SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12035-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

CHRISTOPHER KA KI CHENG Respondent

Before:

Mr A. N. Spooner (in the chair)
Mr M. N. Millin
Mrs L. Barnett

Date of Hearing: 15 April 2020

Appearances

Rory Mulchrone, barrister, of Capsticks Solicitors LLP, of 1 St. George`s Road, London, SW19 4DR, for the Applicant

The Respondent did not attend and was not represented

JUDGMENT

Allegations

1. The allegations made by the Applicant against the Respondent are that, while in practice as a solicitor of Farani Javid Taylor solicitors ("the Firm"):

1.1 Between June 2016 and June 2017, in client matter AS, the Respondent falsified and/or confected documents, thereby breaching Principles 2, 4 and 6 of the SRA Principles 2011 ("the Principles").

1.2 Between June 2016 and June 2017, in client matter AS, the Respondent misled client AS about the status of his application, and thereby breached Principles 2, 4, 5 and 6 of the Principles.

1.3 Between April 2015 and July 2017, in approximately 17 client matters, the Respondent failed to open a client file and/or failed to make or progress the client's immigration application, despite telling the client that he would do so, and thereby breached Principles 4, 5 and 6 of the Principles.

1.4 Between January 2018 and January 2019, the Respondent failed to cooperate with the Applicant's investigation of his conduct and thereby breached Principle 7 of the Principles and to achieve Outcomes 10.8 and 10.9 of the SRA Code of Conduct 2011 ("the Code").

2. In relation to allegations 1.1 and 1.2 above, it was further alleged that the Respondent acted dishonestly.

Documents

3. The Tribunal considered all of the documents in the case which comprised an electronic trial bundle containing:

Applicant

- The originating Application, Rule 12 Statement and exhibits
- Witness statement of Rhea Harrikissoon dated 5 March 2020
- Witness statement of Hannah Macdonald dated 27 March 2020
- Civil Evidence Act Notices dated 18 and 30 March 2020
- Application for the case to proceed remotely dated 30 March 2020
- Application to amend the Rule 12 Statement, dated 14 April 2020
- Schedules of costs at issue dated 9 December 2019 and as at the date of the final hearing dated 8 April 2020
- A "relevant correspondence" section of 33 pages.

Respondent

- Respondent's witness statement dated 1 April 2020
- Statement of financial means dated 6 April 2020
- Further submissions dated 10 April 2020.

Preliminary Matters

Application for the hearing to be conducted remotely

4. In advance of the hearing, by an application dated 30 March 2020, the Applicant had applied for the case to be heard remotely, as by that date the Tribunal's premises at Gate House in London were closed due to the Covid-19 crisis. By email dated 1 April 2020, sent to the Applicant's legal representative and copied to the Tribunal, the Respondent stated that he did not have any objection to the Tribunal hearing the matter remotely. The Tribunal made such a direction on 8 April 2020.

Application to proceed in the Respondent's absence

5. The Respondent did not attend the hearing. Mr Mulchrone applied for the hearing to proceed in the Respondent's absence. He stated that the Respondent was clearly aware of the hearing date and had made no application for an adjournment. Mr Mulchrone outlined the various steps which had been taken to communicate with the Respondent and his engagement from 1 April 2020. Correspondence sent from the Applicant's solicitor, and also from the Tribunal itself, had stated that the Tribunal may elect to proceed with the hearing in his absence. He was warned by the Applicant's solicitor that not attending may be to his detriment. Mr Mulchrone directed the Tribunal to an email dated 10 April 2020 from the Respondent to the Applicant's solicitor in which the Respondent stated that having taken some time to think, he would not be attending the hearing.

6. Mr Mulchrone referred the Tribunal to the cases of R v Jones [2002] UKHL 5 and GMC v Adeogba [2016] EWCA Civ 162. Whilst the utmost care must be taken in exercising the Tribunal's discretion to proceed in the absence of a Respondent, Mr Mulchrone submitted that it was appropriate in this case. He submitted there was little prospect of the Respondent attending a future hearing and no public interest in a delay. The Respondent had given a written account of events and did not materially dispute the case brought. Mr Mulchrone submitted there was little risk of any improper conclusions being reached as the Respondent had stated that he had no defence to the allegations. The Respondent had had the opportunity to make any points he wished and had raised certain points in mitigation. Mr Mulchrone submitted that Adeogba, which applied Jones in a regulatory context, was authority for fairness to the regulator, which represented the public interest in a fair and expeditious disposal of cases, being given appropriate weight. There was an obligation on a professional to engage with their regulator including any regulatory proceedings. In the absence of a good reason to adjourn the hearing, Mr Mulchrone submitted that it should proceed. He also referred the Tribunal to Rule 37 of the Solicitors (Disciplinary Proceedings) Rules 2019 ("SDPR") by virtue of which the Respondent could apply for a rehearing if unrepresented and not present in the event he was not satisfied with the outcome.

7. The Tribunal was satisfied that notice of the hearing had been served on the Respondent and that that accordingly by virtue of Rule 36 of the SDPR it had the discretion to hear the case in the Respondent's absence if that was fair in all the circumstances. The Tribunal considered the factors set out in Jones in respect of what should be considered when deciding whether or not to exercise the discretion to

proceed in the absence of the Respondent. The Tribunal gave due weight to the judicial comment in Jones that it is only in rare and exceptional cases that the discretion to proceed in a Respondent's absence should be exercised. The Tribunal also had regard to the observations in Adeogba, summarised by Mr Mulchrone, that in determining whether to continue with regulatory proceedings in the absence of the accused, the following factors should be borne in mind by a disciplinary tribunal:

(i) the tribunal's decision must be guided by the context provided by the main statutory objective of the regulatory body, namely the protection of the public;

(ii) the fair, economical, expeditious and efficient disposal of allegations was of very real importance;

(iii) it would run entirely counter to the protection of the public if a respondent could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage in the process; and

(iv) there was a burden on all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they signed up when being admitted to the profession.

8. The Respondent had indicated he did not object to the hearing proceeding remotely and had not asked for an adjournment or indicated any objection to the hearing proceeding in his absence. He had provided a brief answer to the allegations and provided information relevant to mitigation and his financial position. Based on the correspondence leading up to the hearing, in particular the Respondent's statement that having taken some time to think he would not be attending the hearing, the Tribunal did not consider that there was any indication that he would participate in a hearing at a later date. The Respondent had belatedly provided an outline response to the allegations and indicated that he did not contest the substance of the allegations. In all the circumstances the Tribunal determined that the Respondent had voluntarily absented himself from the hearing and there was no good reason not to proceed. The allegations were of serious misconduct and the Tribunal was satisfied that in all the circumstances it was appropriate and in the public interest for the hearing to proceed in the Respondent's absence.

Application to amend Rule 12 Statement

9. The day before the hearing the Applicant had applied to correct what was described as a typographical error in allegation 1.1. The date range for the conduct with which the allegation was concerned was intended to be June 2016 to June 2017 (rather than June 2016 to June 2016 which had been included in error). This amendment would bring allegation 1.1 into line with allegation 1.2. Mr Mulchrone submitted there was no prejudice to the Respondent from correcting a clear typographical error, and he directed the Tribunal to an email dated 14 April 2020 from the Respondent in which he stated that he did not object to the proposed amendment. In the circumstances, not least that it was clear from the body of the Rule 12 Statement what the relevant intended period was, the Tribunal considered that there was no prejudice to the

Respondent, who in any event did not object, and permission was granted for the error to be corrected. This correction is reflected in paragraph 1.1 above.

Factual Background

10. On 21 August 2017, the Applicant's Forensic Investigation Officer ("FIO") commenced an investigation following a report from a director of the Firm raising concerns about various client matters. On 21 December 2017, the Government Legal Department ("GLD") separately submitted a report to the Applicant with concerns relating to the AS client matter.

11. The Respondent was admitted to the Roll of Solicitors in July 2014, and held a practising certificate continuously from his date of admission until 31 October 2017. At that point the Applicant stated that he did not apply to renew his practising certificate.

12. From 5 January 2010 the Respondent was employed by the Firm. The Firm specialised in particular in immigration matters. The Respondent completed his training contract with the Firm and qualified in 2014. He continued working at the Firm until 2 July 2017, ultimately in the immigration department as a Head of China Desk.

Witnesses

13. There was no live evidence during the hearing. The written evidence of witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read or consider that evidence.

Findings of Fact and Law

14. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations "to the standard applicable in civil proceedings". In other words, the Applicant was required to prove the allegations on the balance of probabilities (that the conduct and breaches alleged were more likely than not to have occurred). The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

15. **Allegation 1.1: Between June 2016 and June 2017, in client matter AS, the Respondent falsified and/or confected documents, thereby breaching Principles 2, 4 and 6 of the Principles.**

15.1 The Applicant's case was that client AS was led to believe that an application to extend his leave to remain in the UK was made on his behalf on 1 or 2 June 2016. Whilst the Firm did make an application for an extension of his leave to remain, this was dated 16 August 2016 (his leave to remain having been due to expire on

20 July 2016). On 2 November 2016, a Home Office official attended AS' workplace, claiming that AS' leave to remain had expired and he therefore had no right to work.

15.2 It was alleged that the Respondent further led client AS to believe that he had made an application for judicial review challenging the Secretary of State's failure to deal with this immigration application in a timely manner, and that that application had been progressed to a successful outcome. The Applicant focused on six documents which it was alleged were falsified and/or confected.

Certificate of Service

15.3 First was a T485 certificate of service dated 26 January 2017 with name of Applicant "AS" and case number "JR/10620/2017". The certificate stated that a copy of the judicial review bundle was provided on 26 January 2017, by first class post at the address for service. The certificate was signed with a statement of truth in the name of the Respondent, also on 26 January 2017.

Email

15.4 Second was an email dated 26 January (no year), and timed at 10.51, from Ronald Sempebwa, a lawyer with the GLD, to the Respondent with case reference "AS v SSHD JR/10620/2017". The email included an Acknowledgement of Service said to have been filed "today" for the Respondent's records. The Applicant submitted that the email purported to have been sent prior to the date on which the judicial review bundle, if sent by first class post as stated in the T485 certificate of service, could possibly have arrived at the GLD. It was further submitted that even had the bundle arrived on that same day, it was inconceivable that an Acknowledgement of Service could have been filed and served by return on the same day as a minimum of a few hours work would be required to consider the contents of the claim and draft a response. Further, in a statement prepared for the FIO's investigation, Hannah Macdonald, another GLD lawyer stated that she had been informed by the Upper Tribunal that case number 10620/2017 had not been allocated by January 2017 (and the GLD reportedly had no record of a case with that reference number either).Ms Macdonald also stated that Mr Sempebwa had told her that he did not send the email. According to GLD's internal records, Mr Sempebwa was instructed on a case with reference number JR/10620/2016, filed with the Upper Tribunal on 28 September 2016, in which the Respondent was identified on the claim form as the claimant's solicitor. On 16 November 2016, in the course of dealing with JR/10620/2016, Mr Sempebwa had sent the Respondent an email with identical wording to that contained in the purported 26 January email. It was the Applicant's case that the Respondent doctored a genuine, earlier, email from Mr Sempebwa to make it appear as though it related to a claim brought by client AS.

Consent Order

15.5 Third was a consent order dated 28 February 2017 and sealed on 8 March 2017 in the case of "AS v SSHD" on which no case reference was given. The order provided by consent for: AS' application for extension of leave to remain to be considered as submitted in time and prior to the expiry of his previous leave; leave for withdrawal of AS' judicial review claim; the Secretary of State to pay the Claimant's reasonable

costs; and AS' publicly funded costs to be subject to detailed assessment in accordance with the Community Legal Services (Funding) Order 2000. The Applicant's case was that as far as it was aware, AS was not legally aided and so there was no reason why such a reference would have been included in the order. Further, the consent order purported to have been signed on behalf of the Firm and the GLD. The GLD initials were "RKH", said to relate to Rhea Harrikissoon. Ms Harrikissoon's account, provided by signed statement, was that she did not sign the consent order and did not have any case in the name of client AS. Further, the order also gave a telephone number for the GLD which was not Ms Harrikissoon's but that of another GLD lawyer Paul Cairns who also confirmed by signed statement that he did not sign the consent order and did not have any case in the name of client AS. Finally, the consent order gave a GLD reference number beginning with an "s" whilst all GLD reference numbers begin with a "z". The GLD had no record of a case with the given s-reference number and the case with the same number but beginning with a "z" related to a different matter.

Application Notice

15.6 Fourth was an application notice dated 12 April 2017, in the case "AS v Secretary of State for the Home Department" (with no case reference). The notice indicated that the Respondent's client AS sought to resume his judicial review claim, and made reference to the consent order (described above) under which his application for extension of leave to remain was be considered within 30 days and treated as submitted in time. The application notice, signed in the name of the Respondent, stated that the Secretary of State had breached the terms of the consent order.

Hearing Notice

15.7 Fifth was a purported hearing notice from HM Courts and Tribunals Service dated 3 May 2017, addressed to the Firm, listing a 2.5 hour hearing in the matter of "AS v Secretary of State for the Home Department", case number JR/8068/2017/UTIAC, on 17 July 2017. The Applicant's case was that the 2.5 hour time estimate implied that this would have been a substantive, rather than a permission, hearing of the claim in question, but that none of the documents showed or suggested that the necessary permission had in fact been granted. The evidence of Ms Macdonald, of the GLD, was that the quoted Court reference number JR/8068/2017 had not by that time been assigned to any claim.

Email Chain

15.8 Sixth was an email chain dated 28 June 2017 at the foot of which was an email from Zara Atkinson of the GLD to "Administrative Court Office, Case Progression", copied to the Respondent, in case "CO/1084/2017, AS v SSHD". The email purported to state that the Defendant (the Secretary of State) had instructed the GLD to withdraw the case in order to proceed with the Claimant's demands. It further purported to state that the Respondent's client's application would be treated as an in-time application; and that confirmation of his rights would be sent to him while he awaited a decision on his application. The Applicant submitted that it was significant that the email purported to have been sent by the Administrative Court Office, when the relevant case was purported to have been issued at the Upper Tribunal, not the

Administrative Court. The Administrative Court and Upper Tribunal being separate institutions with separate administrative teams.

15.9 On 29 June 2017, the email was forwarded from "ccheng@faranitaylor.com", which the Applicant inferred and invited the Tribunal to accept was the Respondent's work email address, to what the Applicant inferred was the Respondent's personal email address, and then forwarded again to the Respondent's client. The Respondent included covering text stating that he had received the email below from the Home Office's lawyers who it was said "do not want to take the case to court, and that's why they wrote this email to the court". The Applicant stated that when forwarding an email, it is possible to edit the text of the forwarded email. Ms Atkinson stated in a signed witness statement that she never sent the email dated 28 June 2017, and that case reference CO/1084/2017 was another of her matters, involving a different claimant also represented by the Firm. Further, the Administrative Court Office confirmed that it never received the email dated 28 June 2017, and that it had no live case under name "AS".

15.10 It was the Applicant's case that the Respondent doctored the above documents. None of the GLD, the Administrative Court Office, nor the Upper Tribunal had records of the documents allegedly created or approved by them. It was alleged that the documents appeared to be modified versions of genuine documents and were internally inconsistent. This was on the basis that they contained three different court reference numbers; the reference numbers were not and could not have been issued at the time the documents were said to have been created; the GLD reference number was wrong; documents purported to have been sent both to the Administrative Court Office and to the Upper Tribunal; it was purported that a substantive hearing was listed even though it was not purported that permission was granted; it was implied that client AS was legally aided when there was said to be no evidence that he was; and the Respondent sought to re-issue withdrawn judicial review proceedings by way of application notice rather than by way of fresh judicial review. The emails were forwarded from the Respondent's email address, which the Applicant submitted provided a ready opportunity for editing them. Finally, the Respondent had conduct of the case and his name or reference appeared on all of the documents.

15.11 The documents came to light when the Respondent's client AS, forwarded them to the GLD, claiming that they had been provided to him by the Respondent. The Respondent reportedly failed to respond to any enquiries from the Applicant or queries from client AS's new solicitors. The Applicant stated that it did not appear that the Respondent sent the forged or confected documents to the GLD or to the Court.

15.12 The Applicant submitted that the Respondent breached the following Principles:

- Principle 2 (integrity): relying on Wingate v Solicitors Regulation Authority [2018] EWCA Civ 366, in which it was said that integrity connotes adherence to the ethical standards of one's own profession. It was submitted that in the solicitors' profession, this included treating the veracity of documents as inviolable and that the Respondent did not do so.

- Principle 4 (client best interests): the Respondent caused client AS to rely upon the falsified documents, which were quickly exposed as a fraud. Client AS was left with no case, in a matter of vital importance for him. It was submitted that providing client AS with falsified documents was not in his best interests and that he was placed in a worse position as a result.

- Principle 6 (public confidence): the integrity of the legal system depends upon solicitors treating documents as inviolable. It was submitted that the public would rapidly lose confidence in a profession that did not uphold that basic standard and that the Respondent failed to do so.

Dishonesty alleged in relation to allegation 1.1

15.13 It was also alleged that the Respondent acted dishonestly in the conduct set out above. This aggravating allegation is summarised with allegation 1.2 (below) to minimise repetition.

The Respondent's Case

15.14 The Respondent did not submit an Answer to the allegations in accordance with the Standard Directions issued by the Tribunal or engage with the proceedings prior to submitting a statement dated 1 April 2020. In this statement he stated:

> *"I do not have any defence to any of the allegations made against me, and I am and will always be extremely remorseful and regretful of the actions that I took as a solicitor that affected anyone involved… "*

15.15 The Respondent also provided information about his financial means, personal circumstances and advanced some points of mitigation including about the management of the Firm.

The Tribunal's Decision

15.16 The Tribunal considered that the documentary evidence presented by the Applicant that the Respondent had falsified all or any of the six documents in question was compelling. For example, the GLD lawyer, Rhea Harrikissoon, whose initials appeared on the consent order dated 28 February 2017, stated in a signed statement that she did not sign this document and had not seen it before it was brought to her attention. Similarly, the apparent author of the email dated 26 January (no year) had told a GLD colleague Zara Atkinson, who provided details of this conversation within a signed statement, that he had not sent the email. Unchallenged documentary evidence was presented that the case number included in the email had not been allocated at the relevant time. Ms Atkinson also stated in a signed statement that she had not written the email dated 28 June 2017 bearing her name and sent to client AS by the Respondent on 29 June 2017. This evidence was not challenged by the Respondent, was supported by signed statements, and was accepted by the Tribunal. The Tribunal was satisfied to the requisite standard, the balance of probabilities, that those documents had been falsified or confected as alleged.

15.17 The Tribunal also found proved to the requisite standard that the remaining documents (the certificate of service, the application notice and the hearing notice) were similarly falsified or confected as alleged. Their falsification or confection was part of the same exercise as those mentioned in the preceding paragraph. The Tribunal accepted that the highly improbable timescales involved in the certificate of service (dated 26 January 2017) and the purported forwarding of the acknowledgement of service by the GLD (on the same day) coupled with the confirmation from the Upper Tribunal that the case number quoted had not been allocated by January 2017 (confirmation of which was contained within a signed statement from Hannah Macdonald, a lawyer at the GLD), proved to the requisite standard that the certificate of service had been falsified or confected as alleged. Similarly, Ms Macdonald stated in her signed statement that the Court reference number (JR/8068/2017) quoted on the hearing notice had not been assigned to any claim by the date of the purported notice. Again there was no challenge or alternative explanation put forward by the Respondent. The Tribunal found on the balance of probabilities that these two documents had also been falsified or confected as part of the same exercise.

15.18 The Tribunal further accepted that the irresistible inference from the evidence presented was that the Respondent had falsified or confected these documents as alleged. He had had conduct of the matter, his name or reference details were on each document. That he had access to similar documents by virtue of other cases with which he had been involved and had, by his client AS' account, forwarded the documents in question to him supported this inference. When forwarding emails he had the opportunity to edit the documents created in earlier genuine claims. Further, the Respondent advanced no alternative explanation nor challenged any aspect of the Applicant's case. He did not formally admit the separate allegations, stating more generally that he did "not have any defence to any of the allegations". The Tribunal considered that the Respondent's statement was tantamount to an admission of each of the allegations. In any event, the Tribunal considered that the case as outlined by Mr Mulchrone and in the Rule 12 Statement was substantiated through the witness evidence and other documentary evidence summarised above.

15.19 The Tribunal accepted the submission made by Mr Mulchrone that treating the veracity of documents as inviolable was a key ethical standard of the legal profession. Applying the test from the leading case on conduct lacking integrity, Wingate, the Tribunal found that in falsifying or confecting documents the Respondent had failed to adhere to this key ethical standard. The Tribunal found proved on the balance of probabilities that the Respondent's conduct had lacked integrity in breach of Principle 2 of the Principles. The Tribunal also had no hesitation finding proved to the requisite standard that supplying falsified or confected documents to client AS, which misrepresented the position of an application of vital interest to him, was not in his client's best interests in breach of Principle 4 of the Principles. The Tribunal accepted the submission from Mr Mulchrone that the public would rapidly lose confidence in a profession that did not treat documents as inviolable and found to the requisite standard that by failing to do so the Respondent had not behaved in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6 of the Principles.

The Tribunal's Decision on dishonesty in relation to allegation 1.1

15.20 To minimise repetition the Tribunal's findings on the aggravating allegation of dishonesty made in relation to allegation 1.1 is summarised with the decision on allegation 1.2 (below).

16. **Allegation 1.2: Between June 2016 and June 2017, in client matter AS, the Respondent misled client AS about the status of his application, and thereby breached Principles 2, 4, 5 and 6 of the Principles.**

16.1 In this second allegation the Applicant's contention was that the Respondent's actions described in allegation 1.1 were done in order to mislead client AS about the progress of his application. Specifically, it was alleged that client AS believed that an in-time immigration application had been issued on his behalf on 1 or 2 June 2016 when in fact no application was issued until 16 August 2016, which was after client AS's leave to remain had already expired. In addition, it was alleged that client AS was given cause to believe that an application for judicial review on his behalf had been issued, when none had been.

16.2 It was submitted that the conduct was of no possible benefit to the client and that the allegedly falsified and confected documents created by the Respondent were of no value in the client's substantive efforts to regularise his immigration status. It was submitted that on the contrary, client AS was in a worse position as the false documents sowed confusion and were likely to have made it more difficult for him to seek to regularise his immigration status. The Applicant submitted that the Respondent knew, or ought to have known, that the right for client AS and his family to live and work in the UK was a matter of vital importance to him.

16.3 The Applicant submitted that the Respondent breached the following Principles:

- Principle 2 (integrity): It was submitted that the ethical standards of the solicitors' profession included telling one's client the truth about their cases, including points not in the client's favour, and including where the solicitor has made errors. By misleading his own client about the progress of his case, apparently, it was submitted, because of his own error in failing to lodge an application for extension of leave to remain in time, the Respondent put his own self-interest ahead of that of his client.

- Principle 4 (best interests of client): It was alleged that client AS did not seek to regularise his immigration status at an earlier stage as a result of being misled by the Respondent. Client AS was meanwhile unable to work and had no lawful right to remain in the UK whilst his prospects of eventually obtaining further leave to remain diminished as the delay increased.

- Principle 5 (provide a proper standard of service to your client): It was submitted that a proper standard of service would have included the Respondent making the immigration application when he said he would; issuing and prosecuting judicial review proceedings as he said he was doing; and, where a mistake had been made, acknowledging that fact and seeking to rectify it. Instead, it was alleged that the Respondent did the opposite: putting his client in a worse position, and then providing no further assistance.

- Principle 6 (public confidence): it was submitted that the most fundamental purpose of the solicitors' profession being regulated was to assure the public that there is a source of reliable and trustworthy advice and representation for individuals involved in legal matters. It was submitted that the Respondent failed in this most basic aspect, and instead gave his client a wholly unreliable and false impression, by misleading him into thinking that he had a successful case in progress when he had no case at all.

Dishonesty alleged in relation to allegation 1.2

16.4 Dishonesty was alleged in relation to both or either of allegations 1.1 and/or 1.2. The Applicant relied upon the test for dishonesty stated by the Supreme Court in Ivey v Genting Casinos [2017] UKSC 67, which applies to all forms of legal proceedings, namely that the person has acted dishonestly by the ordinary standards of reasonable and honest people. In short, it was alleged that the Respondent doctored documents from fellow solicitors and the Court, and on the basis of those documents sought to mislead his own client as to the progress of his application. He then became uncontactable without providing any further assistance to that client. It was submitted that ordinary and decent people would objectively regard such conduct as dishonest.

The Respondent's Case

16.5 As summarised above, the Respondent's statement dated 1 April 2020 made the general statement that he did not have any defence to any of the allegations against him but did not intend to adversely affect anyone. He did not advance any alternative explanation nor challenge any aspect of the Applicant's case.

Response to allegations of dishonesty in relation to allegation 1.1 and 1.2

16.6 Similarly, the Respondent made no specific response to the allegation that the conduct alleged in allegations 1.1 and 1.2 was dishonest according to the applicable legal test.

The Tribunal's Decision

16.7 The Tribunal again considered that an overwhelming level of evidence was presented by the Applicant that the Respondent had falsified all or any of the documents in question for the purpose of misleading client AS. The impact on client AS was clear from the comments made in an email to his M.P. to which the Tribunal was referred by Mr Mulchrone. The documents that the Tribunal had found in allegation 1.1 that the Respondent had falsified or confected served no other purpose than to mislead client AS as to the progress of his application. They presented a false picture of this progress and on AS's account were supplied to him by the Respondent. As recorded above, the Respondent had not advanced any alternative explanation for his actions nor challenged any aspect of the Applicant's case. Given the nature of the falsified or confected documents, which gave a misleading account of client AS's application which was forwarded by the Respondent to client AS, the Tribunal considered that it followed that the purpose of the conduct found proved in allegation 1.1 was to mislead client AS. The Tribunal found this proved on the balance of probabilities.

16.8 The Tribunal accepted Mr Mulchrone's submissions that such conduct amounted to a stark breach of Principles 2, 4, 5 and 6 of the Principles. Applying the test from Wingate, the Tribunal considered that falsifying or confecting documents to mislead a client amounted to an egregious failure to adhere to a fundamental ethical standard of the profession and a failure to act with integrity in breach of Principle 2 of the Principles. Such conduct was inevitably not in client AS's best interests (Principle 4) and could not amount to a proper standard of service for client AS (Principle 5). The Tribunal also considered that such conduct would inevitably fail to maintain the trust the public placed in the Respondent and in the provision of legal services (Principle 6). Accordingly, the Tribunal found that the alleged breaches including the breaches of Principles 2, 4, 5 and 6 of the Principles were proved to the requisite standard.

The Tribunal's Decision on the allegations of dishonesty in relation to allegations 1.1 and 1.2

16.9 The Tribunal accepted the summary of the test for dishonesty provided by the Applicant. When considering the allegation of dishonesty, the Tribunal applied the test in Ivey. The test for dishonesty was set out at paragraph [74] of the judgment in that case, and accordingly the Tribunal adopted the following approach:

- firstly, the Tribunal established the actual state of the Respondent's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held;

- secondly, once that was established, the Tribunal then considered whether this conduct would be thought to have been dishonest by the standards of ordinary decent people.

16.10 The Tribunal had found that the Respondent had falsified and/or confected documents and misled his client about the status of his application. Given those findings, and again given the Respondent's statement that he had no defence to any of the allegations, the Tribunal considered that it followed that he had acted dishonestly. The Respondent had not sought to suggest that his actual state of knowledge was such that his conduct would not be regarded as dishonest by ordinary decent people; on the contrary, he had stated that he was and always would be extremely remorseful and regretful of the actions he took. The Tribunal did not consider that the conduct found proved in allegation 1.1 and 1.2 could result from anything other than a deliberate attempt to mislead client AS as to the progress of his application. The Tribunal was satisfied that ordinary decent people would regard the Respondent's conduct as dishonest and found the allegations of dishonesty in relation to allegations 1.1 and 1.2 proved to the requisite standard.

17. **Allegation 1.3: Between April 2015 and July 2017, in approximately 17 client matters, the Respondent failed to open a client file and/or failed to make or progress the client's immigration application, despite telling the client that he would do so, and thereby breached Principles 4, 5 and 6 of the Principles.**

17.1 The Firm carried out an internal investigation into the Respondent's conduct, and identified concerns on 17 client files. The Rule 12 Statement included a summary of the concerns on each of the 17 files. The Applicant's FIO reviewed the relevant files and confirmed in his evidence that the issues were as identified in the Firm's internal

investigation. By way of example, the first two cases mentioned in the Rule 12 Statement, typical of the 17 listed, were summarised as follows:

(i) *"Client contacted Respondent to submit an application for further leave to remain prior to expiry of visa on 11 May 2017. The Respondent assured the client that an application had been made prior to the expiry of the visa. But no client file was opened on the Firm's system, by July 2017 no such application had been filed, and the client's passport was lost."*

(ii) "*Client instructed Respondent to make an application for extension of her leave to remain prior to its expiry on 9 April 2015. The Respondent failed to make the application, and made no record of the client's instruction in this regard."*

17.2 The Applicant submitted that in failing to open a client file and/or to make or progress clients' immigration applications, despite telling clients that he would do so, the Respondent breached the following Principles:

- Principle 4 (client best interests): It was in the client's best interests for their matters to be progressed timeously, for them to be properly informed as to the status of their immigration applications, and for proper records to be kept. It was submitted that the Respondent's failure to do so meant that clients' right to live and work in the UK was severely jeopardised.

- Principle 5 (provide a proper service): In immigration matters, meeting deadlines and ensuring applications are valid was said to be of particular importance, and to be capable of making the difference between an individual and/or their family members having the right to live and work in the UK or not. It is a basic duty of lawyers to comply with deadlines, and clients rely upon their lawyers to do so. It was submitted that the Respondent failed to carry out these basic duties at all, let alone with proper care and skill and further that he misled many of his clients about the status of their immigration applications, which was counter-productive as they were unable to take steps to seek to rectify the Respondent's failures.

- Principle 6 (public confidence): The public, and especially those members of the public who have a need for immigration advice and representations, rely upon solicitors to do their jobs properly and to be honest with their clients. It was submitted that the public would have no confidence in a profession which tolerated the departures from those basic principles evident in the Respondent's alleged conduct.

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

17.3 As stated above, the Respondent advanced no alternative explanation nor challenge to the Applicant's case stating that he did not have any defence to any of the allegations against him, was truly sorry and did not intend to adversely affect anyone.

The Tribunal's Decision

17.4 The documentary and supporting witness evidence presented by the Applicant was not contradicted or challenged by the Respondent. The Firm's report to the Applicant that in 17 client matters the Respondent failed to open a client file and/or failed to make or progress the client's immigration application, despite telling the client that he would do so, was corroborated by the FIO in a detailed report. As recorded above, the Respondent had stated that he had no defence to any of the allegations against him. The Tribunal accepted the unchallenged account set out in the detailed report of Hardeep Sangha, FIO, that the Respondent was responsible for the alleged failures. The summary of the concerns on each of the 17 files included in the Rule 12 Statement, two of which were included above in paragraph [17.1], included stark examples of failing to open client files and/or to make or progress on clients' immigration applications, despite telling clients that he would do so. On the basis of the Firm's report, the FIO report and the lack of any challenge to the events they described, the Tribunal found this conduct proved on the balance of probabilities.

17.5 The Tribunal further found proved to the requisite standard that the conduct amounted to a breach of Principles 4, 5 and 6 of the Principles. Failing to open client files and/or to make or progress on clients' immigration applications, despite telling clients that he would do so, was inevitably not in those clients' best interests (Principle 4) nor capable of constituting a proper standard of service (Principle 5); it was the antithesis of both. As with the two previous allegations, such a profound failure to act in his clients' best interests and to provide a proper standard of service in matters of such vital importance to his clients would inevitably fail to maintain the trust the public placed in the Respondent and in the provision of legal services (Principle 6).

18. **Allegation 1.4: Between January 2018 and January 2019, the Respondent failed to cooperate with the Applicant's investigation of his conduct and thereby breached Principle 7 of the Principles and to achieve Outcomes 10.8 and 10.9 of the Code.**

18.1 The Applicant's case in the Rule 12 Statement was that attempts were made to contact the Respondent by email on 11 January 2018 and 19 February 2018; by recorded delivery to the Respondent's last known address on 19 February 2018; by a formal 'explanation with warning' letter sent by post and email on 28 December 2018; and by email on 22 January 2019.

18.2 During the hearing Mr Mulchrone stated that the Respondent did not dispute the case as set out in the Rule 12 Statement, having subsequently provided an explanation for his failure to respond to the Applicant's communications.

18.3 It was submitted that the Respondent had:

- Breached Principle 7 (compliance with regulatory obligations): he was obliged to comply with the Applicant's requests for information and explanations and had not done so.

- Failed to achieve Outcomes 10.8 and 10.9 which provide for prompt compliance with any written notice from the Applicant and the production of documents for

inspection, and the provision of information and explanation requested respectively. The 'explanation with warning' letter was such a written notice with which the Respondent was submitted to have failed to comply.

The Respondent's Case

18.4 Beyond the general statement that he had no defence to any of the allegations, the Respondent stated in his statement of 1 April 2020 that:

> *"Regretfully up until this point, I had not replied to the Applicant's correspondence as I was fearful of the situation, and due to this fear I simply could not find any words to respond appropriately. I have since come to the realisation that this was far from the best way to deal with the matter, and I sincerely hope that this statement has not come too late."*

18.5 The Respondent thereby explained his lack of response to the Applicant's correspondence, and acknowledged that at least some of those communications referred to by Mr Mulchrone had been received. The Respondent apologised for this conduct and did not seek to advance any defence to the allegation.

The Tribunal's Decision

18.6 Copies of the documents relied upon by the Applicant were included within the exhibit to the Rule 12 Statement. The Respondent had not suggested that he did not receive any of the communications. A solicitor was required by Principle 7 and mandatory Outcomes 10.8 and 10.9 from the Code to comply with the requests received from the Applicant and the Tribunal was satisfied to the requisite standard that he had failed to do so. Accordingly the Tribunal found the allegation, including the specified breaches of Principle 7 of the Principles and the failure to achieve Outcomes 10.8 and 10.9 of the Code to be proved.

Previous Disciplinary Matters

19. There were no previous Tribunal findings.

Mitigation

20. As indicated above, the Respondent made various points in mitigation in his statements of 1 and 10 April 2020. He expressed remorse for his actions and apologised for any adverse impact of his actions. Without suggesting it was an excuse or an explanation for his conduct the Respondent stated that he considered the Firm contributed to a lack of professionalism. He apologised for his actions and stated that he would accept any punishment deemed appropriate by the Tribunal.

21. The Respondent also provided details about his current personal, (non-legal) employment and financial position and requested that the Tribunal take this into account when making its decision. He stated that he could pay between £300 and £500 per month towards any fines or costs awarded.

Sanction

22. The Tribunal referred to its Guidance Note on Sanctions (7th Edition) when considering sanction. The Tribunal assessed the seriousness of the misconduct by considering the level of the Respondent's culpability and the harm caused, together with any aggravating or mitigating factors.

23. In assessing culpability, the Tribunal found that the motivation for the Respondent's conduct was to cover his tracks for failures to progress his clients' matters. In the absence of evidence from the Respondent it was not possible to form a judgment on the motivation for his initial failures to make progress. The misconduct was planned with some care. The Respondent had taken various steps to falsify or confect correspondence and documents to mislead client AS about the status of his immigration case. The Tribunal considered that the Respondent was in a position of trust given the vulnerable position of his immigration clients who had placed their trust about matters affecting their livelihood and potentially the ability for their families to remain in the UK in the Firm and the Respondent. The Respondent had some degree of experience at the time, and the misconduct was in such basic and fundamental issues that any solicitor should be in no doubt as to the impropriety of the actions found proved. The actions extended over a year and notwithstanding his comments about the Firm, the Respondent had direct control over the relevant circumstances and his actions. The Respondent had failed to engage with his regulator over a significant period of time. The Tribunal assessed the Respondent's culpability as high.

24. The Tribunal then turned to assess the harm caused by the misconduct. The Tribunal had found that the Respondent dishonestly falsified and/or confected documents in order to mislead his client about the status of his application. The harm to client AS, and to 17 other identified clients, was obvious, very significant and in many cases potentially deeply distressing given the nature of the legal work concerned. The Respondent's conduct represented a complete departure from the probity required of all solicitors. Despite the Respondent stating that he had never intended any adverse impact on anyone, the Tribunal considered that such harm was entirely foreseeable. The harm to the profession from such conduct was also significant.

25. The misconduct found to be proved was aggravated by the fact that the allegations included dishonest conduct. The misconduct, of not progressing client matters, also extended over a considerable period of time. The seriousness of the conduct was also aggravated by the fact that the clients were in a relatively vulnerable position with entitlement to live and work in the UK at stake. The Respondent knew, or ought to have known, that such actions were potentially harmful to the reputation of the legal profession.

26. The Respondent had belatedly demonstrated insight into his misconduct and expressed remorse. He had not made early admissions in the proceedings but when he did belatedly participate in writing he made open and unqualified comments about not having a defence to the allegations. The Tribunal noted that the Respondent had no prior disciplinary findings against him.

27. The Tribunal had regard to the case of SRA v Sharma [2010] EWHC 2022 (HC), and the comment of Coulson J that, save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck of the Roll. The Tribunal was not invited to consider exceptional circumstances and in any event was not persuaded that any exceptional factors were present such that the normal penalty would not be appropriate.

28. Having found that the Respondent acted dishonestly the Tribunal did not consider that a reprimand, fine or suspension were adequate sanctions. The Tribunal had regard to the observation of Sir Thomas Bingham MR in Bolton v Law Society [1994] 1 WLR 512 that the fundamental purpose of sanctions against solicitors was:

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

The Tribunal determined that the findings against the Respondent including dishonesty required that the appropriate sanction was strike off from the Roll.

Costs

29. The total costs claimed in the Applicant's schedule of costs dated 8 April 2020 was £32,202.39. The costs claimed for the Applicant's own costs and for Capsticks Solicitors' costs were both reduced by fifty percent to reflect the fact that not all matters investigated were brought before the Tribunal. Disregarding counsel's fees of £2,700 for advice and drafting the Rule 12 Statement, Mr Mulchrone stated that the applicable fixed fee translated into a notional hourly rate of £125 which he submitted was reasonable. Mr Mulchrone invited the Tribunal to reflect the fact that the hearing had concluded in one rather than the anticipated three days, but otherwise to award the costs as claimed on the basis that costs follow the event and the allegations had all been found proved.

30. In response to questions from the Tribunal about specific entries on the costs schedule, Mr Mulchrone stated that given the fixed fee arrangement, which was a perfectly proper arrangement, the effect of any time entry which the Tribunal may consider to be too high would be that the case overall was correspondingly less profitable for Capsticks Solicitors. Whilst the case had been uncontested, he submitted that it had been necessary to prepare on the basis it may have been contested. The legal work which had been carried out by lawyers at Capsticks had significantly narrowed the scope of the case. In addition, whilst the witness statements taken were not complex they did contain additional necessary detail. The fees had been increased by the lack of engagement from the Respondent. Mr Mulchrone submitted that the Tribunal should determine whether the costs claimed were reasonable in the context of the case rather than by reference to hours on the schedule, particularly when the work was undertaken on a fixed fee basis.

31. The Respondent provided a Personal Financial Statement and submissions about his financial and personal situation, both dated 6 April 2020. The Respondent provided no documentary evidence to support the figures he set out. He described living frugally and stated that he was likely to be able to set aside between £300 and £500 per month to pay any fines or costs awarded.

32. The Tribunal assessed the costs for the hearing. The Tribunal had heard the case and considered all of the evidence. The investigation into the Respondent's conduct had been detailed (involving at least 17 cases). However, based on the FIO report, the Tribunal considered that the Respondent was not initially the primary focus of the investigation, and Mr Mulchrone had been unable to assist with the basis for a fifty percent reduction on the investigatory costs rather than any other figure being applied. The Tribunal considered that Counsel's fee of £2,700 for drafting the Rule 12 Statement was reasonable.

33. The Tribunal did not consider that the schedule of costs presented provided much assistance in assessing the reasonableness of the costs claimed, providing no confirmation about which lawyer had completed which tasks and how long specific tasks had taken. This was not due to the fixed cost arrangement but the way broad categories of activity were presented. The Tribunal reviewed the broad categories of activity included in the schedule of costs and made an assessment of what it considered reasonable in the light of the volume of documentation, the fact that the initial focus of the investigation had not primarily been on the Respondent, the complexity of the issues, the fact a detailed FIO report including various statements had been prepared prior to Capsticks Solicitors' involvement and that counsel had drafted the Rule 12 Statement.

34. In light of the above factors, the Tribunal considered that the fees claimed were excessive. No explanation had been provided for why a reduction of fifty percent, rather than any other figure, had been applied to the investigation costs and to Capsticks Solicitors' initial fixed fee. Based on its reading of the FIO report with its broad initial focus, the Tribunal considered that a larger reduction should have been applied, and that costs of £7,500 for the investigation and the Applicant's supervision costs were reasonable.

35. Given that the Rule 12 Statement had been drafted by Counsel, whose fee was £2,700, and a detailed FIO report had already been prepared, the Tribunal considered that 15 hours, rather than the claimed 33 hours, was reasonable for the investigation and preparation of the Rule 12 Statement for issue by Capsticks Solicitors. Given that no Answer had been submitted by the Respondent, and there had been just one Case Management Hearing, the Tribunal considered that 3 hours, rather than the claimed 14.4, was reasonable for review of and compliance with directions and preparation and attendance at the case management hearing. Given that the witness statements taken had been relatively straightforward the Tribunal considered that the 43 hours claimed for post case management hearing preparation for the final hearing (which was principally related to obtaining witness statements) was excessive and that 15 hours was reasonable for the work completed. The Tribunal accepted the submission made by Mr Mulchrone that it had been necessary for him to prepare on the basis that the Respondent may attend the substantive hearing, and considered that it was reasonable to award the costs of his preparation time together with the one day hearing time. The Tribunal's assessment generated a total below half of that included in the schedule.

36. The Tribunal accepted the submission from Mr Mulchrone that the focus of its assessment should be the reasonableness of the costs claimed, by reference to the work reasonably involved in the case, rather than solely by reference to the hours

included in the schedule, particularly as a fixed fee had been charged. Based on its experience of the time and costs typically and reasonably associated with such proceedings, and the factors mentioned above, the Tribunal considered that awarding costs of £15,000 to reflect the fact that the Applicant had successfully proved all of the allegations brought, was appropriate in all the circumstances.

37. The Tribunal reviewed the Personal Financial Statement and submissions provided by the Respondent. He had not provided evidence to substantiate the statements he had made about his financial means. He had not provided comprehensive or evidenced information to inform the Tribunal's decision, although he had provided a seemingly candid summary. In line with its Standard Directions, of which the Respondent had received a copy, the Tribunal consequently proceeded without regard to the Respondent's means. The Tribunal ordered the Respondent to pay the Applicant's costs of and incidental to this application fixed in the sum of £15,000.

Statement of Full Order

38. The Tribunal ORDERED that the Respondent, CHRISTOPHER KA KI CHENG, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £15,000.

Dated this 16th day of June 2020
On behalf of the Tribunal

A.N. Spooner
Chair