on the TCMS were doctored and placed on file to remove any reference to the Respondent or to junior counsel appearing as advocate.

- Having created the fiction that Mr AH rather than the Respondent or junior counsel had attended the hearing, a second fictitious invoice was created purportedly raised by an entity LS for its fee payable for acting as agent at the hearing. The fee claimed on that invoice bore no relation to any fees actually incurred save that they exceeded the cancellation fee plus the brief fee. Mr Bullock inferred that the reason they exceeded the cancellation fee was because the Respondent anticipated that the claim might be taxed down on assessment but that was not known. It was a curious detail of the case.

- Following the successful conclusion of the case an application was made for the costs of the defendant out of Central Funds, the charges including the fee supposedly due to LS.

- In the final stage, a cancellation fee due to Mr AH and any fee payable to counsel were then paid out of the sum allowed by the NTT following taxation. This allowed a benefit to the firm if the amount allowed on taxation exceeded the cancellation fee and counsel's fee and produced a loss if the Respondent undershot his estimate.

50.5 Mr Bullock submitted that the effect of the scheme was therefore to transfer costs following from the Respondent's failure to cancel Mr AH's attendance timeously away from the firm onto the public purse. The Applicant could not quite quantify exactly the injury to the public purse caused by the Respondent's actions because although the Applicant had counsel's fee notes it did not know the amounts that the Respondent would have charged for what he did himself. Mr Bullock went through the detail of 1 of the 6 cases and gave the Tribunal the important dates and numbers in the others as the facts were not controversial.

50.6 Mr Bullock submitted that it was not controversial that the Respondent did this but the Respondent said that at the relevant time because of matters of which the Tribunal was aware he was suffering from mental illness, drinking heavily, taking un-prescribed medication and that was what led him to behave as he did. To be fair to the Respondent that was the explanation that he had given throughout the process since the Applicant first raised its concerns with him in correspondence on 14 July 2016. In support of that position the Respondent had placed reliance on the report from Dr Razia Hussain, who described herself as a specialist psychiatrist. The documents which Dr Hussain had seen included the FI Report and accompanying bundle and the medical history notes of the Respondent. She had seen the Respondent on 4 September 2016 face to face. The report contained a section "Drug & Alcohol History". Mr Bullock quoted from the report which said that events in the Respondent's personal life had plunged the Respondent "into feelings of utter dejection and it led him to start drinking alcohol to cope." The Respondent said that he ended up drinking heavily increasing from a 50cl bottle of vodka eventually to consuming a 75cl bottle a night. At the same time he also started taking Diazepam, Venlafaxine and Xanax:

> "which he said he was able to obtain without prescription through an associate who said they would "perk" him up came up. [The Respondent] states that he was taking 5 – 6 tablets a day as he thought they would lift his mood. [The Respondent] states these drugs coupled with the consumption of large amount (sic) of alcohol impaired his ability to think logically and rationally and also caused him to lose confidence and weakened his decision-making capacity. [The Respondent] says he was so affected mentally, due to the excessive alcohol and drugs, that it was extremely difficult for him to concentrate during the day and he had to regularly visit the washroom to splash water on his face to try to keep himself awake and alert in the office. [The Respondent] details symptoms at the time of suicidal ideations, excessive alcohol/drug consumption, feelings of dejection and hopelessness, insomnia, very limited appetite, constant belief of his life degenerating on a daily basis and total

> abandonment of leisure activities such as gymnasium attendance which was previously a regular feature of his life…"

Mr Bullock submitted that it obviously followed that if the Respondent was right in what he told the psychiatrist he was getting very drunk almost every night.

50.7 Mr Bullock referred the Tribunal to the question posed at 10.1 of the report and to her answer:

> "Whether [the Respondent] was likely to be suffering from depression or any other illness between February 2012 and October 2012?
>
> According to the history and information obtained during his assessment it is likely that the Respondent would have been suffering from severe depression at the time."

Mr Bullock submitted that the Applicant did not accept that diagnosis and the Tribunal would hear evidence from the Applicant's expert Dr Garvey a fellow of the Royal College of Psychiatrists as to what a clinical diagnosis of severe depression would entail. The Applicant's case was that if the Respondent was ill in February to October 2012 then a proper diagnosis could be no more than mild-to-moderate depression according to the relevant classification in ICD-10. The Applicant would say that someone severely depressed according to that diagnosis would not be capable of functioning in daily life in any meaningful way.

50.8 Mr Bullock referred to the next question posed in the report of Dr Hussain at 10.2:

> "Whether the combination of medicine and alcohol taken by [the Respondent] between February 2012 and October 2012 could have affected [the Respondent's] behaviour.
>
> During the period [the Respondent] failed to seek professional medical advice and instead adopted mal-coping strategies, such as drinking excessive alcohol and taking un-prescribed medications, which is a Benzodiazepine Group of medications with common side effects of drowsiness, irritability, reduced power of concentration, dizziness and memory problems. There is also an additional risk of aggravated hazards to mental and physical health if these drugs are not procured from a licensed pharmaceutical company and taken in a prescribed manner. It is probable that the Respondent's behaviour would have been affected by the large consumption of alcohol and taking non-prescribed drugs."

Mr Bullock submitted that the Dr Hussain could not say what the Respondent did but only what she had been told that he did. The Applicant accepted fully the point that it was probable that a depressed man taking non-prescribed drugs and drinking a bottle of vodka a night would be behaving differently than one would expect him to. However the Applicant said that contemporary material in evidence before the Tribunal did not show that the Respondent's behaviour was adversely affected as one would expect. Mr Bullock asked the Tribunal to look at a document dated 4 June 2013 which on its face was an appraisal document and although it was not expressed to be,

it could be deduced it was an annual appraisal because the overall comments referred to "some very good results this year". One could see from the document that the Respondent met expectations in all areas and exceeded it; in terms of job knowledge, problem-solving and decision-making and innovation. It also showed that he had a good attendance record, had good focus and managed time well. He led by example and had a flexible and approachable attitude and Mr Bullock submitted that the contents of that document were inconsistent with a man who was depressed and drinking heavily to the extent of one full bottle of vodka a night and self-medicating with antidepressants, if one accepted, as the Applicant did, Dr Hussain's view that the behaviour of a man acting in that way would be adversely affected. It was not part of the Applicant's case but there were also a number of character references some of which related to the Respondent's behaviour in 2012. None of them described a man whose behaviour had changed for the worse in a manner consistent with Dr Hussain's views. Ms Bullock also submitted that the documents which the Respondent had created were a scheme which the Respondent deployed to ensure payments of Mr AH's invoices; it was a multi-stage scheme with some degree of sophistication which involved production of multiple documents. Accepting Dr Hussain's views was inconsistent with what the Applicant knew and it pointed out an inconsistency in the Respondent's case.

50.9 Mr Bullock also referred the Tribunal to the question and answer at 10.3 of Dr Hussain's report:

> "Whether any illness, or any medicine or alcohol, affected [the Respondent's] ability in 2012 to realise that, by the standards of reasonable and honest people, his conduct relating to the claims made on central funds might be dishonest.
>
> The influence of alcohol, in combination with Benzodiazepine group of drugs, is likely to impair cognitive ability leading to poor concentration, judgement and assessment skills and coordination. Prolonged and non-prescribed (therefore unmeasured) consumption of drugs may have impacted upon [the Respondent's] cognitive abilities and decision and analytical skills. The combination of alcohol and drugs may have affected the Respondent's ability to comprehend the significance of his actions and judgements."

Mr Bullock submitted regarding the reference to "the standards of reasonable and honest people" that the question was directed at the issue of dishonesty and the second limb of the case of Twinsectra Ltd v Yardley [2002] UKHL 12 and the question was redundant in the light of the judgment of the Supreme Court in the case of Ivey (Appellant) v Genting Casinos (UK) Ltd t/a Crockfords (Respondent) [2017] UKSC 67 to which Mr Bullock would take the Tribunal in due course. In Ivey, the test for dishonesty had been confirmed as an objective one on the basis of the state of the Respondent's knowledge and belief at the relevant time and it was nowhere suggested by Dr Hussain that he suffered from delusions or psychosis such that his knowledge or belief as to the facts was affected. Secondly in reality the same point applied to question 10.3 as to question 10.2; one would expect alcohol and drugs to affect the Respondent's cognitive ability in decision making and analytical skills. Contemporary documents provided no support for the thesis that Respondent's cognitive ability and decision and analytical skills were in fact affected.

50.10 Mr Bullock submitted that he did not intend to go into detail about questions 10.4 and 10.5 in the report of Dr Hussain which related to the Respondent's subsequent mental health. While Mr Bullock did not consider them to be of any great significance in the overall scheme of things, he directed the attention of the Tribunal to the Respondent's medical records running from 1987 to June 2017 entitled "All Medical History". Mr Bullock submitted that there was nothing in the list of attendances on his GP to corroborate the Respondent's claim that he had been severely depressed at the material time that he created false documents and made false claims which were the subject of the present allegations. It was often said and was said by both the experts that people afflicted by mental illness were the last to realise that it was a problem. However Mr Bullock submitted that there were two reasons why the Tribunal should be sceptical of that proposition in this case; the Respondent appeared to be a man who was more than willing to attend his GP; on 8 October 2009 he attended when he had bitten his tongue without it bleeding while eating a crumpet. Secondly he did in fact attend with psychiatric/mental health concerns on multiple occasions beginning on 12 November 2014 complaining of "insomnia unable to sleep for last 7 nights low mood and worrying about work – criminal law solicitor v stressed and workload increased … lots of pressure…" A few days earlier, 10 November 2014, had been a significant date for the Respondent - it was the day he was suspended from work. Mr Bullock invited the Tribunal to consider whether the medical records were consistent with the views expressed by Dr Hussain and the Respondent's own account of his state of mind in 2012 and 2013. It was the Applicant's submission that a man who went to the doctors when he had bitten his tongue and was happy to go and see his GP in 2014 when he was stressed because of his suspension from work ought logically to have something in his medical records to reflect his ill health when he was supposedly suffering from severe depression. The Applicant did not challenge the fact that the Respondent was undergoing sad and stressful events in his private life at the relevant time and it would have been wholly unnatural if those events did not have some knock on effect on his mood but the Applicant submitted that if it was going to be said on the basis of Dr Hussain's report that the Respondent should be exculpated of dishonesty and also of lack of integrity because of his mental state, this assertion should be approached with scepticism and caution. In any case, the Applicant said that the argument was flawed because as a matter of law lack of integrity was determined by reference to the purely objective standards of the profession. One could act without integrity because one was ill; Farrimond did that in trying to stab his wife and child. Secondly the argument did not work on the chronology; the Respondent claimed he was suffering from depression in March to October 2012 and crucially the payments were made after that period. That mattered because at the point at which payment was made the Respondent must have considered the file and appreciated that payment needed to be made to AH and not to LS whose bill had accompanied the claim to the NTT .

50.11 Mr Bullock asked the Tribunal to note that Dr Garvey confirmed the observation that a man drinking heavily would be observed to be doing so in the work place. Mr Bullock also submitted that as the Respondent was advancing a positive case on that point the burden of proof rested with the Respondent and it was not for the Applicant to prove a negative; that he was not mentally ill at that point.

50.12 Regarding the test for integrity, Mr Bullock referred the Tribunal to a document drafted by Mr Geoffrey Williams QC which had been submitted for the Respondent

dated 16 October 2017 "Representations on behalf of the Respondent to the SRA". It had been sent to the Applicant on an open basis. It was for the purpose of discussing an agreed outcome. The Tribunal was asked to note that it included:

> "For the purposes of any discussions [the Respondent] will admit lack of integrity on the basis that (as must be the case) this is judged objectively. If (as no doubt will not be the case) it was to be argued that there was a subjective element in integrity then this allegation would also be denied."

The Applicant did not argue that there was a subjective element in lack of integrity.

Submissions for the Applicant in respect of the allegation of dishonesty

50.13 Mr Bullock submitted that the test for dishonesty was now set out in the case of Ivey at paragraph 74:

> "When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

The first point to note was that since there was no requirement in law that the Respondent must appreciate that what he did was dishonest it did not enable him to say "I only did this because my state of mind was impaired through depression; I didn't really think about what I was doing and did not direct my mind to the question whether what I did was honest or dishonest." What had to be looked at was the state of knowledge and belief and regarding the state of knowledge and belief the Respondent must necessarily know that the documents he created were false because he was admittedly the author of them. He accepted the factual premise of the Applicant's case. He must also have known at the point at which payment was made that the invoice to LS was a fiction and he must have known that because on all 6 occasions with which the Tribunal was concerned he never once made a payment to LS. He always paid Mr AH even though the invoice to LS accompanied his claim on public funds. At the point of payment he knew that a false document had been deployed - the invoice to LS; and secondly it went to the allegation of dishonesty in respect of allegation 1.3 that a claim had actually been made to someone other than the person to whom the NTT contemplated it would be paid. The NTT paid on the basis of the invoice from LS.

50.14 Mr Bullock submitted that it was hard to see why the Respondent would have known that payment was going to be made to Mr AH and not LS at the point of payment but not at the point of submission of the claim some months earlier – this could not be amnesia due to depression because it was pleaded in the Answer that he created false

documents when depressed but deployed them when he had recovered. Alternatively, one could look at it as a course of conduct with dishonesty running through it; starting with the creation of false documents which the Respondent knew to be false and to be deployed. Then there was the deployment and allocation of payments once monies were eventually received. One could say that there was a difference between the Respondent's state of knowledge in 2012 and when the forms were sent off but it did not matter much because it was all part of the same process; the invoices to LS must have come from somewhere. If they were created when the claim was submitted and the Respondent sent off the document he knew it to be false. Alternatively the document was held on file and the Respondent must have looked at the file and would have seen that there was a false invoice to Mr AH as well as a genuine one to Mr AH and any fee notes to counsel as well. However one looked at it, at each stage in the procedure the Respondent knew that false documents were being deployed and false payments made on the back of those documents. The psychiatric evidence did not suggest that the Respondent was in any way delusional or psychotic. He was depressed but depression was not an uncommon illness amongst the general population or indeed amongst the legal profession. The fact that someone was depressed might affect their performance in the workplace or their behaviour but it did not askew their fundamental underlying perception of what was right and wrong. Even a depressed solicitor could appreciate that if he created a false document he was being dishonest even if his depression did not lead him to consider the specific question of honesty at the point in time he created the false document.

50.15 If the Respondent's state of belief was that the creation of a false document was wrong and if he knew that he had created a false document, then Mr Bullock submitted that he was dishonest according to the test in Ivey. Mr. Bullock further submitted that under the test for dishonesty in Ivey one did not need to enquire into the Respondent's state of belief as to honesty - because that was subjective. The test for dishonesty was a simple proposition which boiled down to the answers to the following three questions:- (i) did the Respondent know that he had created false documents (ii) did he know that he was deploying false documents and (iii) is it objectively dishonest to create and deploy false documents. Mr Bullock submitted that the answer to all three questions must of necessity be in the affirmative.

50.16 Ms Bullock submitted that it could not be controversial to say that creating and deploying a false document was an objectively dishonest act. Following on from that, the psychiatric evidence was at best of very limited relevance to the initial question of findings. If it had any significance then it was as to mitigation, specifically as to the extent that the Respondent was culpable for his actions and if, having regard to the cases of SRA v Imran [2015] EWHC 2572 (Admin) and SRA v Sharma [2010] EWHC 2022 (Admin), there were any exceptional circumstances here to justify the Respondent not being struck off the Roll of Solicitors. Mr Bullock did not concede that there were exceptional circumstances. Mr Bullock did not abandon his points about the length of the Respondent's experience, the sophistication of the scheme, the repeated nature of the behaviour, and its following a pattern on a number of files rather than being a complete one-off. These were also factors that supported the view that on the basis of Ivey the Respondent was dishonest and he created false documents and knew that he was deploying false documents.

Submissions for the Respondent

50.17 For the Respondent, Ms Lee submitted that the Respondent admitted the acts set out in the Rule 5 Statement but denied lack of integrity (Principle 2) and dishonesty because an exceptionally traumatic event triggered a mental illness. He adopted what Dr Hussain referred to as "mal-coping" strategies involving alcohol and self-medication with drugs of unknown potency. From early 2012 to the end of that year he was mentally unwell and so confused he could not tell the difference between right and wrong. Self-medication had not been set out as the basis for the allegation of lack of integrity. There was no evidence to suggest the Respondent tampered with the files outside the period to August 2012 just that he submitted the whole file for taxation unaware of its content. The Respondent did not put forward an affirmative defence and the burden of proof did not shift from the Applicant to the Respondent.

50.18 In respect of lack of integrity, Ms Lee submitted that Mr Bullock had referred to the document prepared by Mr Geoff Williams QC for the purpose of negotiation which included:

> "For the purpose of any discussions DM will admit lack of integrity on the basis that (as must be the case) this is judged objectively. If (as no doubt will not be the case) it was to be argued that there was a subjective element in integrity then this allegation would also be denied."

She suggested that it was of limited assistance and it was a without prejudice document and a document did not have to be marked so to be privileged. The context in which the Applicant came into the possession of the document made it very clear that it was intended to be without prejudice. Although the document stated that it was to be regarded throughout as for the purposes of negotiation, she suggested its contents should be ignored. Later in the hearing the Tribunal sought clarification of Ms Lee's comments about the document. She responded that she was not instructed at that time but suggested it was not admissible as a matter of law. Mr Bullock produced to Ms Lee an email from Mr Williams which stated that the document was sent in "open terms". Ms Lee suggested the Respondent was not privy to the email and he had not waived privilege. She did not suggest it had been prepared contrary to his instructions; it just said he intended to admit liability. Ms Lee understood that the Respondent did not understand it to have been sent in open terms.

50.19 Lack of integrity had been referred to in Wingate and Evans by Lord Justice Jackson when he cited the case of Newell Austin v SRA [2017] EWHC 411 (Admin):

> "Integrity connotes moral soundness, rectitude and steady adherence to an ethical code"

Bolton v Law Society [1994] 1 WLR 512 was also cited:

> "A solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal…"

This suggested that solicitors should be held to an additional yet distinct ethical standard tied directly to the nature and the practicalities of their work. Ms Lee asked the Tribunal to note however that Lord Justice Jackson in Wingate and Evans tempered this view with his assertion at paragraph 102:

> "Obviously, neither courts nor professional tribunals must set unrealistically high standards… The duty of integrity does not require professional people to be paragons of virtue..."

Lord Justice Jackson described lack of integrity as a useful shorthand to express the highest standards which society expected from professional persons and which the professions expected from their own members. Ms Lee submitted that the Respondent made various attempts to explain why he did what he did but as he said he surmised what happened but he did not know. This was simply a function of his illness triggered by the distressing events. He acted in many ways against a strict moral code; drinking alcohol and taking medication and most importantly acting in such a way that made him ashamed and bewildered. This was not someone who lacked integrity; he gained no benefit, it defied logic. Mr Bullock suggested that the facts of Farrimond would assist but that was a case relevant to sanction; one must not confuse the facts of a case with the ratio.

50.20 Medical evidence was considered relevant. In Malins [SRA v Malins [2018] EWCA Civ 366] the evidence was considered and found wanting. Comparison with other cases was of no assistance here. One had to determine the facts and apply the relevant test. It was said at paragraph 50 of Newell Austin:

> "At one extreme, if the person is unaware of the relevant conduct, there can be no lack of integrity…"

The Tribunal must decide what facts were proved by the Applicant beyond reasonable doubt and which were not.

50.21 Ms Lee submitted that there was very little difference between the psychiatrists on their expert opinion as indicated by Dr Hussain in her evidence; psychiatrists routinely made diagnoses retrospectively and were often not consulted at an early stage of mental illness. Even where someone was brought to them in a medical emergency suffering from a psychosis, the development of that psychosis and the relevant treatment was based on a retrospective analysis. Both experts agreed that the Respondent was suffering from mental illness as a result of sudden and profound shock after discovering the trigger event. Both agreed that the impact, because of the nature of the event, would be greater on someone of the Respondent's background and circumstances. Dr Hussain had the advantage of meeting the Respondent, asking him questions directly and taking a detailed history so she could analyse his mental state and make an assessment of his interactions, mood, speech and spontaneous reactions and cognitive ability. Even though it was some 4 years since the end of the period in question the Respondent was noted to have psychomotor retardation of movement and thoughts and there was some evidence of poor concentration. Dr Hussain could ask about his background and circumstances and put his actions in context and, as she described, test the facts that supported her diagnosis. Dr Garvey was left with a number of questions which to him could appear to be inconsistencies

which he raised with the Applicant but received no answer. He did not have the opportunity to assess the Respondent although the Respondent was willing to attend an appointment. Dr Garvey had to rely instead on his analysis of accounts of interactions with the Respondent. Dr Garvey himself recognised that this was problematic, stating at paragraph 4.10 of his report:

> "I would wish to see him and to have full review of the medical records before commenting more authoritatively…"

Both experts agreed that no particular significance was to be attached to the Respondent's failure to report mental illness to his GP when willing to attend in respect of trifling symptoms the year before. (His medical records showed that in 2012 and 2013 the Respondent had only attended his GP once on 19 March 2012 for a medical problem arising out of a hair transplant.) They both indicated it was quite common and more so in someone of the Respondent's circumstance and background. In his letter of 5 July 2017, Dr Garvey said:

> "It is also not uncommon for persons not to consult their GP and to seek to self-manage their difficulties until a crisis occurs or they are pushed into attendance perhaps by a concerned relative or friend. Such behaviour is more common among men."

Dr Garvey also stated in evidence that cultural and religious reasons could impact as could the circumstances regarding the index event that caused the depression.

50.22 For the avoidance of doubt, Ms Lee submitted that she was not suggesting that confusion only occurred specifically at the time of the 6 events the subject of the Rule 5 Statement – it would have happened throughout the period in question. Dr Garvey stated in his 5 July 2017 letter at paragraph 6 regarding the Respondent's problems, with which the defence agreed:

> "it is likely that this would have had some impact on the wider scope of [the Respondent's] work and it is unlikely that his decision-making would have been greatly impacted within very limited areas and not affected at all in others."

Both experts agreed that if the Respondent was suffering from depression during that period, combined with self-medication of the type described it could have affected his judgement to the extent that he did not know the difference between right and wrong. In respect of paragraph 10.3 of her report where she stated: "The combination of alcohol and drugs may have affected the Respondent's ability to comprehend the significance of his actions and judgements." Dr Hussain clarified in evidence that included knowing the difference between right and wrong. Dr Garvey was asked at paragraph 4.6 of his report if he was able to comment on dishonesty. He stated:

> "I do not think that excessive use of alcohol and/or non-prescribed medication or problems with anxiety and depression will of themselves in most circumstances conclusively impair a person's ability to be aware that they may be acting dishonestly though it is not impossible to imagine that they could, in certain restricted circumstances, do so because the person's concentration was

> so significantly impaired and/or because they had become so anxious and thereby focused on certain issues which had assumed great importance to the extent that they were not able temporarily to focus on wider issues. I think the matter would need to be tested in each case."

Ms Lee emphasised "in most circumstances" and suggested but not all. Ms Lee submitted that Dr Hussain suggested the Respondent had been suffering with severe depression while Dr Garvey diagnosed mild to moderate depression. Dr Garvey expressed concern at paragraph 4 of his letter of 5 July 2017 that he:

> "certainly found it unusual that a person could greatly increase their alcohol intake and take significant amounts of sedative medication (which would for instance render them unfit to drive) and yet this not be noticed or commented on by colleagues."

Ms Lee emphasised that this would be unusual but not impossible; the Respondent's brother Mr Rofik Ali stated that his family noticed a change in the Respondent; he described instances where the Respondent's behaviour had been markedly changed and his appearance was unkempt. His behaviour at family gatherings was unusual and out of character even though he was not drinking when attending those events. The Respondent sought legal advice from his brother, arranged to meet him but did not turn up without explanation. The Respondent said that he changed his normal working habits and did more work from home, went into the office less and used trains rather than always driving to appointments. The Tribunal heard about the mistakes he admitted he made such as double booking and confusion about where he should be.

50.23 Ms Lee submitted that Dr Garvey was unaware of the Respondent's working habits but did not have the opportunity to put his concerns to the Respondent and the Applicant did not pursue them direct with the Respondent. However Dr Garvey admitted there was some impact on the Respondent's behaviour at that period. At 4.5.1 of his report, Dr Garvey stated:

> "[The Respondent's] description of events is that as a result of increased anxiety he inadvertently double-booked various appointments and then had to cancel at the last minute. It also seems to be suggested that he was anxious about taking on certain duties in Court and tried to avoid these. Such behaviours are certainly quite possible if [the Respondent] was anxious and if he was self-medicating with alcohol and non-prescribed medications, though they are very unlikely to have been the only such symptoms he displayed at work and other aspects of his work should also have been impaired."

Ms Lee submitted that there was evidence that other aspects were affected. Much was made of individual elements and how they affected the Respondent but the entirety of events needed to be looked at. At 4.3.1, Dr Garvey looked at one aspect:

> "If [the Respondent] were under the influence of alcohol at work, this is likely to have been at least suspected by close colleagues."

However Dr Garvey very fairly conceded that persons "taking small amounts of drugs or who have developed tolerance to the effects of larger doses through repeated administration may however not show evidence of intoxication." Ms Lee submitted that much had been made of the smell of alcohol on the breath but in the ordinary course that would depend how close one stood to the individual. The Respondent said he was conscious of the risk and used strong aftershave but it must also be considered in terms that he was not drinking in the day and he used medication during the day from unreliable sources and it was the fluctuating level of alcohol and medication that might have had the greatest impact on his state of mind. The Respondent said he quickly built up a tolerance to alcohol such that it did not have the desired effect and so eventually he was consuming a 75cl bottle of vodka a night and then to avoid detection he would stop drinking abruptly and rely more heavily on medication. This would cause rapid and dramatic fluctuation in the levels of chemicals in his system.

50.24 Ms Lee submitted that the Applicant relied on the Respondent's June 2013 appraisal which was more than 6 months after the episode had ended to say that the Respondent's work pattern was not affected but the Respondent said it was copied from a self-assessment that he completed and he had now that original available but would not apply to admit it unless it was required. In Dr Garvey's 31 May 2017 letter, he commented on a letter from the Respondent's GP dated 10 April 2017 which described the Respondent as being "significantly depressed currently and has had recent suicidal ideation". Dr Garvey noted with some concern that the Respondent had not put forward these points to support his application (to adjourn) and stated:

> "It can however be the case that persons with significant depression are poor judges of their current level of functioning."

Dr Hussain's report at 4.1 described the Respondent's symptoms including in 2012 "total abandonment of leisure activities such as gymnasium attendance" "feelings of dejection and hopelessness, insomnia, very limited appetite, constant belief of his life degenerating on a daily basis" and suicidal ideation and:

> "[The Respondent] describes having no recollection of large periods of time during the period."

Dr Garvey stated that the Respondent's close colleagues would have noticed his problems and commented but at 10.4 of her report Dr Hussain stated:

> "[The Respondent's] inability to attend to his conduct during the above period [from 2012 to 2014] is attributable to lack of confidence and deficiency of trust at his work place."

The Respondent described his work pattern, his limited contact with people in the office and Dr Garvey admitted he knew nothing of the Respondent's working environment and work patterns. The Respondent described how he struggled in the limited periods he was in the office; he could not concentrate to the extent he was going to the washroom in the day to splash water on his face to aid concentration. The Respondent explained the structure of the firm and his pattern of work which was largely unsupervised without close relationships. Ms Lee submitted that he formed no close relationships with colleagues and indeed there were some colleagues

whom he felt were asking him to take on too much. The lack of interest of his colleagues was demonstrated by the fact he had a hair transplant and returned to work with a full head of hair having previously been bald and yet not one person made a single comment. His supervisor Ms PP was based in a different city and met with him infrequently. Contact was limited to either nodding to each other at a group meeting in London or a file review at which he stated that she would spend little time with him perhaps in the region of 5-10 minutes. These took place spasmodically and months would go by with no real contact whatsoever. It was known that the Respondent's last appraisal was at the end of 2011 and he was not appraised again until June 2013. The memorandum produced by the Applicant of August 2012 was simply a note about a pay increase or in that case no pay increase and there was no evidence or suggestion put forward that it was in any way connected to an appraisal. Ms Lee submitted that failure to appraise the Respondent during that period was the loss of a valuable opportunity by the firm to pick up problems which it was intended appraisals should do. Even if the Respondent was only suffering from mild to moderate depression a diligent appraiser should have picked up problems and efforts been made to support him. Dr Garvey anticipated that a lower level of depression could lead to someone being off sick:

> "somebody with moderate depression would, in nearly all circumstances, be off sick from work…Such a depression can however significantly affect functioning."

However Ms Lee submitted that no such problems were noted and this gave credence to the Respondent's assertion that the appraisal document was largely filled out by him and transcribed by Ms PP with very little or no assessment being made as to how the Respondent was functioning. Ms Lee submitted that it was not known how well he was doing his work; the firm did not properly analyse it. They were fully aware that mental illness is a disability and a protected characteristic like any other disability and steps should have been taken to support the Respondent. It was suggested at the hearing that this was a very complex fraud but it was far from that.

50.25 Returning to Dr Garvey's suggestion that work colleagues would have noticed the situation developing, Ms Lee questioned how likely it was that these particular colleagues in this situation would have noticed any changes or if they did would they have commented on them. She submitted that they had failed to notice the depression even at the level assessed by Dr Garvey which he argued could noticeably impact on the Respondent's day to day activities. However nothing was noticed or commented on although Dr Garvey stated at 4.4.1 of his report:

> "…though as an experienced employee and with much greater effort, [the Respondent] may have been able to continue to function reasonably well on a day-to-day basis."

50.26 Ms Lee submitted that the Respondent had made various attempts to describe what he did and why, but he could not be certain; he surmised at the interview. His evidence was that he did not know what he had done until the trigger of the investigation which was set out in Dr Hussain's report at 10.4. Dr Garvey said that there could be reasons why the Respondent was not aware including alcoholic blackouts and deeper psychological aspects but the truth was that the Respondent was not aware and could

not explain. Dr Hussain's report stated that the FI Report was likely to have been a first trigger in recollecting events that had not fully registered with him. It was the Respondent's evidence that by the end of 2012 he had returned to family life and got back control but marital separation resumed in 2014. He had had the benefit of a period of recovery and a fear that he might return to his old patterns and he immediately sought help from his GP. Dr Hussain reviewed the treatment he received from his medical records and said it was appropriately given and there was no further recurrence of problems with his work. The Respondent deliberately sought to reduce the type of work he did to reduce such problems. In short, the Respondent was suffering from an illness such that his judgment was impaired through no fault of his own.

Submissions for the Respondent in respect of the allegation of dishonesty

50.27 Ms Lee agreed that the test for dishonesty was now set out in paragraph 74 of Ivey. The Tribunal must first establish the facts and when once they were established determine whether there was dishonesty. There was no requirement that the Respondent must appreciate that he was dishonest. Ms Lee also referred the Tribunal to part of paragraph 60 of Ivey and the example of someone who did not pay his bus fare because he believed travel was free:

> "But the man in this example would inevitably escape conviction by the application of the (objective) first leg of the *Ghosh* test. That is because, in order to determine the honesty or otherwise of a person's conduct, one must ask what he knew or believed about the facts affecting the area of activity in which he was engaging. In order to decide whether this visitor was dishonest by the standards of ordinary people, it would be necessary to establish his own actual state of knowledge of how public transport works. Because he genuinely believes that public transport is free, there is nothing objectively dishonest about his not paying on the bus. The same would be true of a child who did not know the rules, or of a person who had innocently misread the bus pass sent to him and did not realise that it did not operate until after 10.00 in the morning. The answer to the court's question is that "dishonestly", where it appears, is indeed intended to characterise what the defendant did, but in characterising it one must first ascertain his actual state of mind as to the facts in which he did it. It was not correct to postulate that the conventional objective test of dishonesty involves judging only the actions and not the state of knowledge or belief as to the facts in which they were performed. What is objectively judged is the standard of behaviour, given any known actual state of mind of the actor as to the facts."

Ms Lee submitted that regarding Ivey and Wingate and Evans, state of mind was one of the factors that the Tribunal had to take into account; it was part of all the facts to be considered and Lord Justice Jackson amplified that point. It was not to be considered as a separate limb as in R v Ghosh [1982] QB 1053. Ms Lee submitted that the Respondent's mind was confused as to what he was doing. Outside that period he would have known more clearly. Both the experts were very clear that was possible and it was for the Tribunal to decide if that was what happened. Ms Lee confirmed that if the Respondent's state of mind was such that he did not consciously

or intentionally fabricate invoices the Tribunal had to consider his actions against that background. .

50.28 Ms Lee submitted that the Respondent was so shocked by the trigger event that it triggered a mental illness and in the grip of the illness he started self-medicating. It was a function of that illness that his judgment was affected to the extent that he was unable to seek help, and started trying to deal with his symptoms; he drank alcohol at night so he could sleep and he used a variety of medications in the day so that he could function. Given that medication was bought from the internet, rather than prescribed from a reliable source it would be of uncertain ingredients and strength which could vary from dose to dose. Ms Lee referred to Dr Hussain's report at 10.2 quoted above in respect of his "mal-coping strategies", and the common side effects of the Respondent's benzodiazepine self-medication, which had fluctuating effects. Dr Hussain stated that they could affect judgment (her report at 10.3 above) and as she said in cross examination that extended to the Respondent's ability to understand the difference between right and wrong. Ms Lee submitted that Mr Bullock made much of one of those factors in isolation but the Tribunal must consider the impact of all four factors combined together; the underlying illness, the use of alcohol in someone who was previously teetotal, the use of medication without medical supervision and medication the precise contents of which would be unknown. One must also consider the pattern of drinking and use of medication described; he would have had fluctuating levels of chemical impacting on him. Ms Lee submitted that the evidence was such that given the Respondent's state of mind which was supported by medical evidence it would not lead ordinary decent people to conclude that his actions were dishonest. Ms Lee submitted that it was suggested that this was a very complex fraud but there were aspects of the documents produced that were confused and pointless and would guarantee that the problem would be discovered.

50.29 Ms Lee appreciated that the testimonials were of limited assistance at this stage in assessing liability but they should be taken note of where they said what the Respondent had done was out of character. They included testimonials from legal professional colleagues and people who had known him since childhood. They all stated they were aware of the allegations. The testimonials included one from a client who was a paramedic. He said:

> "even if we were aware of the allegations against [the Respondent] we still would have felt safe within his care. I do not believe [the Respondent] poses any risk to anyone's legal cases because I do not believe that he could be dishonest or unprofessional."

50.30 Turning to the judgment in the case of Wingate and Evans, Ms Lee referred to what Lord Justice Jackson had said at paragraph 117:

> "We now know that the test for dishonesty is objective and that even an objective test involves having regard to the state of mind of the actor."

And at paragraph 119:

> "In reaching that conclusion the judge was not simply looking at what Mr Wingate did and said. He also expressly took into account the facts which Mr Wingate knew and his state of mind."

In this case the factual evidence was admitted. All that remained for the Tribunal to do was to determine what the Respondent knew and his state of mind during the period in 2012. The Tribunal then had to apply an objective test to determine if he was dishonest.

50.31 Ms Lee submitted that the available evidence supported the Respondent's version of events and Dr Hussain's analysis and addressed Dr Garvey's queries. The Tribunal must assess the evidence regarding what both experts agreed was mental illness. The self-medication and the failure to seek help were symptoms of that mental illness. The Tribunal could fairly conclude that the Respondent's judgment was impaired through no fault of his own. The Tribunal must then apply the test for dishonesty and Ms Lee submitted that dishonesty was not proved beyond reasonable doubt.

50.32 Ms Lee clarified for the Tribunal that she asked it to consider the Respondent's underlying illness, his alcohol use, his self-medication and that the latter was of unknown and fluctuating strength. In assessing whether he knew the difference between right and wrong, it was part of his case that he did not understand. The Tribunal would need to be guided by the expert evidence as to the level of the Respondent's depression, take all the factors into account and assess his mental state. Elements of the testimonials might go to liability; other aspects went more to sanction. The testimonials did not deal with specificity.

50.33 As to the final sentence of paragraph 74 of Ivey:

> "There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

Ms Lee submitted that while knowing the difference between right and wrong was not to be subject to a separate test as it has been in Ghosh, the Tribunal could take it into account. The Tribunal must consider all the facts and then apply the test; a relevant fact for dishonesty was the Respondent's state of mind but it was not determinative. In discussion with the Tribunal, Ms Lee agreed that there should be no separate consideration of the Respondent's state of knowledge under the Ivey test. The Chairman put it to her that the Respondent's state of knowledge as to the facts was relevant in applying the test. Ms Lee submitted that the Tribunal must consider all the circumstances including the Respondent's state of mind including his knowledge of the difference between right and wrong. The Tribunal should consider all the relevant facts and then apply the test. Ms Lee submitted Mr Ivey said he did not know he was committing a moral wrong. The Respondent did not say that he genuinely thought he had a right to submit a false claim to the NTT; this was different from a denial of the facts; the question was not whether he thought he had a right to do what he did but what was his state of mind. Ms Lee submitted that if Ivey's argument had prevailed the more morally bankrupt one was the more likely to be acquitted of dishonesty. The circumstances in Ivey were very different from those herein as much as it was not said in Ivey that Ivey's state of mind was in any way confused as to what he was doing. In the case of the Respondent, moral bankruptcy was not the issue. The medical evidence and the Respondent's evidence had to be taken into account to determine the Respondent's state of mind at the material time.

Submissions on points of law for the Applicant

50.34 Mr Bullock submitted that it was accepted that Mr Williams' representations were sent by him to the Applicant on an open basis. Counsel as a matter of law had apparent authority, even if not actual authority, to waive privilege for their client so the representations must properly be treated as an open document. Mr Bullock submitted that in any case it was a little late to object to admissibility on the fourth day of the substantive hearing when it was referenced on the first day of the hearing. Mr Bullock submitted that he did not believe that he opened the case on the basis that the views expressed in the document were in any way determinative of the issue. The significance of the document and of the Respondent's willingness to admit lack of integrity were relevant to the Respondent's own views of lack of integrity at that date. It was a document written on considered legal advice.

50.35 Mr Bullock raised other matters raised regarding the factual submissions which concerned him.

- The Respondent's closing must be confined to what his evidence actually was. Regarding matters the subject of the allegations his evidence was that he could not recall what went on; it was not open to him at this stage to advance a positive case regarding the circumstances in which the documents were created, since his evidence was that he could not recall that.

- Following on from that it was said on a number of occasions there was psychiatric evidence to the effect that at the relevant time the Respondent could not tell the difference between right and wrong which did not accord with Mr Bullock and his colleague Mr Horton's recollections of the evidence of Dr Garvey or Dr Hussain. His recollection was that Dr Hussain went so far as to say there was a possibility of the Respondent's condition leaving him unable to tell the difference. His recollection of Dr Garvey's evidence was that some extreme psychiatric conditions might prevent one being able to tell the difference. Neither went so far as to assert positively that the Respondent could not tell the difference between right and wrong in 2012. The Ivey test would be dealt with by him here against that backdrop.

50.36 As to the Ivey test, Mr Bullock submitted that Ms Lee had quoted paragraph 60 of Ivey in part, Mr Bullock read out the entire paragraph:

> "It is plain that in *Ghosh* the court concluded that its compromise second leg test was necessary in order to preserve the principle that criminal responsibility for dishonesty must depend on the actual state of mind of the defendant. It asked the question whether "dishonestly", where that word appears in the Theft Act, was intended to characterise a course of conduct or to describe a state of mind. The court gave the following example, at p 1063, which was clearly central to its reasoning:
>
> > "Take for example a man who comes from a country where public transport is free. On his first day here he travels on a bus. He gets off without paying. He never had any intention of paying. His mind is clearly honest; but his conduct, judged objectively by what he has done, is

> dishonest. It seems to us that in using the word 'dishonestly' in the Theft Act 1968, Parliament cannot have intended to catch dishonest conduct in that sense, that is to say conduct to which no moral obloquy could possibly attach."

> But the man in this example would inevitably escape conviction by the application of the (objective) first leg of the *Ghosh* test. That is because, in order to determine the honesty or otherwise of a person's conduct, one must ask what he knew or believed about the facts affecting the area of activity in which he was engaging. In order to decide whether this visitor was dishonest by the standards of ordinary people, it would be necessary to establish his own actual state of knowledge of how public transport works. Because he genuinely believes that public transport is free, there is nothing objectively dishonest about his not paying on the bus. The same would be true of a child who did not know the rules, or of a person who had innocently misread the bus pass sent to him and did not realise that it did not operate until after 10.00 in the morning. The answer to the court's question is that "dishonestly", where it appears, is indeed intended to characterise what the defendant did, but in characterising it one must first ascertain his actual state of mind as to the facts in which he did it. It was not correct to postulate that the conventional objective test of dishonesty involves judging only the actions and not the state of knowledge or belief as to the facts in which they were performed. What is objectively judged is the standard of behaviour, given any known actual state of mind of the actor as to the facts."

The points which Mr Bullock submitted should be drawn from that were that the test for dishonesty is an objective one; state of mind is not one factor which may or may not be taken into account in deciding whether there has or has not been dishonesty. It could not be said that one could not have regard to state of mind. One could not say we do not have to have regard to state of mind as we used to under Ghosh and Twinsectra but we can consider it if we think it relevant. The question is was this dishonest objectively on the known facts and one of the known facts may be the known state of mind of the actor as to the facts. If the actor comes up with a positive case that he did not believe he was being dishonest because he thought he could travel on the bus free or he did not understand he had to pay because the rules were complicated or he did not know they existed or misread his bus pass and said I thought I could travel for free at any time but it is only off-peak that I can travel free, that would suffice to acquit of dishonesty. Mr Bullock submitted that the missing link here was the absence of a positive case from the Respondent. He did not say that he thought he was being honest on 6 occasions over the 7 months to fill in claim forms as he did and give a reason why. What he said was that he could not recall doing the acts and was suffering from mental ill health at the time. If the test was an objective one, as the Supreme Court had said that it was; and if the focus was the standard of behaviour given any known actual state of mind of the actor, then the fact that the actor was suffering from mental ill health and might, therefore, have acted out of character or exercised poorer judgement than might otherwise be the case might be a matter that mitigated the severity of what he did but it did not prevent him from being objectively dishonest. The focus on state of mind in paragraph 60 of Ivey was firmly as to the effect that state of mind had on the question of whether there was objective dishonesty. A person could not be dishonest if he believed that what he was doing was

something he honestly believed he was entitled to do, as in the example given in that paragraph. Mr Bullock submitted that the Respondent not being able to tell the difference between right and wrong was not sustainable having regard to the psychiatric evidence but even if he could not tell the difference between right and wrong, it would not suffice on a proper application of the Ivey test to acquit him of dishonesty. Indeed, it would be surprising if it did for the following reason. If an inability to tell the difference between right and wrong meant that one was not objectively dishonest, then one was left with the rather peculiar situation that by the objective standards of ordinary and decent people the sociopath who had no concept of common morality could never do anything dishonest. For those reasons, Mr Bullock submitted that the legal position as to the test for dishonesty was clear and could only take the Tribunal in one direction and to suggest that the Respondent's state of mind was in some way a fact to which the Tribunal might have regard even though not sufficient to acquit him of objective dishonesty was an attempt to introduce what he termed the "Ghosh heresy" by the back door.

Findings of the Tribunal

Allegation 1.1

50.37 The Tribunal had regard to all the evidence, including the oral evidence and to the submissions for both parties. It accepted the Respondent's admissions, given on oath, that on dates unknown between 12 March 2012 and 26 November 2012, he created false documents (telephone attendance notes; full attendance notes; letters and/or invoices) on 6 separate client files. The evidence supported the admissions, so that the Tribunal could be sure that the Respondent and not someone else had created the documents; the Respondent was in charge of the 6 cases which were the subject of the allegations. The Respondent had also made earlier admissions - for example to Ms PP (on 2 April 2015), to the firm, in his response to its investigation report of 11 March 2015 and in his expansion on that response to the Applicant and his response to the allegations dated May 2017.

50.38 The Tribunal also found proved beyond reasonable doubt that what the Respondent had done constituted a failure to behave in a way that maintained the trust the public placed in him and in the provision of legal services (Principle 6). Indeed the Respondent admitted breaching Principle 6.

50.39 The Respondent denied that his actions lacked integrity and thereby breached Principle 2 and he denied that he had acted dishonestly. As to dishonesty, the Tribunal applied the test for dishonesty set out in the judgment of Lord Hughes, with whom the other Supreme Court justices had concurred, in the case of Ivey. There was no dispute as to the facts as set out in the Rule 5 Statement; they were admitted. The first question considered was the Respondent's actual state of knowledge or belief (subjectively) as to the facts when he created the false documents. As Lord Hughes had held in Ivey, "there was no requirement that the [Respondent] must appreciate that what he has done was by those standards [i.e. by the objective standards of ordinary, decent people] dishonest. The Tribunal was satisfied that the Respondent had knowingly falsified the invoices. The Tribunal considered whether the Respondent's state of knowledge or belief as to the facts had been so affected by depression, alcohol and self-medication, as to affect his state of mind at the time. This

had been the subject of many hours of expert psychiatric evidence during the hearing. The Tribunal had heard at length from two consultant psychiatrists, one for each party, and had had the benefit of their written reports. There was no contemporary medical evidence of the Respondent's mental health at the material time, as the Respondent had not consulted his General Practitioner about mental health issues. As a result the psychiatrists' diagnosis had been made retrospectively, based on what the Respondent had said were his mental state and symptoms and, in the case of Dr Hussain, who, unlike the Applicant's psychiatrist, Dr Garvey, had seen the Respondent, also based on what she observed regarding any residual symptoms. The Tribunal noted and gave weight to the explanations as to why an individual, particularly in the Respondent's circumstances and from his cultural background, might seek assistance with fairly trivial physical ailments but not seek help for mental illness. Dr Garvey, for the Applicant, had diagnosed mild to moderate depression at the material time and Dr Hussain diagnosed severe depression. The Tribunal had regard to the definitions of depression in ICD-10 to which it had been referred and which are set out in the Annex to this judgment. The Tribunal also had regard to the Respondent's description of his symptoms and the evidence of his brother Mr Ali about how he presented to family members at the material time. The Tribunal noted that there was not a great deal of difference in the views of the expert psychiatrists, aside from their classification of his degree of depression. Dr Garvey mentioned the difficulties inherent in making a retrospective diagnosis whereas Dr Hussain stated that her assessments started from previous presentations and went back as far as the subject's school days. Both experts emphasised their reliance on what the Respondent told them of his condition.

50.40 Dr Garvey stated in evidence that examples of mental illness that might lead to one thinking a dishonest act was honest included very serious psychotic depression where one could develop delusions, bipolar affective disorder and schizophrenia or dementia. In these severe mental illnesses the ability to know the nature of what one was doing could be lost. Dr Garvey did not think that any of these conditions were suggested here. What one would see with mild depression was concentration not being as it was normally; socialising would go less well, it would be hard to appear spontaneous, to show enjoyment. It would take longer to do work, with more reluctance to take on difficult or more challenging work. One could be more snappy and irritable. In his report Dr Garvey said moderate depression could significantly affect functioning. He also stated in his report that if someone was intoxicated by drugs and/or alcohol and did not know what they were doing their behaviour would be quite disorganised and he stated in evidence that it would be unlikely that they could do something quite complicated. Dr Hussain had the benefit of seeing the Respondent. She considered that the Respondent was suffering from severe depression at the material time. In response to the question from the Tribunal as to whether she was suggesting that the Respondent was delusional she replied "Not at all". Dr Hussain responded to the Tribunal that she considered that it was unlikely that if the Respondent had been suffering cognitive decline he would have repeatedly produced documents without knowing what he was doing. The Tribunal also had the benefit of hearing the Respondent give evidence at length. The Tribunal gave due weight to the professional opinion of Dr Hussain but it did not consider, based on all the evidence including the oral evidence, that at the material time the Respondent's description of his symptoms and how he coped with work (which is discussed at some length below) accorded with the ICD-10 definition of severe depression where, as Dr Garvey

summarised, the Respondent would have required some form of support and assistance in managing his day-to day care. In the light of the psychiatrists' views about his ability to distinguish between right and wrong given in oral evidence (see below) it was not crucial to determine the degree of the depressive illness although the Tribunal had been able to arrive at a determination on that point.

50.41 In the light of the psychiatric evidence, the Tribunal considered whether the Respondent's mental state at the material time was such that he created documents without knowing that he was falsifying them and without realising that he should not do so – whether he was unable to appreciate at the time that in falsifying and deploying falsified documents he was acting in breach of the SRA Principles. The Respondent stated in evidence that he did not recollect any of the cases referred to in the Rule 5 Statement. It was 6 years ago. They occurred during the time he was self-medicating and drinking excessive amounts of alcohol, which affected his memory; he was not functioning properly. He did not know what he was doing on a day to day basis. As a result of the combination of alcohol and antidepressants, he said he could not think rationally and logically. The period was just a blur; the cases did not mean anything to him now. However he also stated that he was well enough at the material time to attend at least preliminary court hearings and on occasions police station interviews. He agreed in cross examination that even on simple court matters, advocacy required a proper grasp of the papers to do the job properly and that he had not turned up at court unless he felt that he was up to the job. On the Respondent's own evidence, he was sufficiently self-aware to self-medicate to enable him to work and carry out his functions and to decide when to drive and when to use the train to meet his professional commitments. He self-medicated with cognisance and carefully; he gave evidence that he would not drink to excess when he had to go to court the next morning and was able to organise his professional diary, for example fixing police station interviews at 5pm, because the nature of his work and that of his department was not that of a conventional criminal law firm; matters arose out of clients' employment. The Tribunal also noted that his files were subject to peer review as to 2 files per month throughout the period. The question of a dissociative disorder and alcoholic blackouts was only raised during the hearing and while the Tribunal noted that the Respondent stated that he self-medicated to get through the working day there was no suggestion he was psychotic or delusional at the material time, even if he might the following day have forgotten events of the night before when he was drinking. No evidence had been provided by the Respondent's colleagues of his ability to function but the Tribunal had heard credible testimony from his brother relating to his general health and well-being at the material time. The Tribunal regarded as a neutral point the fact that work colleagues did not apparently note the Respondent's condition or for example comment upon the Respondent's changed appearance after his hair transplant as there were various reasons why if they did notice it they chose not to remark upon it and on the Respondent's own evidence was never close with anyone in the firm, did not mix socially with colleagues or discuss his personal affairs with them; he was a very private person. He said in evidence as to whether anyone noticed, he was good at masking things except from close family. The Respondent described the way he changed his ways of working so that his difficulties would not become known at the firm. He was often out and would deliberately stay out of the office. He could go straight to the police station and go back home. He stated that it was such a large firm that one could go months and not be noticed by anyone and that it was amazing what smart clothes and a strong attitude

could do; looks could be deceiving. As to his having carried out a self-assessment as the basis for his June 2013 appraisal, while the Respondent stated that he might have been fooling himself as to his performance, it was subject to review by his supervisor. The Tribunal also noted that although similar, the documents in each of the 6 cases were not identical and the Tribunal found they required attention in the fabrication of their detail, particularly with the attendance notes and letters. These were, in the opinion of the Tribunal, sophisticated fabrications made during a multi-stage scheme, as Mr Bullock had suggested. The Tribunal was sure that to have done what he did the Respondent must have known what he was doing because of the complexity of each of the creations on each individual file and the fact he did it on 6 files over a period of months.

50.42 The Tribunal also had regard to the evidence of both the experts who were specifically asked about this point. Dr Garvey stated in his report that if someone was intoxicated by drugs or alcohol and did not know what they were doing, their behaviour would be quite disorganised and he stated in evidence that it would be unlikely that they could do something quite complicated. Dr Hussain stated in evidence that she considered that it was unlikely that if the Respondent was suffering cognitive decline he would have repeatedly produced documents without knowing what he was doing. Having regard to the psychiatric evidence taken with all the other evidence including that of the Respondent, the Tribunal determined that the Respondent was not so affected by the combination of his depression, his intake of alcohol and self-medication with un-prescribed drugs of unknown and possibly fluctuating strength, that he could not appreciate that he should not falsify documents, and that he should not deploy false documents in the manner that he had as to do so would breach the SRA Principles.

50.43 Having considered carefully the evidence including all the oral evidence and the testimonials as to the Respondent's character which were of a general nature, the Tribunal was sure beyond reasonable doubt that the Respondent knew that he was fabricating the false documents covered by the allegations and acted deliberately to cover up his mistakes in double booking advocacy in the 6 cases. Ordinary decent people would certainly consider those acts to be dishonest, taking into consideration the Respondent's state of knowledge or belief as to the facts. The Tribunal therefore found dishonesty proved beyond reasonable doubt in respect of allegation 1.1.

50.44 As to lack of integrity, Ms Lee had expressed concern about the reference to a possible admission of breach of Principle 2 in a document prepared by Mr Williams QC and sent to the Applicant in open terms but as part of negotiations before the hearing. The Tribunal had no doubt that the document was admissible as the document was sent in "open terms" and there was clear authority, implied if not explicit, for Mr Williams to say what he did on the Respondent's behalf. In the light of the evidence and the Tribunal's findings of fact that document was not determinative in this case in any event. The Tribunal applied an objective test to the facts in determining whether Principle 2 had been breached. It had regard to the case law authorities; the requirement to adhere to the ethical standards of the solicitor's profession set out in the case of Wingate and Evans v SRA, SRA v Malins [2018] EWCA Civ 366 which required more of the Respondent than mere honesty. As set out in Hoodless v Financial Services Authority [2003] UKFSM FSM007 "integrity" connoted moral soundness, rectitude and steady adherence to an ethical code. The

Tribunal found that in creating the false documents the Respondent had failed to adhere to the required standards. Indeed he had gone beyond that and had acted dishonestly. Since the Respondent had acted dishonestly, it must logically follow that the Respondent had lacked integrity and the Tribunal therefore found breach of Principle 2 proved beyond reasonable doubt. The Tribunal therefore found all aspects of allegation 1.1 substantiated on the evidence beyond reasonable doubt.

Allegation 1.2

50.45 The Tribunal had regard to the evidence including the oral evidence and to the submissions for both parties. It accepted the Respondent's admissions given on oath that on dates unknown between 11 October 2012 and 17 June 2013 he provided misleading information to the NTT. In his response document to the firm's internal investigation report of 11 March 2015, the Respondent gave a precise explanation of what he had done at 5-48.1:

> "This resulted in the originally instructed counsel/agent being cancelled with little or no notice. As a consequence of this the agent would subsequently send in their invoice for an aborted hearing. The invoice would be placed on to the file. It would not be until the file had concluded that the initial errors would come to my attention again. At this stage it would be too late for any kind of negotiation to reduce the agent's fee note.
>
> As Thompsons would still be liable to pay the invoices because of my errors I accept I did try and amalgamate the invoices into the final bill by amending the invoices or attendance note…"

In respect of his answers to the IO's requests for clarification regarding his explanation in the above document the Respondent said:

> "The notes were likely to have been done at the time the file was prepared for closure/billing and not when the booking of an agent was done. The dates and time frames aren't accurate as I was trying to prepare a file to a standard it would have been had it not been for my errors and incompetence."

In evidence, the Respondent stated that he did not recall providing misleading information to the NTT; that he was trying to co-operate and assist, thinking of explanations for how it could have happened. He could not recall the specifics or mechanics and was trying to show that he was willing to engage. Mr Bullock put it to the Respondent that on 4 of the 6 files, costs were applied for in 2013 when the Respondent was not drinking heavily or depressed. The Respondent answered "possibly yes" but at that stage all he was doing was printing out the bill and sending it off with the file. As to his mental state in June 2013, the Respondent stated that he did not believe he was functioning properly, he was not on top of the work and bills were submitted late to the NTT. He did not check the bills. The Tribunal found that the same evidence and the same motivation supported these admissions as for allegation 1.1. The Respondent's case was that he submitted the entirety of the files with bills which he merely printed off and did not review. However some bills, those created for LS were submitted to the NTT and other bills, those for Mr AH or H Solicitors were not, which the Tribunal considered supported the files having been

reviewed before submission. In Ms PP's statement she said that individual fee earners were responsible for the completion of paperwork and would then send the completed bill and file to the NTT. The Tribunal found that the Respondent had the presence of mind knowingly to select what should be submitted. In any event the Respondent admitted submitting misleading information and that doing so constituted breach of Principle 6 but he denied breach of Principle 2 or dishonesty. For the same reasons as set out under allegation 1.1 above, the Tribunal was sure that the Respondent knew that he was submitting misleading information when he did so and that this amounted to behaving dishonestly by the standards of ordinary decent people. The Tribunal therefore found dishonesty proved beyond reasonable doubt on the evidence in respect of allegation 1.2. It followed, as a matter of logic, that since the Respondent had acted dishonestly, of necessity he had lacked integrity. All aspects of the allegation were therefore proved beyond reasonable doubt.

Allegation 1.3

50.46 The Tribunal had regard to the evidence including the oral evidence and to the submissions for both parties. The Tribunal accepted the Respondent's admissions that on dates unknown between 19 December 2012 and 13 December 2013 he caused or permitted the payment of invoices from monies received from central funds, for purposes and/or to recipients other than those authorised by the NTT. He denied that he breached Principle 2 or that he was dishonest but admitted that he had breached Principle 6. It was not disputed that in respect of all 6 client matters invoices purporting to come from LS were sent to the NTT in support of the claim for costs when in fact no such entity had been involved in the matter. (The Respondent gave evidence that LS was an arm of H Solicitors; that firm would bill through that entity every time.) This resulted in repayment by the firm of over £7,000 to the NTT in relation to payments received for work purportedly carried out by Mr AH on the 6 client matters. The Respondent accepted that people not authorised to be paid were in fact paid. Almost all of the payments were made after the period when the Respondent was unwell. The Tribunal found that the actions that gave rise to allegation 1.3 were consequential upon the Respondent having submitted the misleading information to the NTT. Payment to unauthorised people was the inevitable consequence of the Respondent's earlier actions, regardless of the payment being made by the firm's accounts department to whom he passed the file. Accordingly the Tribunal found proved beyond reasonable doubt that the Respondent had breached Principles 2 and 6 and had acted dishonestly with respect to allegation 1.3.

Previous Disciplinary Matters

51. None.

Mitigation

52. For the Respondent, Ms Lee submitted that whilst all findings of dishonesty were serious, there was a scale of dishonesty and this was at the lower end of the scale. Having regard to the factors which the Tribunal would take into account in determining seriousness, the medical evidence was relevant to the Respondent's culpability. Through no fault of his own, an occurrence so dreadful had triggered

mental illness in the Respondent that this had led to self-medication and mal-coping strategies that worsened the symptoms of his illness. As to the harm occasioned by what he had done, the Respondent accepted that all dishonesty by a solicitor brought the profession into disrepute. The extent of the harm in this case was around £7,000.00 to the firm, which he offered to reimburse, but he accepted that the greater harm was to the reputation of the profession. Once it was brought to his attention, the Respondent immediately admitted that it must have been he who had carried out those actions and he co-operated throughout. His actions made no sense and he received no financial benefit. The actions were those of a vulnerable man who was unwell. He had insight; the Tribunal had seen his letter of apology of 6 September 2016 in which he expressed the shame he felt. Ms Lee submitted that there were exceptional circumstances; his conduct stemmed entirely from the Respondent's mental illness, triggered by an event for which he was blameless. These events occurred in 2012 and despite further setbacks, including the breakdown of his marriage, he had learned to seek help from medical advisers and be more open about his illness with his doctors, his family and his friends. He had practised without restriction since 2012, including a further two years with the firm and there have been no problems since that date and that period. He was a man of previous good character and was well respected as a criminal practitioner, a career at which he excelled. He wanted to be a criminal practitioner to help people and to serve justice and it was particularly painful for him that he was in this position. Testimonials had been submitted which Ms Lee highlighted. The first of them (a solicitor who had known the Respondent since they were at school together) made it quite clear that he was aware of the allegations. He stated:

> "I sincerely believe that [the Respondent] would not intentionally do an act of dishonesty and would not put his career and reputation on the line."

He also stated:

> "Please consider the exceptional and compelling circumstances of [the Respondent], as the allegations are completely out of character and I sincerely believe he deserves the benefit of the doubt and should be given an opportunity to rectify matter that were overlooked or any mistakes made."

A reference from a barrister stated:

> "I always regarded him as an upright and honest individual and I was very surprised to hear of the proceedings he is facing."

Another barrister said:

> "In short as far as I was concerned [the Respondent] has always been an epitome of professionalism and this dishonest behaviour was very much out of character."

An individual who had been to school with the Respondent's older brother said he was shocked about the allegations and stated categorically that this was out of character. He always found the Respondent to be both personally and professionally honest and had never had cause to question his integrity or judgment. He said the

enormity of a situation that rocked the livelihood of a man and his family could not be understated. The rest of the testimonials were of similar experience; there was shock and concern as someone who trained under the Respondent said:

> "[The Respondent] has always been a man of strong ethical values. During our working together he would always be the individual advising me to keep the values we have as individuals reflected in our work. Even after we were no longer working together [the Respondent] would always conduct himself with dignity and respect for all individuals."

Ms Lee submitted that the Respondent had committed a grave error of judgment at a vulnerable time in his life and there was no risk of repetition. He had taken steps to manage his condition and to be able to be open with his family, friends and others about life events. He apologised under oath for the shame he had brought on himself, his family and the profession he loved.

Submissions for the Applicant on exceptional circumstances

53. For the Applicant, Mr Bullock referred to Bolton which summarised the purposes of sanction as being firstly to ensure that a Respondent did not have the opportunity to repeat their offence and more fundamentally to protect the reputation of the profession and so personal mitigation carried relatively little weight in this jurisdiction. Mr Bullock referred to the judgment SRA v Sharma [2010] EWHC 2022 (Admin) where Mr Justice Coulson said at paragraph 13:

> "It seems to me, therefore, that looking at the authorities in the round, that the following impartial points of principle can be identified: (a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll, see Bolton and Salisbury. That is the normal and necessary penalty in cases of dishonesty, see Bultitude. (b) There will be a small residual category where striking off will [be] a disproportionate sentence in all the circumstances, see Salisbury. (c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was momentary, such as Burrowes, or [over] a lengthy period of time, such as Bultitude; whether it was a benefit to the solicitor (Burrowes), and whether it had an adverse effect on others."

The case of Imran was also helpful because at paragraph 24 it put a gloss on Sharma:

> "Clearly, at the heart of any assessment of exceptional circumstances, and the factor which is bound to carry the most significant weight in that assessment, is an understanding of the degree of culpability and the extent of the dishonesty which occurred. That is not only because it is of interest in and of itself in relation to sanction but also because it will have a very important bearing upon the assessment of the impact on the reputation of the profession which Sir Thomas Bingham MR (as he then was) in Bolton identified as being the bedrock of the tribunal's jurisdiction. I therefore accept Mr Williams's submission as to the importance of the tribunal investigating and finding the degree of culpability or dishonesty in each individual case."

Mr Bullock submitted that exceptional circumstances were something very unusual or specific justifying the case being treated differently from usual sanctioning practice. He accepted that the Respondent's circumstances in 2012 were sad but they were not exceptional; mental illness was also sad but not uncommon in the profession or in the general population, nor was the abuse of alcohol or that they afflicted someone of previous good character and exemplary record in their chosen profession. Ms Lee objected to the term abuse of alcohol; what the Respondent had suffered was a symptom of illness. Mr Bullock explained that he did not mean it in any pejorative sense; he referred to someone who on his own account was drinking heavily.

Sanction

54 The Tribunal had regard to its Guidance Note on Sanctions, to the mitigation offered and the testimonials. The Respondent's misconduct included findings of dishonesty in respect of all three allegations as well as lack of integrity. The Tribunal considered the seriousness of what the Respondent had done. As to culpability, the Tribunal noted the Respondent's motivation, which was to conceal his mistakes and thereby to preserve his position at the firm. Whilst much was made of the Respondent not benefitting financially from his actions, he benefited in relation to his reputation by doing so, by concealing the reality of the double bookings from his employer. He had had conduct of the 6 cases involved. He was an experienced solicitor. As to the harm caused, there was a loss of over £7,000.00 to the firm which repaid the money to the NTT and initially there was a loss to central funds. There was also the harm to the reputation of the profession and the firm by a solicitor fabricating and utilising documents which gave a false picture of what had happened in the cases. The harm caused was reasonably foreseeable. The Respondent's proven dishonesty was an aggravating factor, as was the repeated and deliberate nature of what he did. His misconduct involved concealment of his errors from his employer. It was misconduct which the Respondent knew or ought reasonably to have known was in material breach of obligations to protect the public and the reputation of the profession. As to mitigating factors, the Respondent stated that he offered to make good the loss to the firm but was not asked to do so. He had a previously unblemished career but the misconduct was not of brief duration. The Tribunal noted that the Respondent admitted the facts of what he had done at an early stage once they were discovered. As to genuine insight assessed on the basis of the facts found proved and the Respondent's evidence, the Respondent stated regarding what he thought now that he was horrified and disgusted with himself and ashamed of what he had brought on his family and colleagues and what it had done to his reputation. He had undermined what he had done at the firm over 6-7 years. The Tribunal did not consider that there was any genuine insight when he gave evidence.

55. It was set out in the Guidance at paragraph 47:

> "The most serious misconduct involves dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances…"

The Tribunal had to consider, as set out in Sharma and Imran, the nature, scope and extent of the dishonesty in determining whether there were exceptional circumstances

in this case. The dishonesty had extended to 6 files and involved the appropriation of funds from the public purse; it was over a comparatively lengthy period of time; a matter of months. The dishonesty was not a one-off event. The Respondent had been repeatedly dishonest in 6 separate matters. The Tribunal gave due weight to the Respondent being afflicted by mental illness from some time in February 2012 until the end of that year and the impact on him of the combination of self-medicated benzodiazepine drugs and alcohol. It also made allowances for the fact that for cultural reasons the trigger event had considerably more impact on the Respondent than it might have had on someone else, nevertheless his actions were deliberate and sophisticated and in evidence he described the degree of foresight that went into managing his situation. The Tribunal could find no exceptional circumstances such as would justify a sanction less than strike off.

Costs

Costs of the substantive hearing

56. For the Applicant Mr Bullock applied for costs in the amount of £24,825.48 as set out on the Applicant's schedule dated 26 February 2018. It had been prepared for the aborted substantive hearing listed for 5-7 March 2018. Mr Bullock submitted that the costs would have been the same if Mr Bullock appeared at the 5 March hearing instead of junior counsel, save that the fourth day of this hearing was not being claimed for as Mr Bullock felt it would have added unnecessary costs to recast the schedule. Ms Lee submitted that this was a simple case. The firm had carried out the investigation and the Respondent co-operated throughout. The investigation costs of the Applicant therefore seemed high. She also submitted that the legal costs also seemed high for a case of this type. The person who prepared the Rule 5 Statement had left the Applicant's employment. Several fee earners had been involved and Ms Lee submitted that there must have been some duplication. There had also been difficulties for the Applicant regarding experts which should have been resolved at the time of the last Case Management Hearing (5 March 2018). Mr Bullock submitted that the Applicant's costs schedule left out of account Mr Horton's costs of some of the work he had undertaken since he inherited the matter from Ms Sherlock and there were no costs claimed for reading in, so Mr Bullock did not accept there was any element of duplication or overcharging regarding the investigation costs. It was right and proper when the Applicant prepared a report of misconduct that it should carry out an independent investigation and verify what was said in a firm's report rather than simply adopt it as seemed to be suggested.

Wasted costs order made on 5 March 2018

57. The Tribunal also had to deal with the order made by the Tribunal on 5 March 2018 against the Applicant for costs thrown away when the Applicant did not produce its expert. The Respondent applied for costs in the amount of £6.650.80. Ms Lee submitted that the fairest course would be to order the Applicant to pay the costs immediately without set off as it would be unfair to place the Respondent in immediate difficulties; he had an obligation to make payment to her firm for the costs he owed under a fixed costs agreement in respect of the 5 March 2018 hearing. Ms Lee accepted that in principle the Applicant was entitled to ask for payment in one lump sum but understood that the Applicant tended to allow payment of costs orders

over a long period whereas there was no possibility that the Respondent could obtain an extension of the payment term from her firm nor could he pay his expert by instalments. Ms Lee applied for the wasted costs on an indemnity basis by way of an immediately payable order.

58. Mr Bullock submitted that there was both a legal problem and one of principle regarding what Ms Lee suggested. An individual was entitled to offset monies owed to them. Furthermore in this case the Applicant acted as regulator in the interests of protecting the public and the reputation of the profession collectively. The Applicant was funded by the profession via practising certificate fees. Mr Bullock found it slightly surprising that the Respondent should say that he had incurred costs in his own defence and that he should be entitled to be paid those while the Applicant and the profession should have to wait to be paid. In some cases the Applicant would accept payment of costs over 12 months by instalments but Mr Bullock did not have the authority to make that decision. It was wrong in principle to give priority to the Respondent's professional representatives over the Applicant when both were unsecured creditors of the Respondent and there was no certainty based on the Respondent's Personal Financial Statement that the Applicant would accept instalment payment in any event. Having regard to the detail of the Respondent's schedule of costs wasted at the 5 March 2018 hearing which he claimed, Mr Bullock would not argue against the disbursements regarding taxis, travel and hotel accommodation for the Respondent or his legal representatives. Regarding profit costs he would observe that the wasted costs were of the application. There was work done at the end of February 2018 which added value to the case overall and which shortened the preparation time for this hearing. No hourly rate was given and the amount of costs said to be wasted was almost the same as the total costs of the preparation for the hearing in its entirety. He argued that the profit costs needed to be reduced substantially. He accepted regarding the expert's costs that her costs of attending on 5 March had been wasted but argued that £2,000.00 was excessive in that regard. The Applicant's fee for Dr Garvey's attendance at this hearing was £850.00 and Mr Bullock submitted that Dr Hussain's fee should be limited to that amount. Mr Bullock submitted that the wasted costs order related only to the costs wasted at the 5 March hearing and did not extend to the entire fixed fee for an abortive three day hearing. The fixed fee would include work that had to be done anyway and was referable to this effective hearing.

59. Ms Lee responded that the Respondent was out of pocket because he had to pay 2 fixed fees; the first being £4,000.00 including disbursements for the aborted 3-5 March 2018 hearing and the second for this effective hearing. The Respondent had also agreed the fee to his expert. Ms Lee argued that the Respondent was not in a position to shop around for the second hearing. He had a modest fixed fee on offer and a lower fee to take account of the work done was not available to him. Also he had to pay his expert to attend twice. Ms Lee explained that she had only been instructed around 1 March 2018 for the hearing listed for 3-5 March 2018 and had to do a vast amount of preparation over the weekend. There had also been new case law between 5 March 2018 and this hearing. Ms Lee submitted that the Applicant was entitled to investigate but not present in such a haphazard manner where its expert was not available on the day. She submitted that as a matter of procedural fairness the client should be placed in the position in which he would have been and the Applicant

should not profit in the terms Mr Bullock suggested. It would be unusual for the award to be on anything other than the indemnity basis.

Determination of the Tribunal in respect of costs

60. The Tribunal considered the submissions on costs. The costs claimed by the Applicant in respect of the substantive hearing seemed reasonable in the circumstances and the Tribunal awarded costs to the Applicant in the amount sought £28,825.48.

61. The Tribunal also had to assess the costs thrown away at the hearing on 5 March 2018 which the Tribunal had ordered to be paid by the Applicant to the Respondent. Rule 18 (1) of the Solicitors (Disciplinary Proceedings) Rules 2007 provided:

> "(1) The Tribunal may make such order as to costs as the Tribunal shall think fit including an order –
>
> (a) disallowing costs incurred unnecessarily; or
>
> (b) that costs be paid by any party judged to be responsible for wasted or unnecessary costs whether arising through non-compliance with time limits or otherwise."

Whatever the cost arrangements made by the Respondent with his representatives, the Tribunal considered that he should only receive that amount for the 5 March 2018 hearing which it assessed as arising out of proceedings on that day which had been wasted. The Tribunal assessed the wasted costs as follows: it allowed the Respondent's cost for his expert for that day at £850.00 rather than the £2,000.00 claimed. The Respondent had claimed for the attendance of his brother for 5 March 2018 as a witness; there was no real prospect he would be called that day and the Tribunal disallowed the £500.00 claimed. It reduced the profit costs claimed for the Respondent's advocate for that day to £1,000.00 plus VAT. The amount allowed totalled £2,441.80 and the Tribunal awarded costs in that amount against the Applicant for the 5 March 2018 hearing. It was a matter between the parties how the payment obligations were to be dealt with. The Tribunal had seen the Personal Financial Statement submitted by the Respondent which showed equity in his residence. It therefore made no reduction to the costs award notwithstanding he would no longer be able to practise as a solicitor.

Statement of Full Order

62. The Tribunal Ordered that the Respondent, DILAOR MIAH, solicitor be Struck Off the Roll of Solicitors and it further Ordered that he do pay to the Applicant the costs of and incidental to this application and enquiry fixed in the sum of £24,825.48.

The Tribunal further Ordered that the Applicant do pay to the Respondent, the sum of £2,441.80 in respect of the costs of the hearing on 5 March 2018 thrown away.

Dated this 21st day of May 2018
On behalf of the Tribunal

A. Ghosh
Chairman

Annex A
Definitions of types of Depression referred to by the Psychiatric Experts from ICD1-10

"F 32.0 Mild depressive episode

Two of the three symptoms (noted under F32 above and also listed below) are usually present. The patient is usually distressed by these but will probably be able to continue with most activities.

DCR10

A. The general criteria for depressive episode (F32) must be met.

B. At least two of the following the symptoms must be present:

(1) depressed mood to a degree that is definitely abnormal for the individual, present for most of the day and almost every day, largely uninfluenced by circumstances, and sustained for at least 2 weeks;

(2) loss of interest or pleasure in activities that are normally pleasurable;

(3) decreased energy or increased fatiguability.

C. An additional symptom or symptoms from the following list should be present, to give a total of at least four:

(1) Loss of confidence or self-esteem;

(2) unreasonable feelings of self-reproach or excessive and inappropriate guilt;

(3) recurrent thoughts of suicide, or any suicidal behaviour;

(4) complaints or evidence of diminished ability to think or concentrate; such as indecisiveness or vacillation;

(5) change in psychomotor activity, with agitation or retardation (either subjective or objective);

(6) sleep disturbance of any type;

(7) change in appetite (decrease or increase) with corresponding weight change."

A fifth character may be used to specify the presence or absence of the "somatic syndrome" …"

"F 32.1 Moderate depressive episode

Four or more of the symptoms (noted under F32 above and also listed below) are usually present and the patient is likely to have great difficulty in continuing the ordinary activities.

DCR-10

A. The general criteria for depressive episode F32 must be met.

B. At least two of the three symptoms listed for F32.0, criterion B must be present.

C. Additional symptoms from F32.0, criterion C, must be present, to give a total of at least six.

A fifth character may be used to specify the presence or absence of the "somatic syndrome…"

"F32.2 Severe depressive episode without psychotic symptoms

An episode of depression in which several of the above symptoms are marked and distressing, typically loss of self-esteem and ideas of worthiness or guilt. Suicidal thought and acts are common and a number of "somatic" symptoms are usually present…

DCR-10

The general criteria for depressive episode (F32) must be met.

All three of the symptoms in criterion B/F32.0 must be present.

A. Additional symptoms from F32.0, criterion C must be present, to give a total of at least eight.

B. There must be no hallucinations, delusions or depressive stupor."

"F41.2 Mixed anxiety and depressive disorder

Definition

This category should be used when symptoms of anxiety and depression are both present, but neither is clearly predominant, and neither type of symptom is present to the extent that justifies a diagnosis if considered separately…"