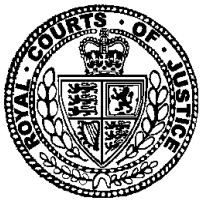

Neutral Citation Number: [2023] EWHC 207 (Admin)

Case No: CO/980/2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 3 February 2023

Before :

MRS JUSTICE FOSTER DBE

- -

Between :

RAJ RAJAN MARIADDAN

Appellant

- and -

SOLICITORS REGULATION AUTHORITY LIMITED

Respondent

- -
- -

Mr Andrew Butler KC and **Mr Mansoor Fazli**
(instructed by **Mr Mariaddan** on a **Direct Access** basis) for the **Claimant**
Mr Michael Collis (instructed by **Capsticks**) for the **Defendant**

Hearing dates: 20 and 21 July 2022

- -

Approved Judgment

This judgment was handed down remotely at 3.00pm on 03 February 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives

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MRS JUSTICE FOSTER DBE

MRS JUSTICE FOSTER DBE :

Introduction

1. Mr Raj Rajan Mariaddan was admitted to the Roll in November 1995. He practised as a sole practitioner until April 2019; at a practice called John Street Solicitors. In April 2019 he joined with a Mr Saltifi forming a new practice, John Street Solicitors LLP ("the Firm"). It was based in London NW10. His practice at that time was 55% immigration, 40% litigation and 5% conveyancing. There were also three unadmitted members of staff. On 28 July 2020 the Solicitors Regulation Authority Ltd (the "SRA") commenced an investigation into the Firm, producing a report on 22 December 2020.

2. On 29 January 2021 the Adjudication Panel of the SRA decided to intervene into the Firm and Mr Mariaddan's practising certificate was suspended. He was thereafter granted a conditional practising certificate, the conditions prevented him from being the manager or owner of an unauthorised body, from being the COLP or COFA, from holding or receiving client money, being a signatory or having power to authorise transfers from an office or client account. Mr Mariaddan also required the approval of the SRA in order to be employed as a solicitor.

3. Based upon their investigations in July 2020 and the Forensic Investigation Report of December of that year, proceedings were begun by the SRA in the Solicitors Disciplinary Tribunal ("SDT"). Eight separate allegations were drafted against Mr Mariaddan.

4. At a hearing between 18 October and 21 October 2021 and on 25 January 2022, the SDT determined that all but one allegation had been proved, the claim that he was semi-retired was not made out, and that Mr Mariaddan was guilty of misconduct. He was accordingly struck off the Roll. An order for costs was made against him of approximately £31,000.

5. He appeals to this court against the findings of the SDT. He is referred to here also as "the Appellant".

Preliminary Issue

6. Before turning to the substantive case a preliminary issue must be considered. It arose shortly before the proceedings in this court began by Mr Mariaddan informing his counsel that he was an undischarged bankrupt.

7. The question arose whether Mr Mariaddan was entitled, nonetheless, to pursue his appeal, by reference to the rule concerning the vesting of a bankrupt's estate in the Trustee in Bankruptcy. Whilst the SRA were neutral as to the position, it was appropriate for the court to satisfy itself that Mr Mariaddan was able to pursue this appeal in his disciplinary matter. Mr Butler KC leading Mr Mansoor Fazli produced a written argument on his behalf. I am grateful for the helpful submissions and am satisfied the position is as follows.

8. The effect of section 306(1) of the Insolvency Act 1986 ("the 1986 Act") is that a bankrupt's estate vests in the Trustee upon the latter's appointment taking effect. Where the Official Receiver is involved, then the estate vests upon his becoming Trustee.

9. A bankrupt's estate comprehends "*all property belonging to or vested in the bankrupt at the commencement of the bankruptcy*" (section 283(1)). The definition of "*property*" is found in section 436 of the 1986 Act:

> "*… money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to property.*"

10. As the question was put by Hoffmann LJ as he then was in *Heath v Tang* [1993] 1 WLR 1421:

> "*By section 306 of the Insolvency Act 1986 the bankrupt's estate vests in his Trustee when appointed and by section 285(3) no creditor has after the making of a bankruptcy order any remedy against the property or person of the bankrupt in respect of any debt provable in the bankruptcy. The effect is that the bankrupt ceases to have an interest in either his assets or his liabilities except in so far as there may be a surplus to be returned to him upon his discharge. What effect does this have upon legal proceedings to which he is a party?*"

Dealing with the bankrupt when plaintiff Hoffmann LJ continued:

> "*The property which vests in the Trustee includes "things in action" see section 436. Despite the breadth of this definition, there are certain causes of action personal to the bankrupt which do not vest in his Trustee. These include cases in which "the damages are to be estimated by immediate reference to pain felt by the bankrupt in respect of his body, mind, or character, and without immediate reference to his rights of property" see Beckham v Dale [1849] 2 HL Cas 579604, per Erle J and Wilson v United Counties Bank Ltd [1920] AC 102. Actions for defamation and assault are obvious examples. The bankruptcy does not affect his ability to litigate such claims. But all other causes of action which were vested in the bankrupt at the commencement of the bankruptcy, whether for liquidated sums or unliquidated damages, vest in his Trustee. The bankrupt cannot commence any proceedings based upon such a cause of action and if the proceedings have already been commenced, he ceases to have sufficient interest to continue them.*"

11. Hoffmann LJ explained that since the Supreme Court Judicature Act 1875 the cause of action does not abate but it will be stayed or dismissed unless the Trustee is willing to be substituted as the plaintiff. The right to continue an action was a chose in action vested in the Trustee, if he chose not to continue the bankrupt himself had no *locus standi*. In such cases there was a right (now statutory) to apply to the court for directions to allow a bankrupt to take over or to direct a Trustee to bring an action.

12. As a defendant a distinction exists where, although a plaintiff may be deprived of their remedy against a bankrupt or his property, where personal relief for example, an injunction which does not directly concern the bankrupt's estate is sought, such might be maintained against the bankrupt himself personally (*Heath v Tang* at 1424 E-H). A bankrupt will have no interest in any order as to costs but could appeal the "*personal order*" in the form of an

injunction. *Heath v Tang* was the case of a builder who, whilst solvent, did not appeal against a judgment which eventually founded the petition.

13. Mr Butler KC drew my attention to a survey of the authorities by HHJ Pelling QC in *Re GP v Aviation* [2014] 1 WLR 166, which considered the meaning of "*property*" in the 1986 Insolvency Act.

14. In Judge Pelling's case the issue was whether the right of a company, which had gone into liquidation, to appeal from a tax assessment was in itself a property right under the 1986 Act. He described the effect of the judgment in *Heath v Tang* : whilst a bankrupt does not have locus to prosecute an appeal following his or her bankruptcy, that is not because the right to appeal is *property* vested in the Trustee, but because the appeal relates to a judgment that can be enforced only against assets that are vested in the Trustee [16]. He referred to the distinction between the personal injunction which was "*a personal order against him*" and an order for costs. A bankrupt was not entitled to appeal in relation to a cost order because he had no interest in the outcome of the order as his estate had vested in the Trustee. The right to challenge a judgment would take effect against the estate which vests in the Trustee so the right to seek leave to appeal also vests in the Trustee.

15. Judge Pelling QC in *Re GP* adverted to *Arnold v Williams* [2008] BPIR 247 where Warren J heard submissions that a bankrupt was entitled to bring judicial review because it was a personal right of the sort described in *Heath v Tang*. A number of tax cases have considered the position see e.g. *McNulty v The Commissioners for Her Majesty's Revenue and Customs* [2012] FTC 2110 (Arnold J) who considered the personal exception, concluding the correct analysis was that a bankrupt loses locus to bring or maintain an appeal because the assets out of which the underlying liability could be met had vested in another – not that a right to appeal is in fact a property interest. See also *Sharafat Ali v HMRC* [TC/2014/04224] relying on *Heath v Tang* for the proposition that actions against the bankrupt personally, not directly concerning the estate, could be maintained against him and he was entitled to defend them.

16. There have also been cases holding that personal injury compensation cannot be claimed by the Trustee for the estate: *Lang v McKenna* [1996] BPIR 419 and in *Grady v HM Prison Service* [2003] EWCA Civ 527 a claim for unfair dismissal was held to be personal, it did not vest within the bankrupt's estate.

17. The personal interest exception persists in the caselaw and as was submitted, the judgment of *Addison v London European Securities Limited* [2022] EWHC 1077 (Ch), of Jonathan Hilliard QC sitting as a Deputy Judge of the High Court is of particular help.

18. There it was argued that a bankrupt had standing to pursue an appeal against a statutory demand – which statutory demand authorised the creditor to present a bankruptcy position. The Judge analysed the effect of the numerous authorities, both as regards the bankrupt as claimant and as defendant. He referred to *Mulkerrins v Pricewaterhouse Coopers* (a firm) [2003] UKHL 41) per Lord Walker at paragraph [22]:

> "*The wide language used in successive statutes to describe the bankrupt's estate was from an early stage interpreted by the court as excluding rights of action which are classified as personal to the bankrupt, rather than relating to his property.*"

These personal rights were not limited to rights coming within a particular description and there was no simple bright line test (by reference to *Mulkerrins*). There were cases where the claim or application brought against the defendant was sufficiently personal to the bankrupt defendant that he had standing to litigate in respect of them - such as by appealing an order made against him [104]. Deputy HCJ Hilliard QC set out his conclusions upon the effect of the case law, including *Heath v Tang* as follows:

> "*111. I draw from the case-law in this section on the bankrupt as defendant the following points:*
>
> *(1) A bankrupt who is a defendant will normally not have standing to bring an appeal.*
>
> *(2) However, there are cases where the bankrupt can appeal an order against him.*
>
> *(3) The latter group of cases is not limited to cases concerned solely with his body, mind or character.*
>
> *(4) One way of characterising the latter group of cases is as those concerning something personal to the bankrupt. Sands,* [*Sands v Layne* [2017 1 WLR 1782] *for example, was a case concerning the status of the bankrupt.*
>
> *(5) However, as in cases where the bankrupt is claimant, there is no more specific bright-line rule than that for determining in marginal cases whether the matter should be regarded as personal to the bankrupt or not.*
>
> *(6) Some of the factors relied on in the cases to determine whether the matter should be regarded as personal to the bankrupt are:*
>
> *(a) whether the bankrupt's status is at issue: [Sands;]*
>
> *(b) what common sense and fairness dictates: [Sands;]*
>
> *(c) whether it is natural to regard the action as vesting in the trustee in bankruptcy and for the trustee rather than the bankrupt to continue the litigation: [Sands;]*
>
> *(d) whether the judgment in the litigation is or would be enforceable against the estate of the bankrupt (as where it will result in a provable debt or a proprietary claim against assets held by the trustee in bankruptcy) or not (as in the case of an injunction to restrain the bankrupt from taking particular steps): [Heath;]*
>
> *(e) tied to that, whether there are other routes by which the litigation can or could have been dealt with, such as (i) the bankrupt seeking to invoke section 303 of the 1986 Act or (ii) the bankrupt persuading the Court not to make a bankruptcy order in the first place and therefore the defendant continuing the substantive litigation in the ordinary way:[Heath;]*

> *(f) the breadth of the concept of the bankrupt's estate, and the public interest that lies behind this: [Heath.]*"

19. I am entirely clear on the basis of these authorities, that the Appellant in the case before me has standing to pursue his appeal. I expressed this conclusion after argument and indicated my reasons would be recorded in this judgment. It seems to me this conclusion is amply supported by the *dicta* cited above. The concept of the case concerning something personal to the bankrupt meets the current position entirely.

20. The disciplinary jurisdiction of the professional bodies is exercised so as to police the personal and professional behaviour of the individuals who are within the purview of their authority. The regulatory function is carried out in the public interest and in respect of the actions and omissions of the professional acting in a professional, and sometimes a personal, capacity.

21. The connection of the regulated person and the proceedings in respect of them to the individual is indissoluble and both the proposition at 6(a) and 6(b) in paragraph [111] of Mr Jonathan Hilliard QC's judgment suggest to me the clear answer must be Mr Mariaddan has locus to bring this appeal. His bankrupt status is not in issue, further common sense and fairness dictates that he be allowed to appeal, it is not natural to regard any action by the SRA or a right of appeal arising from it as vesting in the Trustee in Bankruptcy and the judgment is clearly not enforceable against his estate, that is to say, such conclusions as are reached other than as to costs.

The Allegations

22. The allegations made by the SRA were in four areas:

    (i) Dishonestly making misleading statements to another firm of Solicitors who were chasing a Legal Aid debt on behalf of the Legal Aid Authority, owed by Mr Mariaddan's previous firm;

    (ii) Dishonestly giving misleading answers on an application for PII insurance;

    (iii) Failing to have valid PII insurance in place; and

    (iv) Practising without valid PII insurance.

23. Set out below are the precise pleaded grounds and below each the errors the Appellant says were made by the SDT and which should found a successful appeal to this court. The references to "*Firm A*" are references to Michelmores, solicitors, acting on behalf of the Legal Aid Authority. "*Company B*" are Cavendish Munro, insurance brokers for the Firm's PII policy.

24. It was alleged that whilst in practice at the Firm:

    a. **Allegation 1.1.1** – Between around 21 August 2019 and 12 December 2019, he caused or allowed misleading information to be provided to Firm A to the effect that he did not have a bank account;

    Appellant's Complaint:

"*Ground 1 – the SDT was wrong to find that Allegation 1.1.1 was upheld. In particular, in doing so,*
(a) it found to be proven an allegation which differed from that which had actually been made;
(b) it failed to give proper regard to the content and context of the statement complained of; and
(c) it made a small but significant factual error which may have led to the drawing of an incorrect inference.

Further or alternatively, the matters at (a) and (c) above constituted serious procedural irregularities rendering the decision unjust, because it is inherently unfair for a party (and particularly a party accused of dishonesty) to have the case against him articulated clearly for the first time only in the judgment. Furthermore, in this instance, the irregularity prevented M from adducing evidence which he would otherwise have been able to adduce to answer the allegation."

b. **Allegation 1.1.2 –** Between around 21 August 2019 and 12 December 2019, he caused or allowed misleading information to be provided to Firm A to the effect that his only income was disability living allowance, and/or he had not earned income for at least two years or words to that effect;

Appellant's Complaint

"*Ground 2 – the SDT was wrong to find that Allegation 1.1.2 was upheld. In particular, it*

(a) was wrong not to dismiss the allegation simply on the basis of its unsatisfactory formulation in the Rule 12 Statement;

(b) improperly developed the SRA's case for it;

(c) wrongly and/or incompletely construed the statement on which (as it found) the allegation was based; and

(d) was wrong to find that either part of the statement was made in contravention of the relevant principles.

Further, the second basis as above, that it was unfair to have the case against him articulated clearly for the first time only in the judgment."

c. **Allegation 1.1.3** - Between around 21 August 2019 and 12 December 2019, he caused or allowed misleading information to be provided to Firm A to the effect that he was semi-retired and/or had been unemployed since 2015;

Appellant's Complaint

"*Ground 3 – the SDT was wrong to find that Allegation 1.1.3 was (in part) established. In particular, it*
(a) was wrong not to dismiss the allegation simply on the basis of its unsatisfactory formulation in the Rule 12 Statement;
(b) improperly developed the SRA's case for it;
(c) arrived at findings which are mutually inconsistent; and

> *(d) based its conclusion on a false premise, namely that it was a lie told in support of another lie, when the other statement could not properly or fairly be regarded as a lie.*"

The second basis above was repeated for this allegation.

d. **Allegation 1.2.1** - On an application for Professional Indemnity Renewal, dated 20 August 2020, he caused or allowed misleading information to be provided to Company B in that he indicated on the form that the Firm was not subject to an investigation by the SRA, in circumstances when both he and the Firm were subject to an investigation;

e. **Allegation 1.2.2** - On an application for Professional Indemnity Renewal, dated 20 August 2020, he caused or allowed misleading information to be provided to Company B in that he indicated on the form that he had not been made subject to conditions on his Practising Certificate, in circumstances when he had held conditional Practising Certificates;

f. **Allegation 1.2.3** - On an application for Professional Indemnity Renewal, dated 20 August 2020, he caused or allowed misleading information to be provided to Company B in that he indicated on the form that he had not been the subject of a costs or penalty order before the Tribunal, in circumstances where he had;

Appellant's Complaint

> "*Ground 4 – the SDT was wrong to uphold Allegation 1.2. In doing so, the SDT (a) was wrong not to dismiss the allegation simply on the basis of its unsatisfactory formulation in the Rule 12 Statement; (b) improperly developed the SRA's case for it; (c) erroneously equated inaccurate answers with misleading answers, and (perhaps for this reason) failed to make a finding on the critical question of whether Cavendish Munro was misled.*"

The second basis above was also repeated for this allegation.

g. **Allegation 1.3** – From on or about 29 November 2020, he failed to have in place valid Professional Indemnity Insurance;

h. **Allegation 1.4** – From on or about 29 November 2020, he continued to practise, including holding client money, without valid insurance, when he knew or should have known that no valid insurance was in place.

> "*Ground 5 – the SDT was wrong to uphold Allegations 1.3 and 1.4. In particular, the SDT was wrong (a) to conclude that the production of a run-off endorsement was determinative of the position as regards the LLP's insurance; and (b) to find that there was sufficient evidence of a contravention of the relevant rules.*"

The second basis above was also repeated for these allegations.

25. The SRA pleaded that allegations a, b, c, d, e and f also involved dishonesty.

Framework

The approach of the Appeal Court

26. There are many cases in which the obligations of this court when considering an appeal from the SDT have been set out. My attention was drawn to *Metcalfe v SRA* [2021] EWHC 2271 (Admin), *SRA v Day* [2018] EWHC 2726 (Admin) and other authorities. I take from the case of *Martin v SRA* [2020] EWHC 3525 (Admin) the following recent exposition of principle per Simler LJ and Picken J:

> "*32. … The well-established approach is that an appellate court should not interfere with the finding of fact unless satisfied that the conclusion is "plainly wrong": see McGraddie v McGraddie* [2013] UKSC 58 *and Henderson v Foxworth Investments Ltd* [2014] UKSC 41 *that means it must either be possible to identify "a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence" per Lord Reed in Henderson at [67]; or if there is no such identifiable error and the question is one of judgment about the weight to be given to the relevant evidence, the appellate court must be satisfied the judge's conclusion "cannot reasonably be explained or justified" [67]). Lord Reed made clear that in determining whether a decision cannot reasonably be explained or justified, "It does not matter, with whatever degree of certainty, that the appellate court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge would have reached." Again, we emphasise, that is a high threshold: see to this effect, Perry v Rayleys* [2019] UKSC 5 *at [63] Lord Briggs).*
>
> *33. The effect of these authorities in the context of an appeal against the decision of the Solicitor's Disciplinary Tribunal … was summarised in SRA v Day [2018] EWHC 2726 where, in addition to what we have said above, a number of additional considerations specific to appeals from decisions of the SDT were identified. First the SDT is a specialist tribunal particularly equipped to appraise what is required of a solicitor in terms of professional judgment, and an appellate court will be cautious in interfering with such an appraisal. Secondly, decisions of specialist tribunals are not to be expected to be the product of elaborate legal drafting. Their judgments should be read as a whole; and, in addressing the reasons given, unless there is a compelling reason to the contrary, it is appropriate to take it that the tribunal's fully taken into account all the evidence and submissions. That does not mean that a decision which has failed in its basic task to cover the correct ground and answer the right questions will be upheld. A patently defective decision cannot be converted by argument into an unacceptable one.*"

27. A right of appeal is provided against an order of the SDT to the High Court by Section 49(1) of the Solicitors Act 1974. Such an appeal is governed by CPR 52.21 and will normally be by way of a review. Rule 52.21(3) states that:

> "(*3) The appeal court will allow an appeal where the decision of the*

> *lower court was–*
> *(a) wrong; or*
> *(b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court.*
> *(4) The appeal court may draw any inference of fact which it considers justified on the evidence.*"

28. It is accepted that it is appropriate for this appeal to be by way of review and 52.21(3) applies. Since many of the points taken by Mr Butler KC on behalf of Mr Mariaddan relate to the adequacy of the pleadings and the nature of the Tribunal's findings, it is appropriate to look at the requirements in the relevant Rules made under the Solicitors Act 1974.

29. The Solicitors (Disciplinary Proceedings) Rules 2019 apply to any complaint made to the SDT in respect to matters, as in the present case, relating to failure to comply with rules as to professional practice, conduct and discipline under section 31(2) of the 1974 Act.

30. The Rules contain an overriding objective by Rule 4. This is in similar terms to the provisions under the CPR, in that the Rules place a positive duty on the parties to assist the Tribunal in furthering the overriding objective. Rule 5 provides that the standard of proof is the standard applicable in civil proceedings. Subject to the Act and the Rules, the Tribunal may regulate its own procedure, dispensing with various requirements where it is just to do so. Materially, by Rule 12, the SRA is obliged to ensure their application is:

> "*… supported by a Statement setting out the allegations, the facts and matters supporting the application and each allegation contained within it and exhibiting any documents relied upon by the* [SRA]."

31. From 25 November 2019 the Rules and Principles applying to solicitors were changed, that is to say updated. Solicitors were required from that date to adhere to the standards set out in the 2019 Rules and Principles. For conduct before 25 November 2019 the standards contained in the predecessor to those Rules and Principles applied. The allegations were drafted according to the date of the alleged breaches. As an example, in respect of the first allegation the following was stated:

> "*Insofar as such conduct took place before 25 November 2019, acted in breach of any or all of Principles 2 and 6 of the SRA Principles 2011 ("the 2011 Principles"), and insofar as such conduct took place on or after 25 November 2019, acted in breach of any or all of Principles 2, 4 and 5 of the SRA Principles 2019 ("the 2019 Principles").*"

32. The Rule 12 Statement in this case gave background gleaned from the interviews held between Mr Mariaddan and the SRA, and included excerpts from his answers to questions from the Investigator, the "FIO" and the Investigator Manager, the "FIM".

33. It is well-established that the purpose of the Rule 12 Statement is to make clear to the solicitor the charges that he has to face and the case he has to meet in order to defend himself. This should include the matters relied upon by the SRA; thus it must identify the conduct upon which allegations are based and state with precision in relation to each aspect of the conduct, why it is alleged to be objectionable. This is particularly so if dishonesty or lack of integrity is alleged, see *Constantinides v The Law Society* [2006] EWHC 725 (Admin).

34. Guidance was also given in the case *Thaker v SRA* [2011] EWHC 660 (Admin) by the Divisional Court, per Jackson LJ to the following effect:

> "*For the avoidance of doubt a properly drafted Rule 4* [now Rule 12] *statement will set out a summary of the facts relied upon. It would be helpful if those facts are set out concisely and in chronological order. The reader should not have to burrow through hundreds of pages of annexes in an attempt to piece together what acts are being alleged. It is the duty of the draftsman (not the reader) of a pleading or a Rule 4 statement to analyse the supporting evidence and to distil the relevant facts discarding all irrelevancies.*"
>
> …
>
> *The statement should set out both primary facts and the allegations which are made on the basis of those facts.*"

35. In respect of allegations, in *Connolly v Law Society* [2007] EWHC 1175 (Admin) it was said that whilst it is permissible to characterise conduct in the alternative, the statement should not include numerous alternative allegations. Alternative allegations of dishonesty or recklessness were unobjectionable in *Constantinides*, but allegations which included numerous "*and/or*" allegations were disapproved of in *Connolly*. The Tribunal must exercise care in showing which, if any, of the alternatives have been found proved. However, even if the allegations are not clearly and properly made out in the statement, a finding (including of dishonesty or lack of integrity) may still be made where the respondent is not misled by the statement, and is well aware that he has been accused of dishonesty and makes submissions to meet such an allegation (see the cases of *Constantinides*, *Connolly*, and *Thaker* above).

36. The requirements in any particular case are necessarily fact dependent. For example, in *Constantinides* the court made copious criticism of the Rule 4, (now Rule 12), statement including:

> "*35. We should stress that we do not consider that the allegations of dishonesty were clearly and properly made in the Rule 4 statement. The Rule 4 statement, after alleging conduct unbefitting a solicitor, should have identified that conduct and stated with precision in relation to each aspect of the allegedly guilty conduct the respects in which it was said to be dishonest. It should have alleged that when the Appellant acted, despite the conflict of interest, that that conduct …* [adding the legal tests then relevant] *was dishonest.*"

But it went on to say:

> "*36. In the instant case, however, it does not seem to us that the Appellant was misled by the Rule* [12] *statement. It is clear that he was well aware that he was accused of dishonesty. The submissions advanced on his behalf sought to meet the allegations of dishonesty. The whole burden of those submissions was that the Appellant may have been naive but that he was not dishonest ...*

> *37. The central question, as we see it, is whether the conclusions of the Tribunal were justified.*"

37. I take a summary of the obligations in this area from the case of *Williams v SRA [2017] EWHC 1478 (Admin),* to which both Mr Butler KC and Mr Collis for the SRA referred. The case has resonance given the challenges made in this case to the pleadings and allegations that the SDT dealt unfairly with Mr Mariaddan's case. The law was summarised as follows:

> "*70. In HMRC v Dempster [2008] EWHC 63 (Ch); [2008] STC 2079 , Briggs LJ stated (at [26]):*
>
> > *"It is a cardinal principle of litigation that if serious allegations, in particular allegations of dishonesty are to be made against a party who is called as a witness they must be both fairly and squarely pleaded, and fairly and squarely put to that witness in cross-examination."*
>
> *71. It is right to record that the facts in that case were extreme, in the sense that dishonesty had not been pleaded at all, yet findings of dishonesty were being pressed upon the court, but the broad principle is of general application. Other well-known authorities, such as Three Rivers DC v Bank of England (no 3) [2001] UKHL 16; [2003] 2 AC 1 (at 291), emphasise the need for proper particularity of the facts underlying allegations of dishonesty. In the solicitors' regulatory context, the courts have also underscored the need for clear, coherent and intelligible pleadings: SRA v Chan (supra); Singleton v The Law Society [2005] EWHC 2915 (QB); Constantinides v The Law Society [2006] EWHC 725 (Admin); Thaker v SRA [2011] EWHC 660 (Admin); and Kiani v SRA [2015] EWHC 1981 (Admin) .*
>
> *72. As for the need for cross-examination, the need to put allegations fairly and squarely in cross-examination is based on what is said to be the rule in Browne v Dunne (supra) (and Allied Pastoral Holdings v Federal Commissioner of Taxation [1983] 44 ALR 607), considered and applied in Markem Corp v Zipher Ltd [2005] EWCA Civ 267; [2005] RPC 31 . Allegations need to be put to ensure " fair play and fair dealing with witnesses" (at [59]). A witness must be cross-examined on those parts of his evidence said to be untrue.*
>
> *73. The rule is not an absolute or inflexible one: it is always a question of fact and degree in the circumstances of the case so as to achieve fairness between the parties. Civil litigation procedures have of course moved on considerably since the 19th Century. Witnesses now have the full opportunity to give their evidence by way of written statement served in advance, and then verified on oath in the witness box.*
>
> *74. What matters is the giving of notice to a witness of the allegation in question, and the proper opportunity for the witness to respond. Thus in Markem (supra), the Court of Appeal adopted (at [60]) the following statement from Browne v Dunn (supra):*

> *"... unless notice had already been given of the cross-examiner's intention to rely upon such matters, it is necessary to put to an opponent's witness in cross-examination the nature of the case upon which it is proposed to rely in contradiction of his evidence ..." (per Hunt J, in Allied Pastoral Holdings (supra)) .*

75. Equally, Lord Herschell LC stated (in Browne v Dunn (supra)) that there was:

> *"... no obligation to raise a matter in cross-examination in circumstances where it is perfectly clear that (the witness) has had full notice beforehand that there is an intention to impeach the credibility of the story which he is telling."*

What he was saying was that:

> *"... it will not do to impeach the credibility of a witness upon a matter on which he has not had any opportunity of giving an explanation by reason of there having been no suggestion whatsoever in the course of the case that his story is not accepted."...*

76. As was stated in Seven Individuals v HMRC [2017] UKUT 132 (TCC); [2017] STC 874 (at [114]), the rule should not be applied in an over-technical way. Provided that a witness is on notice that his account is being challenged as untruthful in the relevant respect, there is no requirement mechanistically to challenge each and very statement of fact (see Hussain v Mukhtar [2016] EWHC 424 (QB) at [45]). In Seven Individuals (supra), Nugee J went on to say this:

> *"So long as it is clear from the thrust of the cross-examination (or from notice given beforehand) that a witness' evidence will be challenged, I do not see that it is necessary to continue exploring a point in detail when the witness has already had an opportunity to state his case."*

38. In *Williams* the Divisional Court held a particular finding of dishonesty in respect of a representation concerning £3.9m could not stand because:

> "*90. ... Mr Williams was not cross-examined at all on the £3.9m representation, by reference to the documents leading up to it, or at all. The SRA has fairly indicated that this was an oversight on its part, in the context of a very large and wide-ranging set of facts and issues.*
>
> *91. No mention was then made of the £3.9m representation by the SRA in closing, either orally, or in writing ...*"

also

> "*There was, as I have identified, scope for some ambiguity in relation to the existence of a discrete case of dishonesty based directly and solely on the £3.9m representation.*"

and

> "*He should have had the opportunity to respond to the SRA's allegations against him orally in the witness box, and to be judged on that evidence.*"

Background and Proceedings in the SDT

39. The case against Mr Mariaddan arose as follows.

40. Mr Mariaddan had made a complaint against his partner Mr Saltifi on 20 May 2020. This was closely followed by a complaint against him by that partner in June 2020. In the course of the investigation, begun in July 2020 into the complaint of Mr Saltifi (which complaint did not form any part of this case), the SRA's forensic investigator found a file held by the Firm called 'the Legal Aid File'. It related to a claim for an outstanding debt owed to the Legal Aid Authority by Mr Mariaddan's previous firm.

41. In respect of the Allegations under 1.1 the SRA relied particularly upon these materials as evidence of the matters alleged. The Legal Aid File contained correspondence during August 2019 from the Appellant to Michelmores in which, using the third person, on 13 August 2019 Mr Mariaddan described his situation, as:

> "*… he is semi-retired on medical advice. He receives about £500 per months living allowance. He receives no other regular income.*"

42. Mr Mariaddan had asked to pay the Legal Aid debt in instalments, Michelmores wrote to him by letter of 19 August 2019; they noted his health and financial situation and he was accordingly asked to complete an Income and Expenditure Form (an "IEF").

43. He sent off the IEF to Michelmores. Also enclosed was an email from his wife's personal email address headed "*your government allowance*" and showing screenshots of a bank account detailing 7 "*DWP PIP*" monthly payments of sums between January and March 2019 of amounts between £581 and £596. He enclosed a Barclay's Bank statement for 22 July 2019 to 21 August 2019, labelled "*Mr Maj Mariaddan TR*" showing -£35.61.

44. The IEF declared that the details given were "*true to the best of my knowledge and belief*".

45. Those details included that in the box labelled "*I am employed as*" the Respondent wrote "*semi-retired*"; in the box labelled "*I am a pensioner*", he crossed out the word "*pensioner*" and wrote in manuscript "*semi-retired*". In the box labelled "*my employer is*" he left the box blank, and in response to "*I have been unemployed for*" he wrote "*4 years*" adding in manuscript "*since 2015*". Under the heading "*bank account and savings*", above the statement "*I have a bank account*" he crossed out the "*a*" and wrote "*no*" so the sentence read "*I have no bank account*". Under the heading "*income*" Mr Mariaddan stated his usual take home pay was "*£0*" he also stated his income was £500.00 per month and "*see attached*" (i.e. the disability living allowance email referred to above).

46. In a letter to the solicitors of 21 September 2019, also in the third person, he said he had:

> "*not earned any income for at least Two 2 years [see previous office account] but he remains a director for name sake only and is due to retire*

> *as soon as possible, based on health reasons, as he has been advised, that if he continues in full time employment, as before, if he suffers another episode, it may be fatal*"

and

> "*DLA receipts are banked into his wife's account, as she is his registered carer*"

and

> "*Since his health suffering has become dependent on the Disability living allowance of £500pcm [2015]. This receipt is deposited into his wife's account, who is his current voluntary carer … [the Appellant] receives no other income as he stated before [the Appellant] is a director in the new firm until such time as the new firm is satisfactorily running*
>
> *…*
>
> *your questionnaire is attached as best completed*"

and

> "*the 2 relevant bank accounts are attached which supports his statement*".

47. Michelmores noted that the new practice had been incorporated in January 2019 suggesting his health had in fact recovered, and he had been earning income from practise. They stated they would accept instalment payments for the debt but asked for a medical certificate if he said he could no longer continue in practise. There was further correspondence. A further IEF was sent for completion. It was only ever partially completed, and sent back on 4 December 2019. The Appellant said the position had not changed much except the DLA payment had decreased. He also stated:

> "*Mr Mariaddan continues to remain semi-retired and as last shown and has not earned anything from the current firm*"

and

> "*Mr Mariaddan has no personal bank accounts, but he shares one account with his wife – Ameeta Rajan who is his carer*".

48. The SRA also relied in their Rule 12 Statement on a copy of an HSBC bank statement Mr Mariaddan had sent to the SRA when complaining about Mr Saltifi earlier in 2020 in order to show funds being sent to him from Mr Saltifi. The bank statement was in Mr Mariaddan's name, addressed to his personal address, and in the month from 19 August 2019 the balance had gone from £1,908.37 to £5,029.61. The next day he had completed the first IEF.

49. The Rule 12 Statement recorded that he had said in interview:

> "*I have only this bank account. I have one further account which is shared or held at Santander again, it's with my ex-wife".*

When asked why he had told the LAA's solicitors he had *no* bank account, his response was:

> "*But this account here, it wasn't activated with anything … This account was very much a dormant account, wasn't being active and therefore, I said, it's not something I actively use, except maybe for groceries or Saturday's shopping.*"

50. He was questioned by the FIM:

> "*FIM: But the account exists though, doesn't it?*
> [Appellant]: *Sorry?*
> *FIM: The account in your name – it's an account that exists. You do have a bank account.*
> [Appellant]: *I have a bank account.*
> *FIM: So why have you said, 'I have no bank account'?*
> [Appellant]: *I, I don't use it.*
> *FIM: But you've still got it though, haven't you?*
> [Appellant]: *Yeah, it is in my name.*"

He said:

> "*I should have said that I have a bank account in my name, but I don't handle it. That's how I should have phrased it.*"

When asked whether he considered that stating that he had no bank account when he *did* have a bank account was dishonest he said:

> "*Well, not dishonest. I wouldn't go so far as to say that I am dishonest about anything about all this. But maybe I should have clarified and explained better, the way I put it, to the other side. It wouldn't have made much difference … you know I have the Santander. Even that is handled by my ex-wife. I don't have to lie about it.*"

51. With respect to the allegation that he allowed misleading information to be provided to Michelmores to the effect that his only income was disability allowance and/or he had not earned income for two years, (Allegation 1.1.2), the SRA looked *inter alia* at evidence of drawings. They were informed by the Appellant's accountant that there had been drawings of £7,322.00 for the tax year ending 30 April 2019. Mr Mariaddan was shown a ledger indicating drawings from the practice in his name that totalled £39,064.61 for 29 August 2019 to 29 April 2020. The ledger was labelled "*draw-rr-Drawings Raj Rajan*". Of these the SRA relied upon £20,000. In interview he was asked:

> "*By declaring a zero income, on your income and expenditure form, would you say you're misleading?*"

He said:

"*No … well I may be drawing this but I maybe drawing it to pay for bills*".

He stated it was not income for him. As to what he paid from these drawings he said:

"*I pay the home mortgage. I pay the car hire purchase … I pay for petrol … I pay for my son who is final year at University. I pay for my daughter, who is also in University. I pay their pocket allowances. I pay for repairs and renovations and things like that.*"

52. As to the part of Allegation 1.1.3 found proved by the SDT, namely, that Mr Mariaddan was misleading and dishonest in representing that he was unemployed since 2015, the SRA had relied on a number statements made in the documents. In the IEF dated 21 August 2019, Mr Mariaddan had said he was semi-retired and had been unemployed since 2015. On the further, incomplete undated IEF, he said he was working part-time and had been unemployed for four years.

53. The Rule 12 Statement set out part of his statements in interview, thus:

"*[Appellant]: I am trying to tell the truth about what is in my income…*
FIO: Mmmh.
[Appellant]: … what I have. They ask, they send me a form and then they ask me 'What is your situation?' As I wrote to them I said, 'Look, I have got, I have suffered a health issue and I have, I have been receiving this benefit and, in addition to that, I am working, but I'm not earning income from it and…
FIM: It doesn't say – sorry to interrupt. It says, 'I have been unemployed for four years'.
[Appellant]: Yes.
FIM: But you've just said that you've been working.
[Appellant]: Yeah, I am working but …
FIM: So …
[Appellant]: Unemployed means erm I am not earning, that's how I put it.
FIM: No, unemployed means that you don't have any, any employment, surely?
[Appellant]: Ok, then it's wrong, the phrase then. But I do go to the office."

54. The SRA argued that the communications showed a number things:

a. That Mr Mariaddan had asked to pay off the LAA debt in instalments;
b. That Mr Mariaddan had told the LAA's solicitors;
    i. that he was semi-retired on medical advice;
    ii. that he received about £500 per month Disability Living Allowance and no other regular income;
    iii. that his wife was his registered carer; and
    iv. he had no personal bank account but shared a joint account with his wife.

55. The SRA maintained that the information communicated was misleading, and was given by Mr Mariaddan dishonestly.

56. In respect of the allegation concerning misleading the PII insurers, number 1.2, the SRA relied upon answers given in the Firm's PII Proposal Form received by the Investigation from the Firm's insurance broker in November 2020. It had been signed on 20 August 2020, after the SRA's forensic inspection had begun.

57. The SRA noted that the fact that the Appellant and the Firm were currently the subject of investigation by the SRA was not disclosed in the Proposal Form although Mr Mariaddan was put on notice of an Investigation into the Firm by letter from the SRA on 14 July 2020.

58. Neither Mr Mariaddan's previous SDT proceedings nor the fact that he had practised for periods under only a conditional practising certificate were disclosed. In 2006 Conditions of Practise had been imposed and there had been in fact several separate matters before the SRA between 2008 and 2013. There was also no disclosure of the fact that he had been made subject to costs and Penalty Orders by the SRA in the past. The Proposal Form to the insurers was signed by Mr Mariaddan and dated 20 August 2020; it included by Question 4 the following:

> "*Has the firm or any prior Practice or any present or former Principals, Partners, Members, Directors, Consultants and employees thereof:*
>
> *a) Been or is the subject of an investigation that has been upheld, or any investigation or intervention by any regulatory department of the Solicitors Regulation Authority, the Legal Ombudsman service or any other recognised body?*
>
> ...
>
> *f) Ever been refused a practising certificate or granted a Conditional Practising Certificate or been the subject of a costs or penalty order or reprimanded by the Solicitors Disciplinary Tribunal?*"

In response to both questions, the box was ticked "*no*". There was in fact no time limit on old regulatory matters and the requirement to disclose them.

59. The disclosure requirement was set out in the Form thus:

> "*Please note that under English law, a business insured has a duty to disclose to the insurer every material circumstance which it knows or ought to know after a reasonable search… A circumstance is material if it would influence an insurer's judgment in determining whether to take the risk and, if so, on what terms. If you are in any doubt about whether a circumstance is material we recommend that it should be disclosed…*"

And the Appellant declared on the Form:

> "*We declare that to the best of our knowledge and belief, the particulars and statements given in this application are accurate and complete. We declare that we have disclosed accurately every material circumstance which is known or ought to be known by Principals, senior management, or those responsible for arranging insurance, following a reasonable search …*"

60. Part of the context relied upon by the SRA was the fact that when asked before proceedings why there had not been disclosure of the SRA matters Mr Mariaddan answered in an email of 12 November 2020 to the FIO:

> "*Our firm's PII is insured by the same broker every year for about the last ten 10* [sic] *years. The renewal forms are filled out annually by my trusted assistant Manoj but signed by me … I did enquire, if I need to disclose an investigation in 2005 but I was advised in the last 5 years – 6 years etc that was of interests* [sic] *and the claims history for the purposes of insurance.*"

61. Upon inquiry the broker denied that this advice had been given, further there was no time limit upon old regulatory matters that require disclosure in the form. In fact there had been other disciplinary outcomes namely, including a severe reprimand and in July 2013 a written rebuke as stated.

62. From about 29 November 2020 the firm's insurance cover had been withdrawn. On 5 January 2021 Mr Mariaddan told the SRA that he had taken his active files home, and had left the premises. However the SRA argued with respect to Allegations 1.3 and 1.4 that:

a. the firm in fact had no PII cover from 31 August 2020; furthermore
b. the firm had not closed and still had 5-8 live files with £17k + client money; and
c. the firm's website was still active and provided Mr Mariaddan's details suggesting he was still practising and offering his services to the public.

63. The SRA relied upon the fact that having provided inaccurate information on the Proposal Form, Mr Mariaddan and Mr Saltifi, were therefore required to sign a Personal Guarantee and also a No Claims Declaration to obtain insurance cover for the year 2020/2021. On 7 December 2020 the brokers wrote to Mr Mariaddan saying the insurer had reported that no Personal Guarantee had been received. Accordingly, the renewal terms for the 20/21 policy were officially withdrawn. The brokers wrote again to him on 8 December 2020 to the effect that the firm's insurance policy was now in run-off, with effect from the 1st September 2020, and a week later informing him that the insurance offer was withdrawn. The reasons for these decisions were explained and were founded on the failures to provide accurate information on the Proposal Form and the failure over time to return the Personal Guarantee, even though the implications had been explained. A communication dated 14 December 2020 to Mr Mariaddan and Mr Saltifi from the brokers also stated that any premium already paid would go towards the run-off policy for the Firm. It was emphasised that the Appellant was to speak to the SRA regarding the current position of his insurance.

64. The SRA emphasised in their Rule 12 Statement that the Firm was without insurance cover from 31 August 2020 and should have closed no later than 29 November 2020. The broker said *inter alia* in the letter:

> "*I must therefore confirm that you have not enjoyed any PI cover since the expiry of your 2019 policy and therefore you should, from a regulatory standpoint, not be practising. You were given a deadline to sign and return the personal guarantee; this deadline was missed and the implications were very clear. At all stages I highlighted the importance of receiving this information (multiple times) and yet you continued not to comply or continued not to respond due to the internal on-goings*

> *within the practice. My email to you on the 5th October clearly highlighted. We are now passed the 30 days EIP so you are in the cessation period. You are therefore now in breach of SRA regulations.*"

65. There was no dispute that the SRA Indemnity Insurance Rules are relevant and state materially:

> "*Rule 2.1: An authorised body carrying on a practice during any indemnity period beginning on or after 25 November 2019 must take out and maintain qualifying insurance under these rules with a participating insurer.*
>
> …
>
> *Rule 2.4 – If the authorised body has been unable to comply with … rule 2.2 … the authorised body must cease practice promptly, and by no later than the expiry of the cessation period, unless the authorised body obtains a policy of qualifying insurance during or prior to the expiry of the cessation period that provides cover incepting on and with effect from the expiry of the policy period and covers all activities in connection with private legal practice carried out by the authorised body including, without limitation, any carried out in breach of rule 4.2.*
>
> …
>
> *Rule 4.1: Each authorised body, and any principal of such a body, must ensure that the authorised body complies with these rules.*
>
> *Rule 4.2 - Each authorised body that has been unable to obtain a policy of qualifying insurance prior to the expiration of the extended policy period, and any principal of such a body, must ensure that the authorised body, and each principal or employee of the body, undertakes no activities in connection with private legal practice and accepts no instructions in respect of any such activities during the cessation period save to the extent that the activity is necessary in connection with the discharge of its obligations within the scope of the authorised body's existing instructions.*"

66. The SRA invited the inference that Mr Mariaddan's failure to disclose the SRA matters to the brokers was because he sought to avoid the insurer's scrutiny of the SRA investigation at his firm and of his regulatory history. Full disclosure they submitted would have affected his firm's premium, maybe its ability to obtain insurance. They argued this behaviour also was dishonest.

Findings of the SDT

67. A number of detailed criticisms are made about the SDT's approach, analysis, and findings on behalf of the Appellant. Accordingly, this section sets out the material parts of the Tribunal's judgment necessary in order to understand the tenor of their findings and the detail in which they explained their conclusions.

68. On 18 October 2021 the four and a half day hearing before the SDT started. Mr Mariaddan denied all of the allegations. The Tribunal found all save one, concerning the assertion he was semi-retired, to have been proved and that the proven statements, where alleged to be so, were misleading and dishonest. Taking each of their findings in turn, the essence of their decision was expressed as follows.

(i) Dishonestly making misleading statements to another firm of Solicitors who were chasing a Legal Aid debt on behalf of the Legal Aid Authority, owed by Mr Mariaddan's previous firm

69. The case put to the Tribunal was as set out in the Rule 12 Statement, that Mr Mariaddan deliberately sought to mislead as to his true financial position in the correspondence that was sent in respect of the Legal Aid debt. He was cross examined by Mr Collis to that effect. The SDT held that the misleading assertions were made deliberately, to create a false impression concerning his financial circumstances. The SRA had opened the case on the basis that there was concealment of the true picture about: (a) the bank accounts held by Mr Mariaddan; (b)the income of Mr Mariaddan; and (c)the extent to which Mr Mariaddan was actually working. The SDT were invited to conclude that the misleading was deliberate and that that would be considered dishonest by the standards of ordinary and decent people.

70. The Tribunal recorded the submission of Mr Butler KC made below, as he makes it here, to the effect that the pleading of the case was extremely unsatisfactory. The content and provenance of the first statement alleged to be dishonest was precisely stated he said, but this was not so for the second and third statements. The phrase "*and/or*" was used, and the materials relied upon were not clear. Given that dishonesty was alleged in respect of these matters, it was highly unsatisfactory.

71. Regarding the allegation Mr Mariaddan had stated he had no bank account, the SDT fairly recorded the principal arguments. The said that "*the first and most fundamental point on which the* [Appellant] *relied to show that this was not a dishonest or misleading statement*" was the fact that the IEF was sent under cover of a letter of 21 August 2019, to which was attached a page from a bank statement of the Respondent. The submission made by Mr Butler KC had been that it was therefore extremely surprising that Mr Mariaddan was ever accused of dishonesty. Further, if it was right, as he said, that Mr Mariaddan had no control over the bank account (despite it being in his name), his answer that he had "*no bank account*" was understandable. The questionnaire could have been clearer, he was clearly just muddled, rather than misleading or dishonest – and he had also said the IEF was "*as best completed*"; it was in its form unsuited to him and his circumstances.

72. The Tribunal was referred to the decision of Lord Millett in *Three Rivers DC v Bank of England (No 3) (HL(E))* [2003]2AC and the requirement to be particularly clear when drafting dishonesty pleadings.

73. The SRA had emphasised in their case, and the SDT noted, that there was an express statement, "*I have a bank account*", this was deliberately crossed out so it read "*I have no bank account*", with the word "*no*" inserted. As the Tribunal also noted, there were in fact at least three bank accounts in the Appellant's name:

(a) A Barclay's account, the office account of his former sole practice (a copy of part of a statement was provided with the correspondence containing the Income and Expenditure Form ("IEF");

(b) An HSBC account – in his sole name. He had not submitted this with the IEF or referred to it. It came to attention as it had been submitted previously in another connection, concerning the complaint by the Appellant against his partner Mr Amjad Saltifi; and

(c) A Santander account which he had described in interview with the investigators, and was a joint account with his wife.

74. The Tribunal said:

> "*18.59 As regards the HSBC account, the Respondent admitted in his interview that this was his account. He stated that it was dormant and was not something he actively used, except for groceries. When asked why he had not disclosed the account, given that the income and expenditure form asked for the balance on any account, even if it was overdrawn, the Respondent replied … "I have no answer to that"*."

75. The Tribunal recorded that in his oral evidence when asked why he had not disclosed the account, Mr Mariaddan said it was not under his control and he had no permission from his wife to disclose it. He accepted the account was in his sole name and the statements were sent to his ex-wife – who lived with him. In fact, the statements came to him and he gave them to her. They noted he did not say he had forgotten about the account or was unaware of it, and there was money coming into that account from the Firm.

76. The Tribunal expressly did not accept Mr Butler KC's submission that the concept of a "*bank account*" was unclear. Asking rhetorically whether if one had an account which one did not control whether, nevertheless, one "*had a bank account*". The Tribunal said, "*the answer to that question was plainly yes*". The Tribunal concluded that Mr Mariaddan:

> "*Knowingly and deliberately failed to disclose the existence of the HSBC account as it would show that he was receiving monies from the Firm that he had not disclosed in the questionnaire*."

77. It was argued before the SDT that the cases made in respect of allegations 1.1.2 and 1.1.3 were not clear but the SDT rejected that criticism, as it did a submission it was wrong to admit evidence of the Ledger. The first of these criticisms was expanded upon on appeal.

78. It was argued on his behalf before the SDT there was no dishonesty, and that Mr Mariaddan was correct to understand the meaning as "*regular income*" and, by referring to no "*income*" he referred back to the particular meaning "*regular income*" which he himself had used in correspondence. This the SDT did not accept:

> "*[Mr Mariaddan] had sought to draw a distinction between income and regular income. The Tribunal noted that the questionnaire referred to "other income". It did not ask about "other regular income". Throughout his evidence, the Respondent referred to not having a regular income. He was unable, despite a number of invitations, to show the*

> *Tribunal where in the documentation he had been asked by Firm A to provide details of his regular income.*"

79. The Tribunal also found, contrary to submissions, that in saying in the letter to Michelmores of 21 August 2019 that he had become "*dependent on DLA*" and that he "*received no other income*" Mr Mariaddan had indeed, "*caused or allowed misleading information*" to be provided as pleaded "*to the effect that his only income was DLA and/or he had not earned income for at least two years or words to that effect*". The Tribunal also noted that:

> "*When it was suggested that those monies were income that he should have declared, the Respondent stated "The money is coming in and someone else is managing it for me. So, if they ask me of course, I may have, I should have said, give a long explanation, but I didn't want to go through that.".*"

80. He had argued that the SRA were wrong to concentrate on money coming in - money was going out. Reflecting the explanations Mr Mariaddan had given, the Tribunal rejected Mr Mariaddan's defence to Allegation 1 wholesale thus:

> "*18.71 When asked why he had not disclosed the HSBC account to Firm A (which was the account into which payments were made by the Firm), the Respondent explained that it was irrelevant as those monies were being used to pay debts. The Respondent stated that Mr Collis was focussing on the money that came in but not the money being paid out, and that was the problem.*
>
> *18.72 The ledger showed that* [the Appellant] *had received £15,000 in drawings between 29 August and 20 November 2019. This included the £2,500 payment seen on the HSBC statement. Further, the evidence of* [Mr Mariaddan's accountant] *was that* [the Appellant] *had received £7,322 in drawings from 1 May 2018 – 30 April 2019. Whilst the statements relied on by the* [SRA] *were made in September – December 2019, the receipt of those monies was relevant in circumstances where* [the Appellant] *stated that he had earned no income for two years.*
>
> *18.73 The Tribunal did not find the Respondent's evidence that he considered that drawings were not income to be credible. The Respondent's explanation was that as he had to pay bills, the monies he received were not income. The Tribunal found that explanation to be extraordinary. Further, in his evidence, the Respondent stated that the £6,000 income that he did declare related to the drawings that he had taken. That evidence was wholly inconsistent with the view expressed that he did not consider drawings to be income.*"

81. They concluded the evidence showed he had received more than just DLA payments, and had earned within the two years before submission of the IEF. Thus:

> "*18.75 The Tribunal found that in stating that he had no income (other than DLA) and that he had not earned any income for at least two years, the Respondent had provided misleading information to Firm A.*"

82. With regard to the third statement about being unemployed the Tribunal likewise rejected Mr Mariaddan's explanation of why he represented himself as unemployed, or that he was confused and his answers muddled indicating he was not dishonest as alleged.

> "*18.77 The Tribunal found that the Respondent was not, as he asserted unemployed. As a self- employed practitioner, he was exactly that – namely self-employed. The Tribunal did not accept the Respondent's evidence that he considered that as he was not working full time, he was unemployed. Further, the Tribunal did not accept that because he had provided inconsistent and conflicting statements, this evidenced that he did not intend to mislead.*"

83. The Tribunal deduced that he had stated he was unemployed because this supported the assertion that he had no income. The Tribunal found that in stating that he was unemployed when he was not, he had provided misleading information and had failed to uphold the trust placed in him and had acted without integrity, contrary to Principles 6 and 2 of the 2011 Principles, and Principles 2 and 5 of the 2019 Principles.

84. The SDT drew the threads together at the end of the section on Allegation 1.1 thus:

> "*Dishonesty/Principle 4*
>
> *18.81 The Tribunal determined that the Respondent had deliberately sought to create a misleading impression of the accounts in his name, his income and his employment status. He had failed to disclose the HSBC account which showed drawings that he was receiving, as well as failing to disclose those drawings. He had also stated that he was unemployed so as to support his position that he had no income other than DLA. The Tribunal found that ordinary and decent people would consider that the Respondent's conduct was dishonest. The Tribunal found that the Respondent had been dishonest and had breached Principle 4 of the 2019 Principles*."

ii) Dishonestly giving misleading answers on an application for PII insurance

85. In dealing with this allegation the Tribunal recorded the materials that Mr Mariaddan had received from the SRA and his answers in interview as recorded above, setting out the case made by the SRA and recording the submissions of Mr Butler KC against.

86. They also noted that Mr Mariaddan's case to them was he had not thoroughly checked the form and there was a misunderstanding as to what he needed to disclose. Even *prima facie* dishonesty was denied and Mr Butler KC had submitted to the SDT it was surprising such an allegation was even made - rather than acknowledging mere carelessness. He submitted the pleading should also have alleged the Respondent *knew* the answers provided in the IEF were misleading but that allegation was not properly put. He suggested that Mr Mariaddan had not been properly questioned about the answers he gave concerning the IEF. The indications and context were that the form had been completed in a slap dash manner. The SRA could not show that he knew what it said. The broker, he argued, was aware of the regulatory history and it could not be said that they had in fact been misled. The overall submission was that the Appellant's conduct fell far short of dishonesty or a lack of integrity. The brokers who were the potentially misled party had been the brokers

for 8 years and would have known the true position, it was submitted, and evidence showed the broker was aware of a SRA investigation, there would be no point in misleading them. Mr Mariaddan had said there was no benefit to him, he would have saved some money, but would not have been insured.

87. The Tribunal however noted that Mr Mariaddan had provided a number of explanations as to why the answers on the Proposal Form were incorrect – that is that the application forms were changing every year and requests for information varied; that he had enquired if he needed to disclose an investigation of 2005 but was told it was for the last 5-6 years; or that the brokers were fully aware of an accurate history. The Tribunal continued:

> "*19.37 During his examination in chief, the Respondent explained that the advice referred to was from the FIO. The Tribunal did not accept that evidence. It was clear that the conversation the Respondent had with the FIO was as a result of her enquiry as to why the Respondent had not disclosed the investigation in the Proposal Form. That conversation, the Tribunal found, could only have taken place once the Proposal Form had been completed and submitted. Accordingly, the FIO could not have advised the Respondent prior to completion that he was not required to disclose matters that had occurred outside of the 5 – 6 year period.*
>
> *19.38 Further, it was stated that as this was a new entity, he did not consider that his previous regulatory history was relevant, and there was no regulatory history for the Firm. When asked by the Tribunal whether he was aware of the investigation, the Respondent considered that the SRA were not undertaking an investigation, but had been invited by him to assist in the dissolution of the partnership. The Respondent was taken to the letter of 14 July 2020, which informed him of the investigation. It was clear from that letter that the investigation related to the Firm and not the Respondent's former sole practice.*
>
> *19.39 Notwithstanding his oral evidence that he did not consider that there was any investigation, the Respondent also stated that he did not believe that the investigation needed to be disclosed as it was not an investigation resulting from a client complaint, but was an internal dispute that had been referred by the Respondent to the SRA. The Tribunal did not find this to be a credible explanation. There was nothing on the form that suggested that the only investigations that needed to be disclosed were matters involving client complaints.*
>
> *19.40 The Respondent explained that he had not completed the Proposal Form himself, but had delegated that task to the office manager. When the form was presented for signature, he asked the office manager whether there was anything he needed to know. The office manager did not raise any issues. The Respondent glanced through the form but did not read any of the responses in detail. He signed the form, trusting that his office manager had completed it accurately. When asked whether the office manager was aware of the investigation, the Respondent replied that he was not. It had also been the Respondent's evidence that he knew that the questions on the forms were changeable in that sometimes they*

asked for any previous matters, and at other times they asked for previous matters within a defined period.

19.41 It was the Respondent's case that he had told Mr C of Company B about the investigation. He had a long-established relationship with Mr C, and spoke with him on a regular basis. The Respondent produced an email that he sent to Mr C dated 15 June 2020, in which he informed Mr C that the partnership was not working and that he had reported the issues both to Mr C and the SRA. The Tribunal noted that this email pre-dated the investigation into the Firm. Further, the Respondent had not produced any of the 10 emails he asserted he possessed in which he fully appraised Mr C of any SRA involvement. Additionally, the Tribunal noted that the Respondent, in his email to the FIO of 13 November 2020, stated that he had informed Mr C of an investigation into Mr Saltifi numerous times. That email did not state that he had informed Mr C/Company B of any investigation into the Firm."

88. They summarised the position as follows*:*

"*19.43 The Tribunal found that in circumstances where (i) the Respondent had previously been sanctioned for failing to disclose information, (ii) he was aware that the questions on the form were changeable, and (iii) he knew that his office manager was not aware of the investigation of his regulatory history, the Respondent had failed to act with integrity in failing to ensure that the answers on the Proposal Form were accurate. A solicitor acting with integrity would not have disclosed his regulatory history and the investigation into the Firm. In failing to do so, the Respondent had failed to act with integrity in breach of Principle 5.*

19.44 The Tribunal did not find the Respondent's evidence as to his knowledge of the investigation credible. As detailed above, his oral evidence had been inconsistent and contradictory. The Respondent knew that there was a current investigation into the Firm which he did not inform his office manager about. He also knew that the Proposal Form would contain questions relating to his regulatory history. The Respondent also knew that the questions on the Form were changeable as to whether all previous matters needed to be disclosed or only matters of a certain age."

89. They recalled that they had found him untruthful concerning the advice he had received from the FIO. The Tribunal found that he had either read the Proposal Form and *deliberately* did not amend it or did not read it so as to turn a blind eye to answers he knew would be incorrect because he knew his office manager was not in possession of all the relevant information needed to ensure the answers were true and accurate. They found it to be dishonest in a solicitor to attest to the truth of information in a Proposal Form where he knew the information was incorrect.

90. The SDT drew an inference that he did not provide accurate information so as to avoid paying a higher insurance premium. He signed a declaration attesting to the truth of the statements made and ordinary decent people would consider that behaviour dishonest. The

SDT went on in more detail to explain the dishonesty, reflecting that the SRA in the Rule 12 Statement had stated it was inconceivable that he had forgotten any of the circumstances and he was knowingly including blatantly misleading information.

(iii) Failing to have valid PII insurance in place; and iv*)* Practising without valid PII insurance

91. The SRA's case in respect of these allegations was that, resulting from the failure to provide accurate information on the Proposal Form, Mr Mariaddan and Mr Saltifi were required to sign a personal guarantee and a no claims declaration in order to obtain insurance cover for the years 2020/2021.

92. On 7 December 2020 Mr Mariaddan was written to, indicating no personal guarantee had been received and so the renewal terms were withdrawn. The insurance policy was therefore in run-off, and this was confirmed on 8 December 2020 and on 14 December 2020 the company notified both Mr Mariaddan and Mr Saltifi that the decision was made that there would not be any cover after the expiry of the 2019 policy; "*therefore you should from a regulatory standpoint, not be practising*". It was emphasised that he must speak to the SRA with regard to the current position on insurance. The consequences were explained, together with the history and that any premium paid would go toward the run-off policy and be deducted from the final figure.

93. The effect of this was that the Firm was without insurance cover from 31 August 2020, the Firm should have closed no later than 29 October 2020. No formal notification of closure was received by the SRA at the date of the Forensic Investigation Report on 22 December 2020 and Mr Mariaddan told the FIO on 5 January 2021 that there were 5-8 live files and he was holding £17,689.40 in his client account. It was noted that the Firm's website was still active containing the Respondent's contact details suggesting he was still practicing and offering services to the public in spite of holding no valid insurance and in breach of the SRA Indemnity Rules 2019.

94. Before the Tribunal Mr Butler KC submitted that these two allegations, were "*fundamentally flawed as they were based on the wholly inadequate evidence underlying the insurance position*". It was inadequate, he argued, to proceed only on the FIO's statement and there was nothing other than communications from the insurer that the company had withdrawn cover. This constituted relying upon multiple hearsay evidence.

95. It was denied that there was cogent evidence to show he was practising without insurance. It was inadequate to point to a letter of 12 July 2021 indicating that the SRA intended to rely on documents exhibited to the Rule 12 Statement under the Civil Evidence Acts. It should have given particulars concerning the non-calling of the witness and it required to be compliant with CPR 33.2. The weight that should be given to this evidence was affected - even if, it was admitted, it was nonetheless admissible. It had been suggested that some evidence ought to have been called from the insurance company to explain the position, but none was. Furthermore, there was no evidence that either Mr Mariaddan or the Firm were carrying on practice.

96. The Tribunal set out, as before, in respect of each of the allegations, the gist of the case for the SRA and the submissions made on behalf of Mr Mariaddan.

97. The Tribunal reflected that they were not in fact governed by the CPR and there had been no objection in respect of hearsay evidence despite Mr Mariaddan having previously been represented and there having been two previously interlocutory hearings. They said this on the arguments raised:

> "*20.36 The Respondent had submitted that there was no evidence that the insurance had been revoked as alleged, and that the only evidence in support of that assertion was the hearsay evidence of Mr C, the FIO and the author of the Rule 12 Statement. The Respondent had provided as part of his evidence, a copy of the run-off insurance for the Firm. The Tribunal found that this was determinative of the position as regards the insurance. The Firm could not be in possession of run-off insurance in circumstances where it still held valid PII insurance.*
>
> *20.37 It was not for the Tribunal to decide whether the insurance company could validly and unilaterally convert the PII insurance to run-off insurance. It was the Respondent's case that he might have a claim against the insurance company for doing so. The Tribunal considered that until such a claim was made and had succeeded, the position was that the insurance company had revoked the insurance, and the Firm had been placed into run-off effective from 1 September 2020 as detailed in the run-off insurance certificate adduced by the Respondent.*
>
> *…*
>
> *20.40 The Tribunal found that the Respondent knew that the Firm was no longer insured. That this was the case was clear from the correspondence between Company B and the Respondent. It was also plain that the Respondent did not agree with the action taken. However, and as detailed above, disagreeing with the insurance companies' position did not mean alter the decision taken by them.*"

98. The SDT found that the Mr Mariaddan had failed to act in the best interests of his clients, therefore he knew that he did not hold PII insurance and a solicitor acting with integrity would not continue to act for clients knowing there was no insurance in place. Accordingly Principle 5 was breached.

CONSIDERATION OF THIS APPEAL

i) Dishonestly making misleading statements to another firm of Solicitors who were chasing a Legal Aid debt on behalf of the Legal Aid Authority, owed by Mr Mariaddan's previous firm

99. The gist of the challenges made to this court were in many cases a repetition of the complaints as to the adequacy of the pleadings or evidence made to the Tribunal itself. A thread running through them is that the Tribunal were appealably wrong in not accepting Mr Mariaddan's explanation that he was careless and/or mistaken rather than dishonest.

100. It is argued that the SDT were wrong to find that Allegation 1.1 was upheld as a matter of substance. Mr Butler KC in his written submissions and orally sought to say that, as he had submitted to the SDT, Mr Mariaddan was confused and not dishonest, and that the

finding of dishonesty was improperly reached and not open to the Tribunal on the evidence, properly approached.

101. He took issue with the allegation that Mr Mariaddan had caused or allowed misleading information to be provided to Michelmores to the effect that he did not have a bank account in his name. He emphasised that the covering letter attached to the completed IEF stated it had been completed "*as best completed*". This was submitted to reflect nuances in the tick box form. Mr Butler KC advanced his argument on paper in terms that "*this answer certainly had the potential to confuse*" if it was taken in isolation, but he posed a number of rhetorical questions: Why had he completed this section, rather than leaving it blank? He had left the building society section blank, and why had he given a zero balance figure – did that mean he did have an account but with nothing in it? It was submitted it was clearly not Mr Mariaddan's intention to convey the impression that there were no bank accounts in his name.

102. Mr Butler KC felt able to submit that the statement "*I have no bank account*" which appeared on the IEF, was, taken in context, not misleading and certainly not dishonest. He relied heavily on the fact that there was alongside evidence of two bank accounts, one described as "*belonging to his wife*" into which his benefits were paid, and evidence of the Barclays account in his own name which had been the office account of the LLP. The Tribunal were wrong in concluding that he had knowingly and deliberately failed to disclose the existence of the HSBC account: that had not been alleged and ought to have been if it were to be relied on. Further, it was not pleaded that Mr Mariaddan knew he was being asked to disclose *all* bank accounts in his name, and that he had deliberately failed to do so.

103. There was in my judgement, no failure of pleading nor lack of particularisation here.

104. The bald statement concerning the absence of a bank account was not true. The task for the Tribunal was to assess the context, which included other documentation and the evidence Mr Mariaddan had given, and determine what the inference from the totality of the relevant materials should be. That is precisely what they did. It is the case that in other circumstances, the statement that a person has no bank account, coupled with other evidence and their oral testimony as to how they came to make that statement, might lead to the conclusion they were, as submitted here, just muddled but honest. The question is whether it was open to this Tribunal to draw the inference that Mr Mariaddan was dishonest. I am clear the conclusions reached (set out above) were entirely sustainable in the context of the view that the SDT took of Mr Mariaddan's response to a request for information about his finances from Michelmores. Mr Mariaddan had altered the form to read that he had no bank account when in truth, he had (at least) three.

105. Mr Butler KC submitted that the Tribunal had found Mr Mariaddan guilty of dishonestly supressing the HSBC account and that was different from what was charged. He characterised the Tribunal's explanations for their conclusions as "*descending into the arena*" and said that it was unfair to look outside the actual document charged when characterising material as dishonest or using it to influence decisions as to the main charges.

106. I reject these submissions.

107. It is clear from the principles enunciated in the case law cited above that a Tribunal is entitled, indeed obliged, to look at the potentially relevant material before it and examine

the submissions made in context. In a case where dishonesty is alleged, the relevant context will necessarily include documentation surrounding the allegedly fraudulent or dishonest materials, arising in some cases both before and after the relevant dishonest activity. Indeed, Mr Butler KC's own argument proceeded on the basis that there was context to Mr Mariaddan's allegedly dishonest statements which exonerated him. It was, he submitted, only in isolation that the statement that he had no bank account, when he did, could be characterised as misleading or dishonest. His argument was that the context showed he was confused or mistaken. The Tribunal disagreed. The question for this court must be whether the inferences they drew from the materials before them were properly available to them, and whether in drawing such inferences they evinced some procedural error or other unfairness. I conclude they did not. The reasons given to support the dishonesty findings were clear, cogent and sustainable on the evidence.

108. The same approach and considerations apply to the other allegations, concerning information to the effect that his only income was disability living allowance and/or he had not earned income for at least two years. Likewise, the statement as to Mr Mariaddan's unemployment since 2015. The Tribunal did not, as was alleged, disregard the context of Mr Mariaddan's evidence. The explanations advanced before this court of imperfect English, inadequate self-expression and confusion, were also advanced to the Tribunal. The reality is that they saw and heard from Mr Mariaddan, and they disbelieved him.

109. A number of more general points were taken in the skeleton argument before this Court about the Tribunal's approach to their decision-making task. It is said:

a) that the Tribunal overlooked the fact that Mr Mariaddan brought "*the affairs of the LLP*" to the SRA's attention, although the point was made to them both orally and in written submissions. This is cited as an example of the Tribunal's tendency to disregard important parts of Mr Mariaddan's evidence;

b) that in the introductory paragraphs of the decision, a cursory overview of the legal tests for dishonesty and want of integrity is set out; and

c) that the Tribunal approached ground 1, which involved three separate allegations compendiously when it came to reaching their conclusions as to breach of SRA principles.

110. I reject these contentions.

111. Dealing first with the law, there was nothing cursory about the Tribunal's approach to the law. It was not in issue what was required by the law of dishonesty and the Tribunal set out accurately the relevant passage from *Ivey v Genting Casino* [2017] UKSC at [74]. They correctly described the task they were required to perform and explained what they had done, thus:

> "*14. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Tribunal considered all the evidence before it, written and oral together with the submissions of both parties.*

Dishonesty

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

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

16. When considering dishonesty, the Tribunal firstly established the actual state of the Respondent's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held. It then considered whether that conduct was honest or dishonest by the standards of ordinary decent people."

112. Likewise, the legal test for integrity was not an issue between the parties and the SDT accurately set out the appropriate passage from *Wingate and anor v The Solicitors Regulation Authority [2018] EWCA Civ 366* which states that integrity:

> "*97. … is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members … the underlying rationale is that the professions have a privileged and trusted role in our society. In return, they are required to live up to their own professional standards …*"

and

> "*100. … connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty …*"

113. It is said the Tribunal made no reference to *Three Rivers* but they did – see paragraph 18.34 of their judgment.

114. As to context, the interaction of Mr Mariaddan with the SRA had been in order to make a complaint concerning his partner. That was unconnected with any activity which later came to the SRA's attention regarding his own alleged defalcations. He did not reveal the account when asked in IEF.

115. Given the express statement, altered by him, on the face of the IEF that he had no bank account, it was unsurprising that the SDT found the allegation to that effect proved. The Tribunal gave context to their findings: they deduced, having made them, that the motivation was in order to mislead as to his financial position. That was a perfectly reasonable deduction to make in the circumstances. It is impossible to characterise this

part of their decision as "*wrong*" as that word is used in the context of an appeal of this nature.

116. The Tribunal's conclusions by reference to their inferences as to motivation against the context of Mr Mariaddan's actions is not evidence of a redraft of the allegations, nor a failure to reflect in the findings, the substance of the allegation.

117. Similarly it cannot sensibly be argued that the Tribunal failed properly to have regard to the context of the various statements made by the Appellant. Mr Butler KC sought to suggest there was selective quotation from the materials by the SDT to defeat the Tribunal's clear rejection of Mr Mariaddan's assertions. In my judgement however, their findings are fair and evidence-based and flow naturally from the facts, and from their (reasonable) rejection of those assertions.

118. Again this is an attack on the factual findings and the deductions made by the inferior Tribunal. They had the benefit of hearing Mr Mariaddan seek to explain his position and of seeing him cross-examined. They were able to judge whether the answers were as submitted by Mr Butler KC "*a muddle but nothing more sinister*", or not. That phrase was used in the course of attacking the Tribunal's alleged "*descent into the arena*" when they deduced as set out at paragraph 18.64 that there was a pattern, and a motive to Mr Mariaddan's behaviour. The Tribunal concluded:

> "*The Tribunal determined that the Respondent knowingly and deliberately failed to disclose the existence of the HSBC account as it would show that he was receiving monies from the Firm that he had not disclosed in the questionnaire.*"

119. This conclusion was entirely open to the Tribunal for the reasons they explained.

120. This is not deciding a case on a basis not put, nor is it descending into the arena. Mr Mariaddan had been charged with stating he had no bank account when in fact he had more than one. In determining whether this was carelessness or dishonesty the Tribunal was highly likely (although not bound see *Williams* at [62] (above)) to ask itself whether there was a motive for concealing what was later revealed. The non-disclosed account was that which had received (at least one) payment from the practice to Mr Mariaddan. In fact, on questioning, it became clear that Mr Mariaddan did use bank accounts, make payments and received funds. The Tribunal was entitled to draw the conclusion that there was a motive behind his failure to ask the questions asked in the IEF correctly.

121. It was also said there was a factual error in the Tribunal's finding that the HSBC account disclosed "*payments into the account from the firm*". It is said there was a single payment which was made after return of the IEF, namely of £2,500 from the Firm received on 29 August 2019. Mr Mariaddan does not deny that this did come from the Firm but also says that other bank statements (not in evidence) show this was the only one. This was a material mistake, it is argued, and this court should look at the further evidence showing it was the only payment.

122. I was invited to consider the other material, available, in truth, for the SDT hearing but not relied upon at the time. The *Ladd v Marshall* criteria are plainly (and admittedly) not met. However I resolved to look at the new material *de bene esse*. It was submitted that it proved Mr Mariaddan's point about there having been only one relevant payment into the account

HSBC account from the Firm. This was an earlier payment on 11 January 2019 of £1,037.47. Mr Collis, by contrast, said the material proved the SRA's point that the account was very much not "*dormant*" as claimed. There was evidence of the payment from the Firm of £2,500 of 29 August 2019, and also the earlier one in January 2019. There were also receipts of £6,919.47 paid into the account between 17 November 2018 and 2 May 2019 and, during the period 17 November 2018 and 23 August 2019, he noted there were 43 separate transactions on the account.

123. In my judgement this evidence does not assist Mr Mariaddan. There is no ground for the submission that the Tribunal went wrong in any material way when they held "*... the Tribunal noted from the HSBC statement that there were payments into the account from the Firm*". This evidence reinforces the position that there was payment – as stated the account shows that there had been (more relevantly) one before, and one a few days after submission of IEF on 21 August 2019. As the SRA submitted, in my judgement, the new material reinforces the conclusion, that Mr Mariaddan had good reason not to disclose this account which was far from dormant and revealed that he received payments from the Firm into it. The payment/payments debate is neither here nor there.

124. The correspondence which accompanied evidence of the existence of the HSBC account stated he had:

> "*... Become dependent on the Disability Living Allowance of £500 PCM* [2015]. *This receipt is deposited into his wife's account, who is his current voluntary carer ... Raj Mariaddan receives no other income as he stated before.*"

125. With regard to allegation 1.1.2 it was argued that the SDT were wrong to find any statement by Mr Mariaddan that his only income was Disability Living Allowance and he had not earned income for at least two years. It is claimed that Mr Mariaddan had to "*cast around ... to understand the most basic plank of the case against him*".

126. I do not accept that was the position or that there was any unfairness. The core submission was that the allegation did not plead that the DLA and absence of earnings for two years statements derived from a letter of 21 September 2019.

127. There is no unfairness in this allegation, nor do I (nor did the SDT) accept that Mr Mariaddan was in any way disadvantaged or inhibited from understanding what was put against him. The letter of 21 August 2019, passing between Mr Mariaddan and Michelmores as stated before, said that Mr Mariaddan had "*become dependent on the disability living allowance of £500 pcm* [2015]" and "*received no other income as he stated before*". It was also submitted that in truth this should be read as saying "*no <u>regular</u> income*" because the phrase "*regular income*" had been used by him in previous correspondence, and the words "*as he stated before*" must be read as incorporating the notion of "*regular*".

128. I do not accept that it was not open to the SDT to read the letters from Mr Mariaddan as supporting the contention that he caused or allowed misleading information to be provided to the effect that his only income was disability living allowance and/or he had not earned income for at least two years or words to that effect. As the SDT pointed out (as set out in paragraph 78 above) the concept of "*regular income*" was not a relevant one – and income

[without qualification] was the word he used in the relevant representation, although he sought to develop this line of defence orally.

129. The nub of the criticism regarding allegation 1.1.2 is the Tribunal's reading of Mr Mariaddan's statements as amounting to the pleaded charge.

130. It was suggested that the concept of "*income*" in the IEF was unclear and not capable of being understood for the purposes of filling in the form. It must connote the notion of regularity and Mr Mariaddan was not in error in saying he had no other income and that his usual take-home pay was £0 in all the circumstances. The statement that he had not received any income for at least two years was not diminished it was said by the fact that drawings had been received by Mr Mariaddan: he did not understand them in that context, he claimed that he understood the phrase to mean only net income – of which he understood there would be none. The Tribunal, who heard and saw Mr Mariaddan advance this approach in oral evidence rejected it. They were entitled to do so given their other findings and the late appearance of the "*explanation*" and in light of the other untruths.

131. It was submitted that Mr Mariaddan did not understand the case all the way through that had to be met. Complaints are made concerning this allegation as being unsatisfactorily formulated. The SDT is again said to have stepped in and assisted the SRA. These criticisms were levelled at the finding that the Tribunal made at paragraph 18.78:

> "*The Tribunal determined that the Respondent had stated that he was unemployed as this supported the assertion that he had no income. The Tribunal found that in stating that he was unemployed when he was not, the Respondent had provided misleading information to Firm A.*"

132. Given that Mr Mariaddan was at the time a self-employed practitioner he was not unemployed. It is neither descending into the arena nor improperly approaching the context of the case to deduce in the circumstances that he told a lie. I also reject the submission that Mr Mariaddan did not understand the case that was being put against him in the SDT.

133. It is clear from the principles set out in paragraphs 35-38 above concerning particularity and the pleading of dishonesty, that the adequacy of any particular pleadings is judged in the context of the case and what fundamentally matters is the giving of sufficient notice to a witness of the allegation in question and a proper opportunity to respond. In this case the pleadings and the exposition of the case were neither of them flawed in the manner suggested.

134. This was not a case where Mr Mariaddan was not cross-examined on the relevant representations or where there was no mention of the representations in issue, whether orally or in writing nor was there ambiguity or any scope for material misunderstanding.

135. Importantly, it is relevant that, as conceded by Mr Butler KC in his written skeleton argument for this appeal, Mr Mariaddan had disregarded a number of opportunities to respond (although he did not phrase it in those terms). Standard Directions had been issued on 2 July 2021 requiring him to file and serve an Answer to the Rule 12 Statement by 30 July 2021. Such answer as he gave on the 13 July 2021, by sworn statement, was an attack on the SRA's intervention and on matters sworn in support of delivery up of materials in respect of the SRA's intervention. A supplemental statement on 25 July, after considering

the Rule 12 Statement, asserted that Mr Mariaddan had already answered what was said by Messrs Dunn and Lane, the deponents, and would not repeat it.

136. No issue is taken here that Mr Mariaddan was unable to develop his case in oral evidence if he chose. Having read his transcript of evidence, in my judgement that is an appropriate concession.

137. Mr Collis for the SRA opened the documents to the SDT upon which the SRA sought to rely, whether or not they were expressly mentioned as he accepted (in respect of allegation 1.1.2 and 1.1.3) they were not. The advocate's skeleton argument before the SDT had also identified the materials which the SRA used to build their case. He submitted, and I accept, that it was perfectly clear in respect of allegations 1.1.2 and 1.1.3 that given the date range, a number of documents are being referred to. Each of them was the subject of cross-examination and Mr Mariaddan had an opportunity to give his explanation. In order to test his case as to innocent mistake or carelessness, the surrounding documentation was, of necessity, also put to him.

138. Again, as a conclusion of general application, I do not accept as was submitted by Mr Butler KC, that it is a requirement of a pleading in this context that it sets out all the facts and matters upon which the SRA might rely in order to show that what might be negligent and what not. There could be no doubt in this case, whether Mr Mariaddan chose to address it before the hearing or not, what the SRA's case was and the record of hearing makes clear Mr Mariaddan was able to address it.

139. The earlier parts of this judgment set out those relevant extracts of the Rule 12 Statement which illustrate that the SRA made clear to Mr Mariaddan how it had come to the conclusion it was appropriate to charge him with dishonestly misleading. In particular the Statement set out excerpts of Mr Mariaddan's answers to the Firm. Those excerpts indicate clearly that Mr Mariaddan was asked in terms about the dishonesty or otherwise of his actions and given an opportunity to respond. The Rule 12 Statement set out the sequence of correspondence upon which later reliance was placed and indicates how the SRA argued it showed dishonesty.

140. Whether he chose to respond or not at the time, Mr Mariaddan could not have been under any misapprehension of the case that was made against him. He would also have been clear as to which evidence the SRA said was relevant to his behaviour. An example (from paragraph 28 of the Rule 12 Statement) was the exposition of Mr Mariaddan's answers in interview concerning the important evidence of the ledger "*draw – rr – Drawings Raj Rajan*" between the end of August and the end of April 2020. He had said when interviewed he may be drawing this, but he may be drawing it to pay bills and he explained, as is set out above, he paid the mortgage etc from that account. He later, in evidence, gave an explanation about what he said was his understanding of what "*income*" as opposed to "*drawings*" meant.

141. In respect of the allegation as to unemployment since 2015, it is complained that the SDT failed to determine the issues as formulated and overstepped its remit by a considerable margin.

142. It is however the case that Mr Mariaddan did say on the IEF that he was unemployed. The submission was that, because the previous assertion was that he was semi-retired, it could not have been that he was being dishonest when he said he was unemployed, the two were

inconsistent. The fact remains, that Mr Mariaddan was not unemployed. It is a reasonable deduction of the SDT that he ticked the box in order to bolster the impression he sought to create, namely, that he had no money coming in except DLA, and was in straightened circumstances.

143. It was suggested that it is not open to the SDT to deduce a dishonest motive, if contradictory answers were given in the IEF form. I disagree. If the form contains statements which are, on their face not true, it is a matter for submission and the assessment of the specialist Tribunal whether or not those untrue statements were advanced through a misunderstanding, through ignorance or through a more sinister, and dishonest, motive. Once again, in context, it is impossible to impugn the SDT's conclusions. This was not "*developing a thesis*" nor "*making the SRA's case for it*". This was the proper duty of the Tribunal in drawing such inferences of fact, as it was required to do.

ii) Dishonestly giving misleading answers on an application for PII insurance

144. It was accepted by the Appellant that the boxes on this form had been incorrectly ticked such that previous regulatory action was not disclosed nor the refusal of an unconditional practicing certificate. Mr Mariaddan had said that his employee had completed the form and he signed it without checking and was careless. This was said to be "*on the face of it … a perfectly plausible contention*". This court was invited to find that there were pleading errors in this allegation such that it was not possible for the SRA to rely upon their dishonesty case.

145. It was suggested by reference to *Three Rivers DC v Bank of England* [2003] 2 AC 1 that Mr Mariaddan was disadvantaged because the facts, matters and circumstances showing Mr Mariaddan had been dishonest had not been advanced by the SRA. I reject that submission. Mr Mariaddan can have been in no doubt at all what was being alleged. He admitted the inaccuracy and the only question was whether the explanation that he gave, that the form was filled in by a subordinate and he, carelessly, did not check it, was believable.

146. As already stated, it is an unsustainable submission that the SRA was required to plead that inconsistent answers given in interview supported a conclusion of dishonesty.

147. It was also suggested that the SDT went appealably wrong in concluding that Mr Mariaddan must either have read the proposal form and deliberately did not amend it, or he did not read the form and knowingly turned a blind eye to answers that he knew would be incorrect given the admitted incomplete knowledge of his subordinate. These are both deductions from the evidence that was before the Tribunal, including Mr Mariaddan's explanations as to what happened. There is nothing improper in the SDT analysing what they read and heard in this manner. As Mr Collis pointed out, it was Mr Mariaddan's evidence at the hearing that suggested he might not have read the insurance proposal form properly that led to this conclusion by the SDT.

148. The principles set out above in full from *Martin* at [32] and [33] apply. These are conclusions as to the dishonesty of Mr Mariaddan and conclusions as to the likely factual history, they having rejected his defence of mere negligence. It is impossible to say that this together with the other conclusions reached on allegation 1.2 cannot reasonably be explained or justified. In my judgement, it might be said that it beggars belief that a practicing solicitor would, carelessly, not check a form filled in by an associate whose

knowledge he was well aware was faulty on material matters in such an important matter. This is particularly so in the crucial context of the declarations required in respect of PI cover.

149. Once again, drawing what were in my judgement perfectly reasonable inferences from the facts and Mr Mariaddan's answers, is not "*making the SRA's case for it*".

150. Rejecting Mr Mariaddan's case of negligence was an entirely reasonable inference on the facts.

151. I reject the analysis that in order for the allegation to be made out the SRA needed to prove that somebody was misled. A misleading statement is a statement that is not accurate. The allegation is that Mr Mariaddan caused or allowed misleading information to be provided to Company B, the adjective "*misleading*" is used synonymously with false or inaccurate. No misunderstanding was likely to, or in my judgement, did arise.

iii) Failing to have valid PII insurance in place; and iv) Practising without valid PII insurance.

152. The appeal against these findings was put on the basis that the SDT was wrong to accept that Mr Mariaddan's insurance had in fact come to an end. It was wrong to conclude from the fact that the policy was in run-off that Mr Mariaddan was not held covered. There was no direct evidence, it was said, that Axis had purported to withdraw cover or validly done so and both of these were necessary if the allegation were to be made out.

153. I have no hesitation in rejecting this submission. The correspondence makes clear Mr Mariaddan was told the effect of a failure to renew was the absence of insurance which would require him to cease business. As Mr Collis pointed out, the insurance was not cancelled suddenly, there had been issues with the professional indemnity policy from September 2020 when there was correspondence. This sequence of correspondence was set out in the Rule 12 Statement. Not only was Mr Mariaddan told on 7 December that the renewal terms had been withdrawn but on the next day he was notified that the insurance firm's policy was in run-off. If that were not clear, a letter of 14 December from the brokers explained the history and confirmed that Mr Mariaddan did not have any personal injury cover since the expiry of his 2019 policy and ought not to be practicing.

154. It is not arguable that Mr Mariaddan could not be said to be "*practising*" as was suggested. It was claimed there was no evidence led to prove this. Reference was made as follows in argument by Mr Butler KC to the Tribunal:

> "*…. "Practice", in Rules 2.1 and 2.4 of the SRA Indemnity Insurance Rules was defined in the SRA Glossary as "the whole or such part of the private legal practice of an authorised body as is carried on from one or more offices in England and Wales" (with "practise" to be construed accordingly); and "private legal practice" meant: "the provision of services in private practice as a solicitor or REL in an authorised body including, without limitation: (a) providing such services in England, Wales or anywhere in the world in a recognised sole practice …*"

The conclusion of the Tribunal was:

> "*20.42 That the Respondent was still practising pursuant to the definition referred to by Mr Butler QC above, was evident on the Respondent's own evidence. The Respondent referred numerous times to "working" prior to the Applicant's intervention in January and thereafter having "no job". The Respondent also referred to having 5-8 live files and holding money in the client account.*"

155. There is no ground to impugn such a conclusion- it is not suggested such "*work*" was other than as a solicitor within the description of practice as set out.

156. Whether or not Mr Mariaddan had any claim against the insurance company is irrelevant. It was clear beyond peradventure that whether right or wrong, his insurers would not hold him covered for the relevant period, and Mr Mariaddan knew it.

157. At various points it was suggested that the SDT had been appealably wrong in their "*selective*" approach to the evidence. It was suggested for example that the SDT "*mishandled*" evidence concerning the broker and whether he knew or did not know of the investigation. They misunderstood a piece of evidence, it was argued, that showed Mr Mariaddan had mentioned partnership issues to Mr Elliot Cross of the brokers. It was said it was ignored and it showed Mr Mariaddan was transparent and therefore less likely to have been dishonest and also that he was not trying to keep "*interactions with the SRA*" from Mr Cross.

158. These details of the evidence, the weight to give to them, and the inferences to be drawn from it were matters for the expert Tribunal, absent an error of principle or egregious error of analysis. There is nothing here to suggest such a thing. These were contentions made to the SDT. There is no appealable error in the Tribunal's rejection of them.

159. Further, as was reinforced in *Williams*, the decisions of the SDT are not to be expected to be the product of elaborate drafting. A judgment should be read as a whole and it is appropriate to take it that the Tribunal has fully taken into account the evidence and submissions that were made to it. It cannot be said that the basic task of covering the correct ground and answering the right questions failed here.

160. It was also submitted that there was a "*troubling alacrity*" on the part of the SDT to find the allegations proven. Not only is there no actual evidence to support such a statement, but the care with which the Tribunal logically laid out the allegations and expressed its conclusions on the basis of days of detailed evidence gives the lie to such a criticism. The transcript also shows the SDT intervened on several occasions to protect Mr Mariaddan from what it saw as unnecessary or repetitive cross-examination.

SUMMARY

161. There were very many and intricate criticisms of the Tribunal, its reasoning and its approach to the evidence carefully (and properly) put by Mr Butler KC. I intend him no disservice in not recording every single nuance of the case that he made in order to seek to suggest this decision was appealably wrong on the various bases set out. I have examined each of the points he made both on paper and orally to me.

162. In my judgement the SDT decision plainly is not appealably wrong on any of the technical grounds advanced. I reject each of the criticisms made of the decision, the pleadings, or the SDT's approach to the evidence.

163. It has been said many times (see the cases referred to in paragraphs above) that the Court must exercise particular caution and restraint before interfering either with the findings of fact or with the evaluative judgment of a first instance and specialist tribunal, such as the SDT, particularly where the findings have been reached after seeing and evaluating witnesses.

164. Further, what matters is whether the decision under appeal is one that no reasonable judge would have reached. As it was put by Morris J in *Ali v Solicitors Regulation Authority* [2021] EWHC 2709 (Admin), having referred to similar authority:

> "*94. … that is a high threshold. That means it must either be possible to identify a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence. If there is no such identifiable error and the question is one of judgment about the weight to be given to the relevant evidence, the Court must be satisfied that the judge's conclusion cannot reasonably be explained or justified.*
>
> *…*
>
> *Therefore the Court will only interfere with the findings of fact and a finding of dishonesty if it is satisfied that that the Tribunal committed an error of principle or its evaluation was wrong in the sense of falling outside the bounds of what the Tribunal could properly and reasonably decide.*"

165. No grounds to interfere with the reasoning and conclusions of the SDT, nor the drafts or presentation of the case against Mr Mariaddan have been shown. This appeal must fail.