Neutral Citation Number: [2024] EWHC 2775 (Admin)

Case No: CO/1593/2023

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 6 November 2024

Before :

MRS JUSTICE MCGOWAN DBE

- -

Between :

FARRUKH ABBAS

Appellant

- and -

SOLICITORS' REGULATORY AUTHORITY

Respondent

- -
- -

Mansoor Fazli (instructed by Direct Access) for the Appellant
Matthew Edwards (instructed by Capsticks) for the Respondent

Hearing dates: 28 February 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 06 November 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mrs Justice McGowan DBE:

Introduction

1. Farrukh Abbas, ("the Appellant'') seeks to appeal pursuant to section 49 of the **Solicitors Act 1974** (''the 1974 Act'') against the decision of the Solicitors Disciplinary Tribunal (''the Tribunal'') dated 3 January 2023. That decision was reached following a hearing which concluded on the 29 November 2022, at which the Appellant was present and represented.

2. He is represented in these proceedings by Mr Mansoor Fazli, who did not appear below. He was represented by Mr Billal Malik in the proceedings below. The Solicitors' Regulatory Authority, ("the Respondent") is represented by Mr Matthew Edwards, as below.

3. By their decision, the Tribunal found three allegations of dishonesty proved and, consequently, it ordered that the Appellant should be struck off the Roll of Solicitors.

Preliminary Application

4. The Appellant applies, at section 10 of the Appellant's Notice, for permission to file the Appellant's Notice out of time. That application was ordered to be listed for hearing at the commencement of the appeal hearing by Mrs Justice Lang on 1 November 2023

5. An Appellant's Notice must be filed within 21 days of the publication of the Judgment which is the subject of the appeal (CPR rule 52.12(2)(b) and CPR PD52D para 3.3A). The Appellant's Notice was filed with the Court on 16 April 2023 and was therefore filed 3 months and 13 days (103 days) after the expiry of the time limit for doing so.

6. At section 11 of the notice he attaches a witness statement which purports to explain the reasons for the delay in support of his application which are, in summary, as follows:

    i) The Appellant was initially advised within the 21 day time limit against appealing to the High Court which he says he accepted given "his fragile state of mind",

    ii) The Appellant was "exhausted emotionally and mentally" and "unable to think clearly and straight" after the Tribunal hearing,

    iii) The Appellant has no prior experience of regulatory matters and it was therefore not possible for him to pursue the appeal himself,

    iv) He found it difficult to obtain pro bono advice/representation given his limited financial means. Contacted those whom he knew in the legal profession, nobody could help and,

    v) His financial well-being and professional career depend on the outcome of the appeal.

7. In summary, the Respondent contends that there is no good reason to grant relief from sanction. In particular, Mr Edwards makes the point that the Appellant has failed to justify his non-compliance within the mandatory deadlines for filing an Appellant's

Notice imposed by CPR r 52.12. In the view of the Respondent, the reasons given do not justify such a delay.

8. I have a general power of case management under CPR 3.1(2)(a) to *"extend or shorten the time to compliance with any rule, practice direction or court order (even if an application for extension is made after the time for compliance has expired)".*

9. Both parties recognise the starting point from which to approach any such application is the guidance and test set out in ***Denton v TH White Ltd [2014] WLR 3926*** at [24] et seq.

10. The guidance suggests that a three stage test should be applied, per CPR 3.9(1).

    i) Firstly, to assess the seriousness or significance of the failure to comply,

    ii) Secondly, to consider why the breach occurred, and

    iii) Thirdly, to consider all the circumstances, in order that the application can be dealt with fairly.

11. Mr Fazli describes the finding of the tribunal as a "serious" one, he is right, insofar as the consequences for both the Appellant and the public are serious. He submits that it would be in the interests of justice to grant the application. He points out that there is no prejudice to the Respondent caused by the delay in filing the application. He argues that after the original delay and once the Appellant had obtained representation things moved at reasonable pace. He relies on ***R (Talpada) v SSHD [2018] EWCA Civ 841*** and invites the court to distinguish this type of litigation from ordinary civil litigation.

12. The Respondent submits that the breach is serious and significant. Further that the Appellant does not explain, other than simply stating he was exhausted emotionally and mentally, why it took more than three months to lodge the appeal. There is no supporting medical evidence. There is no detail about the efforts to secure the advice that was eventually received. The Appellant was a solicitor with 8 years' experience and must be assumed to have some knowledge of the process of the court.

13. The Respondent accepts that there may be some merit in the argument that this is not "ordinary" civil litigation but properly makes the point that there is a need to enforce compliance with rules, practice directions and orders.

14. There is substantial force in the Respondent's argument that parties must comply with time requirements. However, I am just persuaded that I should grant permission to the Appellant to file his notice out of time. That is a decision I have reached, with some diffidence, purely on the circumstances of this case. I recognise the importance of this issue to the Appellant and his family.

APPEAL

15. There are three allegations against the Appellant which are accepted to have occurred whilst he was in practice as a solicitor, with Chauhan Solicitors Limited and/or with Prime Law Solicitors Limited.

16. It was accepted that between 28 July 2017 and 5 April 2018, the Appellant instructed and/or approved the issue and/or pursuit of a fabricated claim for damages against Person A in respect of a road traffic accident when he knew that the basis of the claim was not true. In doing so the Appellant breached either or both of Principles 2 and 6 of the SRA Principles 2011.

17. It is accepted that on or around 29 September 2017, he signed a witness statement containing a declaration of truth knowing that the statement was untrue in material respects. In doing so he breached either or both of Principles 2 and 6 of the SRA Principles 2011.

18. It is accepted that between 27 and 30 October 2017, the appellant provided misleading information in respect of medical evidence provided by a medical expert, Mr Habib Qazi, in that on 27 October 2017 he provided instructions to Mr Qazi which were untrue in material respects; and/or on or around 30 October 2017, the Appellant signed a declaration confirming that he agreed with the contents of a medical report when he knew that the medical report was, in material respects, untrue. In doing so the Respondent breached either or both of Principles 2 and 6 of the SRA Principles 2011.

HISTORY

Allegation 1

19. The first allegation arises out of a fraudulent claim following a road traffic accident on 27 July 2017. Person A was involved in a collision on St Albans Road, Ilford Essex. It was not a very serious incident and no serious physical injury was caused. A reported the accident to his insurers the same day. The driver of the other vehicle, a VW Golf SE07 NRV, gave his name as Mohammed Sohail (also known as Sohail Anjum).

20. On the following day, 28 July 2017, the Appellant instructed Prime Law Solicitors ("the Firm") to represent him in a claim for personal injuries and losses he claimed to have suffered as a result of the road traffic accident on 27 July 2017, in which he claimed to have been the driver of the car at the time of the collision.

21. On 28 July 2017 he signed a letter of authority and client care letter instructing the Firm to act on his behalf to seek compensation for injuries, expenses and losses arising from the accident.

22. He also signed a Conditional Fee Agreement with the Firm. The Client Care letter indicated that the Appellant's case would be handled by Mr Sohail under the supervision of Mr Faiz Ahmad ("Mr Ahmad"), a solicitor at the Firm.

23. Both have denied any knowledge of or involvement with the Appellant's claim.

24. A was subsequently contacted by his insurers seeking clarification of the details of the other driver as they had received a claim from the Firm which stated that the Appellant was the driver of the vehicle and not Mohammed Sohail or Sohail Anjum.

25. A then forwarded evidence to his insurers which showed that the driver of the VW Golf was, in fact, Mr Sohail and not the Appellant. Both the Appellant and Mr Sohail worked at the Firm.

26. The Firm corresponded with A's insurers and made a claim for damages arising out of the accident on 27 July 2017. The correspondence included the following:

    i) A Claim Notification dated 28 July 2017 naming the Appellant as the claimant in respect of the accident on 27 July 2017. This form stated, amongst other things, that that the value of the claim was up to £10,000, that the Appellant had suffered whiplash and soft tissue injuries as a result of the accident and that the Appellant had been the driver of the vehicle at the time of the accident,

    ii) An email dated 3 August 2017 enclosing a vehicle engineer report dated 3 August 2017 for damage to the Appellant's car. This was subsequently resent on 25 August 2017,

    iii) On 18 August 2017 and again on 13 September 2017, A's insurers wrote to the Firm stating that they did not accept that their insured was responsible for the collision. Due to the discrepancies between both parties' accounts, they requested a copy of the Appellant's statement and any plans or diagrams and any other evidence, as well as an update on the Appellant's injuries,

    iv) The Firm responded by email dated 4 October 2017 referring to the letter of 13 September 2017 and enclosing the Appellant's witness statement of 27 September 2017. That email stated that the Appellant rejected A's version of events and maintained that it was A who caused the accident. It urged the insurers to settle the matter,

    v) The Firm sent an email dated 5 March 2018 enclosing the medical report of Mr Habib Qazi and an invoice for physiotherapy treatment,

    vi) An email was sent from the Firm dated 7 March 2018 rejecting A's version of the facts of the accident and enclosing references to photographs of the scene. It enclosed another invoice for physiotherapy sessions,

    vii) A's insurers wrote to the Firm on 3 April 2018 requesting a further witness statement from the Appellant, which was accompanied by a statement of truth covering further outstanding questions about the incident and,

    viii) On 5 April 2018, the Firm wrote to the Appellant stating, *"Having considered all of the available evidence in this matter and as a result of your lack of cooperation, we have come to the conclusion that we are unable to proceed with your claim… We can confirm that we have now closed your file."*

27. The claim was not pursued further.

28. The matter was reported to the Respondent by the Insurance Fraud Bureau. On 18 March 2020, the Respondent wrote to the Appellant seeking the following information:

    i) Who was driving the vehicle registration SE07 NRV on 27 July 2017 at the time of the accident;

    ii) What time did the accident take place;

iii) To whom did the telephone number given to A at the scene of the accident belong;

iv) What was the relationship between the Appellant and Mr Sohail;

29. He replied the same date and responded to the above questions as follows:

i) The driver at the time of the accident was Mr Sohail;

ii) He had been told that the accident took place around 15:00 hours;

iii) The telephone number belonged to Mr Sohail;

iv) Mr Sohail "is a work colleague and was a friend";

30. The Appellant added *"I apologise to [A] and am sorry for my poor decision making on my part"*.

31. The Respondent asked him to clarify if, in stating this, he admitted that he had falsely submitted a personal injury claim in his name when the person in the car at the time of the accident was Mr Sohail.

32. The Appellant replied on 24 March 2020, saying, *"Unfortunately, yes I was naïve to send a pre-action protocol*"

33. On 22 April 2020, the Respondent sought further information from the Appellant, he replied on 6 May 2020 and confirmed the following:

i) He became aware of the road accident on the same day as it happened;

ii) He was told that it was A's fault and that he was joining the road from the street and hit Mr Sohail;

iii) His, (the Appellant's) last contact with Mr Sohail was as a friend, towards the end of January 2020;

iv) They had stopped speaking on a personal level since then;

v) Mr Sohail had been working for the Firm as a paralegal and;

vi) Mr Sohail proposed that the Appellant state that he (the Appellant) had been the driver. He had agreed to do this and said it was an error of judgement. He stated *"The sole motivation was that it was borne out of stupidity. As far as I am aware, he was insured at that time as he had two vehicles at home which he was also driving regularly"*.

34. In response to a question asking how far he had taken the deception, the Appellant stated that "a pre-action protocol was sent followed by disclosures".

35. The Respondent sought further information on 28 May 2020 from the Appellant. On 11 June 2020 the Appellant confirmed the following that the person named "Istkhar" in the correspondence was a solicitor.

36. The email address info@primelawsolicitors.co.uk was being used by Mr Sohail.

37. In response to the Respondent's question, "*At the time the claim was submitted was anyone in the firm, other than Mr Sohail, aware that this was a fraudulent claim?"* He confirmed that he and Mr Sohail were aware the claim was fraudulent.

38. The Firm had been informed of the Respondent's investigation. The Appellant was a self-employed consultant and had been asked not to take up any new matters.

39. On 1 April 2021, the Respondent wrote to Mr Sohail in the course of its investigation. Mr Sohail responded on 30 April 2021 and stated the following: "On 27 July 2017, he had been driving vehicle registration SE07 NRV. The Appellant was a colleague and friend of his. He did not propose that the Appellant should say that he, the Appellant, was the driver. He could not explain why the Appellant had said that.

40. Mr Sohail had borrowed the Appellant's car. He, Mr Sohail, was under the impression that he had fully comprehensive insurance which enabled him to drive any car which was insured by the owner/ keeper.

41. He had left the Firm in October 2019 and had not had any contact with the Appellant since March 2020.

42. He, Mr Sohail, did not take part in any deception.

43. In a further email of 11 May 2021, Mr Sohail added that he had never acted for the Appellant in his personal injury claim and had no knowledge of the client care letter. He did report the accident to the Appellant as he was the owner of the car.

44. Mr Sohail provided a witness statement on 28 June 2022. In it he confirms the following:

    i) After the accident he came out of his vehicle and exchanged details with the third party;

    ii) He informed the Appellant about the accident on the same date it happened, 27 July 2017, and forwarded the details of the third party;

    iii) He has seen the Client Care Letter addressed to the Appellant which appears to have been drafted by him;

    iv) He has never seen this letter until it was disclosed to him; he did not draft this letter and;

    v) As far as his memory is concerned (sic), he did not discuss the accident with the Appellant once he had reported the fact of it to him.

Allegation 2

45. On 27 September 2017, the Appellant signed a witness statement in support of his claim against Person A. The statement was headed: *"The contents of my statement are accurate and derive from my own knowledge; where the contents are not from my own knowledge, I have specified where the information came from.*"

46. In it the Appellant stated the following:

> *"At the time of the accident I was driving my Volkswagen Golf registration SE07NRV. …The [other] driver was [A] which I became aware of when we exchanged details; …I was wearing [a] seatbelt at the time…I was correctly proceeding along the… A118 … "*

47. With the exception of the statement that A was the other driver, none of this was true and the Appellant knew that it was not true.

48. The statement was sent to A's insurers by the Firm on 4 October 2017 as confirmation by the Appellant that this was a true version of events.

Allegation 3

49. On 27 October 2017, a medical report was prepared by Mr Qazi in respect of the injuries the Appellant purportedly sustained on 27 July 2017.

50. This report was sent by the Firm to A's insurers in support of the claim. The report indicated that Mr Qazi examined the Appellant on 27 October 2017. It also stated that, *"Mr Abbas informs me that he was involved in a road traffic accident. The accident occurred on the afternoon of 27/07/2017…Mr Abbas was the driver of the car. He was wearing a seatbelt … Mr Abbas was not able to brace himself before the accident. He was looking straight ahead at the time of the impact. He was jolted to the left then the right".*

51. None of this was true.

52. On 30 October 2017, the Appellant signed a document with the title 'Medical Report Engineer Report' [sic] which stated, *"I Farrukh Abbas … hereby confirm that I have received a copy of medical report and I agree with the contents of the report and agree to its disclosure."*

53. In fact, that medical report was untrue in a number of material respects including that it stated that:

    i) He was involved in a road traffic accident on 27 July 2017;

    ii) He was the driver of one of the cars involved and;

    iii) He suffered injuries as a result of the accident.

54. On 5 March 2018, the Firm sent an email to A's Insurers enclosing an invoice in respect of physiotherapy services totalling £810 which it sought to recover.

55. The Appellant did not require any physiotherapy as a result of the accident of the accident on 27 July 2017 as he was not involved in the accident and he was not entitled to recover anything from A or any other party.

Breach of Principles and Dishonesty

56. **Principle 2 of the SRA Principles 2011** requires solicitors to act with integrity.

57. In ***Wingate v SRA [2018] EWCA Civ 366***, the Court of Appeal stated that integrity connotes adherence to the ethical standards of one's profession. At [[95] Jackson LJ said, "…….*integrity is a broader concept than honesty…….. In professional codes of conduct the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members".*

58. The Respondent's position is that a solicitor acting with integrity would not instruct and approve the issue and pursuit of a claim for damages which he knew to be false, either for a client or, in this case, for his own financial benefit. Accordingly, Principle 2 was therefore breached.

59. The Appellant acted dishonestly in accordance with the test laid down in ***Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67*** at [62] Lord Hughes said, "*Dishonesty is by no means confined to the criminal law. Civil actions may also frequently raise the question whether an action was honest or dishonest.*"

60. **Principle 6 of the SRA Principles 2011** requires solicitors to behave in a way that maintains the trust the public places in them and in the provision of legal services.

61. The public's trust in solicitors generally is seriously diminished by a solicitor who issues and pursues a damages claim which he knows to be false. Accordingly, Principle 6 was therefore breached.

TRIBUNAL'S DECISION

62. I have set out the relevant parts of the decision in full in light of the complaints made on appeal.

63. The Tribunal gave an executive summary of its findings,

> *"5. Mr Abbas involved himself in making a false insurance claim for personal injury following a road traffic accident.*
>
> *6. The vehicle involved in the accident belonged to Mr Abbas, but was being driven by his colleague, Mr Anjum, when the accident took place. Mr Abbas was not present in the vehicle. Mr Anjum was not insured to drive the vehicle.*
>
> *7. Mr Abbas subsequently allowed an insurance claim to be submitted in which he stated he had been the driver of the vehicle and had suffered personal injuries in it. In furtherance of the dishonest claim Mr Abbas presented for medical examination and physiotherapy sessions. After a period of 9 months Mr Abbas discontinued his involvement in the claim.*
>
> *8. Whilst, ultimately no damages were ever paid out, Mr Abbas admitted to wanting to gain financially from the dishonest claim.*
>
> *9. Subject to some factual disputes Mr Abbas admitted all the allegations made against him and he was struck off the roll of solicitors. There was no order for costs."*

64. **The Tribunal's findings,**

"21.1 The Tribunal found the allegations proved in full to the requisite standard, namely on the balance of probabilities, and it was satisfied to the same standard that Mr Abbas' admissions to all the allegations and breaches of the Principles, including dishonesty, were properly made.

21.2 The Tribunal therefore found proved breaches of:

- *Principle 2 of the Principles on allegations 1, 2 and 3;*
- *Principle 6 of the Principles on allegations 1, 2 and 3; and*
- *Dishonesty on allegations 1, 2 and 3.*

21.3 Applying the test in Ivey with respect to dishonesty, the Tribunal found that Mr Abbas had known the claim was fraudulent from its inception and he had made a false statement to the third party's insurers. He had also attended medical appointments and feigned injuries in furtherance of the false claim. In the circumstances known to Mr Abbas, ordinary decent members of the public would consider this conduct to have been dishonest.

21.4 As to the matters in dispute, the Tribunal found that there was some evidence of Mr Anjum's involvement from which an element of joint venture between Mr Abbas and Mr Anjum could be inferred.

21.5 In reaching this view the Tribunal had regard to the evidence relating to Mr Anjum's insurance not being operative on the day of the accident, and his reluctance to identify that fact, which may have given him a reason to propose the plan to Mr Abbas. It may also have been the case that, in going along with this suggestion, Mr Abbas placed store on Mr Anjum's greater knowledge of personal injury claims in which he was the more experienced of the two. Further, Mr Anjum's evidence relating his access to the info@primelaw e-mail account was not persuasive. Both Mr Abbas' and Mr Anjum's fee earner initials appeared on some, but not all, of the correspondence generated by the Firm. But so did the initials of other fee earners who appeared to have had nothing to do with the matter. It seemed that the creator of the correspondence was trying to disguise who was actually dealing with the matter. It was not possible to determine exactly the extent to which either Mr Anjum or Mr Abbas were the creators of the correspondence on Mr Abbas' file. Despite Mr Abbas producing a schedule in which he identified the creator of each document, neither witness struck the Tribunal as honest in giving their evidence.

21.6 Having made a finding regarding the element of joint venture the Tribunal would go on to assess the weight it should give this finding when it came to determining sanction."

65. **Mitigation**

"23. Mr Malik said that Mr Abbas apologised unreservedly to the Tribunal, the Applicant and the profession for his short comings, mistakes and failings which caused the allegations raised against him by the Applicant.

24. His behaviour had been foolish, and it had put him in a position where his ability to practise as a solicitor could be ended either for a significant period or permanently. He was deeply remorseful and devastated about his past behaviour, and the prospect of losing his professional status and livelihood.

25. Mr Malik referred to the personal difficulties experienced by Mr Abbas at the material time (set out in his evidence).

26. As the Tribunal had accepted that Mr Anjum was involved in some part in the fraud, then the Tribunal should accept Mr Abbas' account of what had taken place.

27. At a time when Mr Abbas' decision making was impaired by his personal problems, he had been 'led by the nose' by Mr Anjum into the misconduct which, objectively viewed, had been a 'ham fisted', ill thought out, and unsophisticated fraud which had been bound to unravel under critical scrutiny.

28. Mr Malik referred the Tribunal to the latest edition of its Sanctions Guidance and he went through the relevant issues which required attention to determine seriousness, culpability, and harm.

29. Mr Malik said that the motivation for the misconduct had been a financial one. There had been an element of spontaneity in the making of the initial decision to go along with the fraud, however, thereafter Mr Abbas had been involved in pursuing the claim for 9 months.

30. Whilst there had been no breach of trust per se, Mr Abbas had abused the trust placed in him by the Firm which he had used as a vehicle to carry out the fraud.

31. With regard to control and responsibility, Mr Malik said Mr Abbas shared this with Mr Anjum. However, he accepted that this did not exonerate Mr Abbas, who ought to have known better, and he should not have succumbed to another's influence. Mr Malik submitted, nevertheless, that the involvement of Mr Anjum reduced Mr Abbas' culpability in circumstances where Mr Anjum had greater experience than Mr Abbas.

32. Mr Malik questioned why no action had been taken by the Applicant against Mr Anjum (an indirectly regulated individual) and/or the Firm and its principals who, at the least, supervised Mr Abbas and Mr Anjum poorly, and therefore they too shared some culpability by having inadequate systems in place to spot and prevent such mischief.

33. Mr Abbas had not misled the Regulator in its investigation, and he had made early admissions, albeit he could have been more expansive in his explanations.

34. It was accepted that there was harm to the profession, as the public would take a dim view of Mr Abbas' actions albeit, he received no financial gain, and there was no loss to the insurer, save for its costs and time in investigating the matter.

35.With respect to aggravating factors, although Mr Abbas' actions had been capable of amounting to a criminal offence, he had not been charged with one. He had not taken advantage of a vulnerable person, and the misconduct had not been generated by

hostility or accompanied by violence or bullying. There had been no concealment of wrongdoing on Mr Abbas' part.

36. The misconduct, however, had not been of short or fleeting duration as it had lasted 9 months. That said, it had not been repeated and it should be seen as one continuing episode.

37. Mr Abbas had not sought to blame anyone save for Mr Anjum, who he maintained had been the persuasive force throughout. Mr Malik accepted that Mr Abbas knew or ought reasonably to have known that the conduct complained of was in material breach of his obligations to protect the public and the reputation of the legal profession.

38. With respect to mitigating factors Mr Malik asked the Tribunal to bear in mind Mr Abbas' hitherto unblemished disciplinary record, and for the Tribunal to recognise that, while he may not have been coerced by Mr Anjum into the misconduct, he had been subject to an unhealthy influence exerted upon him by Mr Anjum. However, Mr Abbas had stopped the misconduct of his own accord, and he had had 'a moral awakening' at the point when he was asked to provide photographic identification.

39. Mr Malik said that, while this was no doubt a serious case, the matters identified in mitigation amounted in totality to exceptional circumstances such as would enable the Tribunal to consider a lesser sanction than strike off in a case where dishonesty and lack of integrity had been admitted.

40. Mr Malik asked the Tribunal to consider the impact upon Mr Abbas of the loss of his profession and livelihood, and the consequences this would have upon Mr Abbas' family.

41. Mr Malik asked the Tribunal for clemency on Mr Abbas' behalf. He accepted that if the Tribunal decided not to strike him off then that decision would have been made by 'a razor thin margin' and he urged the Tribunal to suspend Mr Abbas instead. He recognised that a suspension was, realistically, the minimum sanction that the Tribunal would impose for misconduct including lack of integrity and dishonesty.

42. In conclusion Mr Malik accepted that Mr Abbas' behaviour had been completely unacceptable, and he asked the Tribunal to give weight to his unblemished record, his remorse, and his mitigation which warranted a suspension as opposed to a strike-off."

66. **Sanction**

"43. The Tribunal considered the Guidance Note on Sanction (10th Edition June 2022) ("the Sanctions Guidance"). The Tribunal noted the full exposition by Mr Malik of seriousness, culpability, and harm together with the aggravating and mitigating factors which had been put in a fair and balanced way.

44. The Tribunal adopted much of Mr Malik's reasoning, but it did not accept his submissions on exceptional circumstances and sanction in a case where the level of seriousness was high. It could not be viewed in any other way given the admitted allegations of lack of integrity and dishonesty, financial motivation and the duration of the misconduct, to name but some of the factors. Nor did the Tribunal accept the entirety of the submissions as to Mr Abbas' insight. Whilst he had made early, albeit

guarded, admissions as to his misconduct when first challenged by the Applicant, he had sought to play down the seriousness of his misconduct, including advocating that no disciplinary action against him was warranted. This suggested that he did not recognise the seriousness of what he had done.

45. The involvement of Mr Anjum in the enterprise did not displace Mr Abbas' high culpability, as he had taken a knowing and full role in the matters giving rise to the misconduct.

46. In assessing harm, the Tribunal noted that, while there had been no serious harm to any individual, save for Mr Javidan Ahmad, the damage to the reputation of the profession was very high as Mr Abbas' conduct would inevitably discredit the profession in the eyes of the public.

47. The public would expect a solicitor to act honestly, with integrity and to uphold public trust in the profession. The trust the public placed in the profession was shattered when a solicitor engaged in such behaviour, and in the pursuit of personal and unwarranted gain.

48. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from harm.

49. Mr Abbas was found to have been dishonest. The element of dishonesty was therefore an aggravating factor. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed: "there is harm to the public every time a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be "trusted to the ends of the earth"."

50. Also: "A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances …." confined to "...a small residual category where striking off will be a disproportionate sentence in all the circumstances ...".

51. The Tribunal did not consider there were exceptional circumstances present in Mr Abbas' case such that a lesser sanction was warranted.

52. The nature, scope and extent of the dishonesty was such that the matters raised by Mr Malik in mitigation did nothing to lessen these factors. This had not been a momentary lapse, and Mr Abbas had not acted in blind panic. The dishonest misconduct had taken place over a 9-month period and was pursued actively by Mr Abbas, wherein he attended a medical examination and physiotherapy sessions in which he feigned symptoms of whiplash and other problems he contended had been suffered in the accident.

53. Other than the fact of the accident, nothing subsequently said by Mr Abbas in pursuit of the claim was true. The claim had been submitted in the expectation of personal and unmerited financial reward, without any concern for the effect of this on Mr Javidan Ahmad or his insurers.

54. Following the guidance given in SRA v James et al [2018] EWHC 3058 (Admin) the Tribunal considered that where dishonesty has been found, mental health issues, specifically stress and depression suffered by the solicitor because of work conditions or other matters, were unlikely without more to amount to exceptional circumstances.

55. The Tribunal noted that Mr Malik referred to Mr Abbas experiencing difficult family circumstances at the material time. However, the Tribunal had not been directed to any medical evidence to substantiate the impact this would have had had upon his work and upon his decision-making capability, other than assertion as to its supposed impact.

56. The protection of the public and public confidence in the profession and the reputation of the profession required no lesser sanction than that Mr Abbas be removed from the Roll."

GROUNDS OF APPEAL

67. The appeal was originally brought under three grounds;

(1) The Tribunal erred in concluding that there were no exceptional circumstances by failing to have proper and sufficient regard to all the relevant facts and circumstances of this case. These facts included the initial influence and the subsequent pressure of Mr Anjum on the A; the personal and family circumstances of the A; his early full and frank admissions; his subsequent cooperation with the R; and the insight and remorse that he had shown.

(2) The Tribunal found that there may have been a 'joint venture' between the A and Mr Anjum [21.4 – 21.6], but it arguably then erred by failing to properly consider and make specific findings in respect of whether it was Mr Anjum's idea to issue the false claim; whether Mr Anjum had drafted and sent the client care letter and other documents; and whether Mr Anjum later pressured the A to continue with the deception when the A did not wish to do so. These issues were of some relevance to the issue of the extent of the dishonesty and, potentially, to the issue of exceptional circumstances.

(3) The Tribunal may have potentially erred in finding that there has been 'serious harm' to Mr Javidan Ahmad without setting out (it so appears) as to what that harm may in fact have been. In addition, it is arguable that the Tribunal did not provide adequate reasons in respect of all of its findings and it did not consider all aspects of the evidence that was before it. Finally, it appears that it may not have considered the good character evidence that was provided to it.

68. At the hearing Mr Fazli consolidated those into one ground. The core issue in the appeal is his criticism of the Tribunal's finding at paragraph 51 of the decision, in that they erred in not finding exceptional circumstances such that a sanction less than striking off was warranted.

69. He also seeks to add a new ground, namely that the Tribunal erred in that it had not assessed the Appellant's credibility properly in light of his personal and family medical circumstances.

LEGAL FRAMEWORK

70. This is an appeal to which CPR Part 52 applies: the High Court will only allow an appeal if satisfied that the Tribunal decision was (a) wrong or (b) unjust because of serious procedural or other irregularity in its proceedings.

71. It is a fundamental principle that this court will defer to the expertise of a regulatory tribunal and recognise its relative disadvantage. The tribunal hears the evidence and is best placed to judge the credibility and reliability of a witness, ***Assicurazioni Generali SpA v Arab Insurance Group [2003] 1 WLR 577 at [13], Gupta v GMC [2002] 1 WLR 1691 at [10].***

72. The Court of Appeal described the decision of a tribunal as "a multifactorial decision". It involves a mixture of fact and law. ***Bawa-Garba v GMC [2018] EWCA Civ 1879 at [60-67].*** This court should only interfere if the decision about what is necessary to protect the public and maintain proper standards in the profession is "wrong". It is not for this court to substitute its own judgment for that of the tribunal. It should interfere only if there is an error of principle in the tribunal's evaluation or because the tribunal has acted outside the bounds of what it could properly and reasonably decide. A tribunal reaches a view based on an assessment of a number of factors. In particular the conjunction of the accepted facts and the oral evidence of any witness. Such a "multifactorial" view cannot usually be dislodged unless it is demonstrated to be wrong or procedurally flawed. As established ***In re: a solicitor [1956] 1 WLR 131 per Lord Goddard CJ,***

> *"It would require a very strong case to interfere with sentence because the disciplinary committee are the best possible people for weighing the seriousness of the professional misconduct."*

73. In ***Mibnaga v SSHD [225] EWCA Civ 367*** per Buxton LJ at [29], the court dealt with an appeal based on the approach of the adjudicator amounting to a "structural failing" not just "an error of appreciation".

> *"In his careful submissions, Mr Tam urged that a broad and not a technical approach should be taken to an adjudicator's decision and to the reasons that he or she sets out. I respectfully agree. That restraint on the part of the appellate court is especially important when, as is now the case, an appeal to the Immigration Appeal Tribunal is on a point of law only. Where, as in this case, complaint is made of the reasoning of an adjudicator in respect of a question of fact (that is to say credibility), particular care is necessary to ensure that the criticism is as to the fundamental approach of the adjudicator, and does not merely reflect a feeling on the part of the appellate tribunal that it might itself have taken a different view of the matter from that that appealed to the adjudicator."*

In that case the tribunal heard expert medical evidence about the Appellant's injuries in support of his case that he had been the victim of torture. The Court of Appeal found that the adjudicator's reasoning was flawed in that she separated the expert medical evidence from the rest of the evidence and reached her decisions on the credibility of the Appellant's account of torture without any reference to the medical evidence.

74. The approach of a tribunal to a finding of dishonesty against a solicitor is set out by Sir Thomas Bingham MR in ***Bolton v the Law Society [1994] 1 WLR 512*** dealing specifically with findings of dishonesty against solicitors.

> *"Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may of course take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings or penalties. In such cases the Tribunal has almost invariably, no matter how strong the mitigation advanced by the solicitor, order that he be struck off the role of solicitors. Only infrequently, particularly in recent years, has it been willing to order the restoration to the role of a solicitor against whom serious dishonesty has been established, even after a passage of years and even where the solicitor had made every effort to reestablish himself and redeem his reputation."*

75. The phrase "almost invariably" does not mean automatically but it does show how serious a lapse of professional standards such as proven dishonesty will be taken. It will be an exceptional case in which striking off does not follow such a finding, despite the strength of any mitigation.

SUBMISSIONS

76. Mr Fazli set out a number of propositions which he argues, taken together, demonstrate that the Tribunal was wrong in its assessment of the gravity of the Appellant's conduct and the necessary sanction. This ought to have been identified by the Tribunal as one of this exceptional cases in which striking off should not follow findings of dishonesty.

77. He submits that this was a joint venture but the Tribunal was wrong in failing adequately or at all to consider whether it was Mr Anjum's idea or that pressure had been applied by him to Mr Abbass. His submission is that if Mr Anjum's role had been properly identified it would demonstrate that the Appellant was "less dishonest" because Mr Anjum had instigated the scheme, which had then spiralled out of control. He sought to characterise the Appellant's role as that of a secondary party in a criminal enterprise. He supports that contention by arguing that the Appellant's expertise was not personal injury work, as opposed to Mr Anjum, who although he was not a solicitor did have expertise and experience in that area of practice.

78. He submits that the tribunal was wrong to find that serious harm had been caused to Mr Ahmad, the other driver. He accepted that some harm was caused but argues that the Tribunal was wrong to identify it as serious.

79. He further argues that the Tribunal had failed to give sufficient weight to his family's medical circumstances in considering the impact of the sanction.

80. In his new ground he argues that the Tribunal was wrong in assessing the Appellant's credibility without reference to his personal and family's medical circumstances. He argues that the Appellant was vulnerable as a consequence and that should have played a part in the Tribunal's assessment of his credibility. He relies on ***Mibanga*** at [30] to suggest that the Tribunal made the same error of approach as the adjudicator in that case in not considering the medical evidence. He submits that when the appellant gave his evidence to the Tribunal he was recounting events which were contemporaneous with his family's medical problems and that lead to his being vulnerable, for which the Tribunal had failed to make sufficient allowance.

81. He concedes that the Tribunal were aware of the medical problems relating to his wife and newborn son, his mother and his brother. All those issued were dealt with as mitigating factors but he disputes the validity of the Tribunal's findings at paragraph 55. There they found that there had been no medical evidence which identified any impact this might have had on his decision making capacity at the time of his participation on the dishonest scheme.

82. On behalf of the Respondent Mr Edwards, in summary, argues that this was dishonest scheme to obtain money which lasted over a period of months. However the plan was conceived the Appellant played a full part, and in particular, signed the declaration of truthfulness on his witness statement. He was a full party to the claim for the costs of the treatment which it was claimed he had received. It should be added that Mr Anjum gave evidence before the Tribunal. Mr Anjum denied being the one who instigated the scheme or that he had applied any pressure to the Appellant to continue with the deceit.

Discussion

83. The need to protect the public and the legal profession requires that any solicitor who engages in dishonest conduct will "almost invariably" be struck off. Acts which damage or diminish the public's confidence in the profession have a corrosive effect. In this case the dishonesty might have led to a criminal investigation. It is one of the most serious lapses of which Lord Bingham spoke in ***Bolton*** (supra). Deception was used to facilitate a bogus insurance claim. Even accepting that it was not his idea originally, he went along with the scheme which lasted for about nine months, played an active part and only stopped after the insurance company started to raise queries. He was a party to the submission of a false insurance claim, signed the declaration of truth on a witness statement, attended a medical examination and physiotherapy sessions, all with a view to personal financial gain. As the Appellant told the Tribunal in his response to them on 6 May 2020, Mr Anjum had proposed the scheme and "he went along with it".

84. The fact that it was not his idea originally, that another was involved, that he did not practice in personal injury work and that his family circumstances may mitigate but they do not absolve him of responsibility to the extent contended for by Mr Fazli, notwithstanding the absence of any previous adverse findings. Any experienced solicitor knows that he should not become involved in such a fraud. A knowledge of personal injury work is not necessary to understand that making a claim for an accident in which he was not involved is thoroughly dishonest.

85. His sense of grievance that another or others were not before the Tribunal does not affect his own position or alter the level of his deceit. The Tribunal, accepted Mr Anjum's involvement but made that clear finding at paragraph 20.33, ……."*While this did not absolve Mr Abbas, it demonstrated that he was not the sole driving force behind the enterprise".*

86. The Tribunal found that the Appellant had known that the claim was fraudulent from its inception and had made the false statement to the insurers. As the Tribunal found, ordinary decent members of the public would consider this dishonest, specialist knowledge of personal injury work has no bearing on his state of mind.

87. The Tribunal is best placed to assess credibility of the Appellant. He accepted the acts of dishonesty alleged against him, that was obviously to his credit but cannot reduce

the level of his dishonest conduct. His personal circumstances were considered but there was, nor could there have been any suggestion that he was not responsible for his actions at the time nor in any sense impeded in his ability to give evidence. There was no medical evidence to support the suggestion that he was vulnerable to the point that his capacity as a witness was affected. The Tribunal regularly hears evidence from persons whose careers are in jeopardy, there is no substance in the complaint that his credibility would have been diminished by his family circumstances, nor that the Tribunal incorrectly formed any view of him as a witness, its findings as to lack of insight are borne out by his apparent unwillingness to recognise the seriousness of his conduct. It could not properly be described as "naïve" or "foolish", it was dishonest and persistent.

88. Before the Tribunal it was conceded that the decision being urged upon them, not to strike off, could only be made by a "razor thin margin". With respect, that is an untenable position. This was clear case of a systematic attempt to defraud an insurance company by a false and dishonest claim. The necessary elements of a criminal offence were established and the Appellant, and others, were fortunate not to have been prosecuted.

89. The Tribunal was entitled to find that A, the other driver, had been caused serious harm, his insurance claim for damage to his car had been delayed and placed in jeopardy for months. Being caught up in another's fraud can be a distressing experience, and in this case, lasted for many months.

90. The Tribunal carefully and properly reviewed all the circumstances. They made a clear finding that this was not an exceptional case, such that any sanction less than striking off could be justified. This was not in that small residual category of cases where striking off would be disproportionate. The combination of all mitigating factors could not lower the nature, scope and extent of the dishonesty to a level where anything less than striking off would be a proportionate sanction. The Tribunal accepted the fact of his difficult family circumstances but did not find that they had an impact on his ability to make a rational decision between honesty and dishonesty. Indeed it is difficult to see how such matters could be said to explain a continuing course of dishonest conduct over nine months or so.

91. This was not a momentary or spontaneous reaction. The Appellant signed a witness statement bearing a declaration of truth, he attended a medical examination and therapy sessions and he was an active participant throughout. Public confidence in the legal profession; the need that the public should be able to trust the legal profession is damaged by this conduct and would be further damaged if the sanction did not meet the seriousness of the conduct.

92. Being struck off the Roll was the only appropriate and proportionate penalty. It is of course, a severe and lasting punishment but one that was entirely justified in this case.

93. The appeal is dismissed.

94. Costs to be dealt with separately, the Appellant to pay the Respondent's costs, to be agreed or dealt with on paper.