Neutral Citation Number: [2021] EWHC 2709 (Admin)

Case No: CO/3442/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/10/2021

Before:

THE HONOURABLE MR JUSTICE MORRIS

- -

Between :

ZULFIQAR ALI	**Appellant**
- and -	
SOLICITORS REGULATION AUTHORITY LIMITED	**Respondent**

- -
- -

The Appellant appeared **in person**
Ms Louise Culleton (instructed by **Capsticks Solicitors LLP**) for the **Respondent**

Hearing dates: 14, 15 July and 2 August 2021
Further evidence submitted 9 September 2021

- -

Approved Judgment

Mr Justice Morris:

Introduction

1. This is an appeal by Zulfiqar Ali ("the Appellant") pursuant to section 49 of the Solicitors Act 1974 ("the 1974 Act") against an order of the Solicitors Disciplinary Tribunal ("the Tribunal") dated 10 September 2020 ("the Order"). By the Order the Appellant was struck off the Roll of Solicitors and ordered to pay the costs of the Solicitors Regulation Authority ("the SRA") in the sum of £26,500. The reasons for the Tribunal's decision are set out in its judgment dated 10 September 2020 ("the Judgment"). The appeal is brought in respect, principally, of the Tribunal's findings of professional misconduct. The SRA is the respondent to the appeal.

2. The decision to strike the Appellant off the Roll was made following a substantive hearing which took place between 6 and 8 July 2020. At that hearing the Appellant was represented by counsel and gave detailed oral evidence.

Background to the Allegations

3. The Appellant was admitted as a solicitor on 1 November 2010. From then he was employed as an associate at the firm of Denning Solicitors. On 8 June 2015 he was authorised as a sole practitioner and thereafter practised as ZA Solicitors Limited ("ZA Solicitors").

4. The charges of professional misconduct arose out of two distinct matters: first the involvement of the Appellant in 2016 and 2017, acting as solicitor for the property developer, in conveyancing transactions, involving the purchase of flats which were under construction, which "bore the hallmarks of fraud" ("the Property Matter"); and secondly, matters arising out of a television documentary produced by Hardcash Productions ("Hardcash") and broadcast on ITV in July 2015 called "ITV exposure UK The Sham Marriage Racket" ("the TV programme"). The TV programme concerned sham marriages entered into for immigration purposes and involved the Appellant and other solicitors being surreptitiously recorded allegedly discussing sham marriages with purported clients. It included footage of an undercover reporter posing as a client and seeking advice from the Appellant at two meetings in relation to sham marriages for the purpose of circumventing UK immigration control. I refer to this as "the Immigration Matter". The TV programme also gave rise to disciplinary proceedings against one of the other solicitors involved - Mr Syed Naqvi - culminating in the judgment of the Divisional Court in *Naqvi v Solicitors Regulation Authority* [2020] EWHC 1394 (Admin) (the "*Naqvi* Judgment").

5. The charges were first considered, and found proved, by the Tribunal in February and March 2019 ("the First Tribunal"). The Appellant appealed against that decision and on 16 October 2019 the SRA consented to an order quashing the First Tribunal decision on the basis that the transcript/tape of the first meeting had not been provided to the Appellant. The matter was remitted to the Tribunal. In the following paragraphs I set out the factual background in more detail. In course of this appeal, the parties, and in particular, the SRA have provided some additional factual material relating in particular to events in 2014 to 2016 concerning the Immigration Matter. This has been provided, as a result of the Appellant's case, now made, that the Immigration Matter had been resolved earlier and it was an abuse of process for the

SRA to investigate it a second time from February 2017 onwards. Whilst much of this material was not before the Tribunal, I have been assisted by the provision of further evidence from both parties, including in particular a witness statement from Mr Robin Horton, a senior legal adviser at the SRA and a further witness statement from Mr Carruthers (see paragraph 48 below). In addition, since the hearing before this Court, the SRA has written to the Tribunal and, on the Appellant's application dated 9 September 2021, I have admitted that letter into evidence (see paragraph 34 below).

The Immigration Matter

6. In September 2014, the Appellant was charged with an offence of conspiracy to seek or obtain leave to enter or remain in the UK by deceptive means between 18 October 2013 and 10 December 2013. He maintains that this prosecution arose out of a Home Office investigation following a complaint from the husband of a former client.

7. It appears (from the SRA's recent letter dated 26 February 2021) that in 2014 after being charged with that offence, the Appellant self-reported to the SRA. In that letter the SRA explained that at that time the Home Office was investigating but did not make a finding. The SRA stated that it did not then progress the matter because they did not have sufficient evidence to do so. On 26 November 2014 the CPS sent to the Appellant formal notice that the prosecution was being discontinued.

The Meetings with Person A

8. On or about 30 January 2015, and then again on or about 1 April 2015, there were meetings (respectively "Meeting One" and "Meeting Two") between an undercover reporter (referred to as "Person A") and the Appellant, in which Person A posed as a student requiring advice about obtaining a UK visa. At that time the Appellant was working as an associate at Denning Solicitors. Those meetings were secretly recorded by Person A. There is an audio recording of Meeting One and a video recording of Meeting Two. These two recordings are referred to as "the footage". There is an also agreed transcript of each meeting.

9. The TV programme was broadcast on 2 July 2015. Shortly before, on 30 June 2015, Mr Naqvi had referred himself to the SRA in relation to the TV programme. On 31 July 2015 the SRA wrote to Hardcash asking for copies of the recordings of *Mr Naqvi's* meetings with the undercover reporter. By that time, the SRA had access to a copy of the TV programme itself.

10. In the course of August 2015 the SRA started its investigatory process in relation to two related matters involving the Appellant: a case file in relation to Denning Solicitors and concerning the Appellant's involvement in the TV programme (and following on from the case file in relation to Mr Naqvi) ("the Denning file"); and a case file in relation to ZA Solicitors and evidence that the Appellant had been a sole director of another firm, SZ Ali Solicitors Limited ("SZA"), of which the SRA had no record ("the ZA file"). On 10 August 2015 the Denning file was passed to the SRA's Supervision department. On the same date, the SRA sought to obtain the footage from Hardcash. On 11 August 2015, the Appellant was interviewed under caution by the Home Office at Eaton House in Staines. He maintains that that interview concerned the TV programme.

11. On 18 August 2015 Hardcash informed the SRA that ITV was happy for it to provide the SRA with the footage. On 28 August 2015 the ZA file was passed to the SRA's Supervision department. Whilst on 2 September 2015 Hardcash informed the SRA that it would be providing the Home Office with all footage and that the Home Office would then coordinate with the SRA, there is no evidence that in fact this footage was provided at that time.

12. On or around 6 October 2015 the SRA formally approved the investigation plan for both the Denning file and the ZA file. Whilst noting that there was no evidence of the Appellant's involved in sham marriages, it was decided to commission forensic investigations at *both* firms and to review a sample of files "in relation to immigration matters" and "in particular in relation to those where one or more of the firm's clients is marrying a British Citizen". At this stage, therefore, the ZA file covered not only the concern about SZA, but also about immigration matters, the catalyst for which was the Appellant's involvement in the TV programme. At the same time, further efforts were to be made to obtain copies of the recordings of the Meetings and of the TV programme. The forensic investigation officer was to review generally immigration matters undertaken by *both firms*.

13. The SRA's investigation into the TV programme under the Denning file was on hold in October until the SRA could get documents from the Home Office or Hardcash. On 9 November 2015, in relation to the Naqvi case, the SRA was informed that the Home Office would not release the footage, but would let the SRA view it. It is not known whether the SRA did view the footage at that time. However there is no evidence that it did so.

14. On 7 January 2016, the SRA wrote to *Mr Naqvi* informing him that it had closed its investigation for the time being (as explained at paragraph 4 of the *Naqvi* Judgment*)*. On the same date, and in line with that decision, the SRA decided to close the matter in relation to Denning and to withdraw the forensic investigation commission. Accordingly at the point the Denning file was closed, or at least put a hold.

The ZA file: SRA notifies ZA Solicitors Limited; first investigation into the Appellant

15. By letter dated 20 January 2016 the SRA notified the Appellant of an investigation into him and his firm. There was to be an inspection visit on 26 January 2016. This notification was made in respect of the ZA file. The letter stated, inter alia, as follows:

> *"**Investigation of ZA Solicitors Limited***
>
> *I write to give you notice that in order to enable the preparation of a report upon your firm's compliance with the principles, codes and rules, this letter is notice under rule 31 of the SRA Accounts Rules 2011 and Principle 7 and Outcomes 10.8 and 10.9 of the SRA code of conduct 2011, for you and your firm… to supply the documents and information referred to in Appendix A(1), together with any other relevant information needed for the investigation, and comply with Appendix A(2) of this letter.*

> *You are also required to comply with the enclosed notice pursuant to section 44B of the Solicitors Act 1974 (as amended).*
>
> *It is therefore necessary for the investigation officer, Mr J Carruthers, to attend on my behalf, at the place and on the date specified in the attached schedule.*
>
> *It is important that you read Appendices A(1) and A(2) and ensure that the documents listed are made available to the attending officer on arrival.*
>
> *…*
>
> *… This particular investigation has been prompted by concerns in respect of immigration matters. Please note that the investigation is not restricted to this issue and that proportionate enquiries will be made in respect of the material specified in Appendices A (1) and A (2).*
>
> *…"* (*emphasis* added)

Thus, the letter suggests that not only had the investigation been prompted by concerns in relation to immigration matters but the investigation included (but was not limited to) that issue of immigration matters.

16. The specified date and time of the investigation visit was 26 January 2016. Appendix A(1) sets out a long list of detailed records that were to be made available, including lists of clients books of accounts and other factual matters of a general nature. The Appellant was also required to write to relevant banks requesting them to confirm balances. However, apart from the passage cited above, there is no specific reference in the letter or the attached schedule or appendices to matters concerning immigration.

17. However, significantly, an internal SRA email dated the next day, 21 January 2016, sent in advance of Mr Carruthers' proposed visit to ZA Solicitors on 26 January 2016, recorded that, following its decision to close off the investigation into immigration matters arising from the TV documentary, the scope of the investigation under the ZA file was amended so as to proceed only in relation to the SZA issue i.e. the ZA file was no longer to cover immigration matters as originally intended. The Appellant was not informed of this amendment at the time.

Visit to ZA Solicitors: 26/27 January 2016

18. In accordance with the schedule to the letter of 20 January, on 26 and 27 January 2016 Mr Carruthers visited ZA Solicitors and carried out a full inspection of the books and records, as set out in the Appendix.

19. Mr Carruthers "closing report" on his investigation dated 23 February 2016 recorded that, having reviewed documents, there were no matters arising and the investigation was closed.

20. Similarly, at a date unknown in February 2016, the SRA's investigation plan was updated with the outcome of the two case files. In relation to the Denning file (covering the investigation in relation to the Appellant's involvement in into the TV Programme), it was stated that the matter was closed (but with risk to lie on file) on the basis that the Forensic Investigation did not identify any concerns and the Home Office had informed the SRA that they had reviewed the evidence provided by Hardcash and that they had not identified any substantive issues. In relation to the ZA file, referring to Mr Carruthers' visit, no issue of concern had been found, the matter (i.e. the SZA issue) was closed with no issue of misconduct.

21. Thus, by email dated 3 March 2016, Mr Carruthers informed the Appellant, in relation to the ZA file, as follows:

> *"I can confirm that I have completed my investigation of your firm and advised the SRA's supervision department of the satisfactory outcome of this investigation.*
>
> *Thank you for your assistance and cooperation throughout. If can assist further then please do not hesitate to contact me."*

In this way the SRA notified the Appellant that it had closed the first investigation. There is no evidence that the SRA told the Appellant at or around this time that it had closed the investigation specifically regarding the immigration matters. No explanation was given that the immigration matters, referred to in the letter of 20 January 2016, at that stage could not be taken any further because the SRA had no further information. (It is not known what, if anything, Denning Solicitors were told about the closing of the Denning file). Nor was there any reference to the internal closing in January 2016 (paragraph 17 above) or the fact that the Home Office had not identified any issues arising from the TV programmes. The SRA did not write to the Appellant in terms similar to its notification to Mr Naqvi on 7 January 2016 (see paragraph 14 above).

The Property Matter

22. The Property Matter concerned a property development at 87-89 Plashet Road London (referred to in the Judgment as "Property P") which involved the redevelopment of a school building into residential units for sale. The development company was called Inner Court Limited ("IC") which was represented by the Appellant. Ms Jones of JP Goldman solicitors ("JPG") acted for the purchasers of the residential units. In her evidence to the Tribunal, she indicated that they were familiar with the development and that her clients were sophisticated and savvy with that type of development. The Appellant received deposit moneys from the purchasers, in a total of £828,796 from JPG and remitted them to IC. It turned out that IC did not own Property P. As at August 2016 (and at all material times thereafter) Property P was owned by Amin Fazal Pabani. IC was the purported prospective purchaser from Mr Pabani.

23. There was before the Tribunal a document dated 12 August 2016 entitled "Contract for the Sale of [Property P]" between Mr Pabani and IC ("the Contract Document") and bearing a manuscript annotation "Exchange 12.8.16 S Malik". Further evidence relating to the Contract Document is explained in paragraph 31 below.

The 15 August Letter

24. By letter dated 15 August 2016 ("the 15 August Letter"), Chamber of Legal Advisors LLP stated as follows:

> *"To whom ever it may concern*
>
> ***Property: "87-89" Plashet Road Newham, London, E 13 0RA***
>
> *We can confirm that we are instructed to act on behalf of Inner Court Ltd in relation to their proposed acquisition of the above property and confirm that contracts have been exchanged in relation to the acquisition.*
>
> *Inner Court Ltd is therefore in a position to enter into sub sale agreements in relation to the same.*
>
> *If you need further detail, please do not hesitate to contact us.*
>
> *Yours faithfully*
>
> *…"*

The 15 August Letter was unsigned. Subsequently, in March 2017, Chamber of Legal Advisors informed Ms Sarah Taylor, the SRA's forensic investigation officer, that the 15 August Letter was "not our letter".

25. In the Appellant's first meeting with IC in September 2016, IC informed him that exchange of contracts had *not* yet taken place[1]. On 26 October 2016 the Appellant received the 15 August Letter.

20 December 2016 emails

26. By email dated 20 December 2016 at 1353, Ms Jones wrote to the Appellant with a list of numbered outstanding enquiries and stated that, following satisfactory responses, her clients would be in a position to exchange. The email continued as follows:

> *"1. The freehold title is currently owned by Amin Fazal Pabani and the intended owner is Inner Court Limited. At what stage is the freehold title being transferred to Inner Court because this will be required in order for the Lease to work."*

At item 2, she further asked for confirmation that IC was intended to be the landlord and would not be appointing any management companies or agents.

27. At 1428, Mr Fell of IC, in response to Ms Jones' email, sent an email to the Appellant stating "*Answers to the following enquiries in red below, please forward them officially in separate email to JP Goldman so they can exchange today!"*. The

[1] Transcript of Tribunal hearing, Day 2 page 89 ll. 10-12

documentation before the Court is not in colour, but it appears likely that what was set out "in red below" in Mr Fell's email was a version of Ms Jones's email at 1353 marked up with IC's answers in red. That this is likely can be seen from the "separate email" which the Appellant then sent to Ms Jones at 1500.

28. In that email to Ms Jones at 1500, the Appellant set out the terms of Ms Jones's email and then added in answers to each of the numbered items, presumably in red typeface. For the purposes of this judgment the relevant answer is highlighted in underlining. That email stated, inter alia, as follows:

> *"Please find below response to your query; we prepared these on instructions from our client.*
>
> *1. The freehold title is currently owned by Amin Fazal Pabani and the intended owner is Inner Court Limited. At what stage is the freehold title being transferred to Inner Court because this will be required in order for the Lease to work; See attached, exchanged has happened already, we will be completing in January*
>
> *…"*

29. As regards "see attached", the Appellant attached and sent to Ms Jones the 15 August Letter.

30. On 21 December 2016, and in the days that followed, a number of purchasers represented by JPG exchanged contracts with IC for the purchase of leases of flats at Property P and paid over deposits in substantial amounts From the terms of the contract of sale between IC and the purchasers of the leases, the purchaser was required to pay over before the execution of the contract the deposit "to the Seller's solicitors as agent for the Seller". Each such contract also made provision in respect of "title" providing that IC would grant a lease to the purchaser and that the lease would be granted with full title guarantee. However there was no representation, or term, to the effect that at the time of the exchange of contracts for the lease IC held title; only that it would do so at the time of completion.

31. As explained subsequently in his interview with Ms Taylor and in her forensic investigation report, on 23 January 2017 the Appellant emailed IC asking for a number of documents including "the agreement with landowner and seller". The Contract Document was then provided by IC to the Appellant on 14 March 2017 and forwarded by him to JPG on the same date. Further, in response to enquiries by Ms Taylor in March 2017, the solicitors recorded on the Contract Document as acting, respectively, for Mr Pabani and for IC, both denied any knowledge of it and the transaction.

The involvement of the SRA: February 2017 onwards

32. In February 2017 Ms Jones developed concerns about the fraudulent nature of the property scheme and reported the Appellant's conduct to the SRA.

33. As regards the Immigration Matter, the Rule 5 Statement in the present proceedings (and as a result the Judgment itself) states that, in *February 2017*, the SRA became aware of Appellant's involvement in the arrangement of sham marriages and in the TV programme. The SRA now accepts that this statement was not correct. The SRA had been aware of this since August 2015, at the latest and possibly since June 2015. Ms Culleton was unable to explain fully how this statement was not corrected in the course of the present proceedings in circumstances where the Appellant had raised the issue by May 2020 at the latest: see paragraph 46 below.

34. Following the hearing before this Court, on 6 September 2021, the SRA's solicitors wrote to the Tribunal, informing it of the inaccuracy in the Rule 5 Statement and confirming that the SRA was first aware of the Immigration Matter in the summer of 2015. They expressed the view that the SRA did not consider that this was material to the Judgment. On the Appellant's application I have admitted this letter into evidence.

35. On 24 February 2017 a Chief Immigration Officer working for Home Office Criminal and Financial Investigation department based at Eaton House reported by email to the SRA that they were currently conducting an investigation into three solicitors who had offered to assist in the arrangement of sham marriages and that had been caught on camera during an ITV undercover programme. The Officer was trying to establish if the matter had ever been referred to the SRA. The email named the three solicitors, which included both the Appellant and Mr Naqvi. The email went on to state that the solicitors had been arrested and were on bail awaiting CPS advice. This was certainly not true in relation to Mr Naqvi (see §5 of the *Naqvi* Judgment). It appears not to have been true in relation to the Appellant either.

36. On 28 February 2017 the SRA opened a new file in relation to the Appellant and the TV programme i.e. the Immigration Matter. On the same date the SRA responded to the Home Office email of 24 February 2017, indicating that it would look more closely at the matter and would report back within a month. Thereafter further correspondence ensued between the SRA and the Home Office, seeking details of the TV programme and the production company.

37. On 15 March 2017 the SRA began an investigation into the Property Matter. On the same date the SRA requested documentary details from the Home Office in relation to the TV Programme. On 12 April 2017 the SRA requested documentary details from Hardcash. On 25 April 2017 Hardcash responded stating that the ITV documentary could be disclosed but the raw footage of the meetings with Person A (sometimes referred to as the "rushes footage") would not be disclosed without a court order. On 27 April 2017 the SRA replied, indicating that it thought the best way forward was to obtain a court order, without which it would not be able to disclose the footage to the individuals involved.

38. On 18 May 2017 JPG asked the Appellant that he request IC to return all deposits as the transaction had now completely collapsed.

39. On 31 May 2017 Ms Taylor completed her forensic investigation report into the Property Matter. This was sent to the Appellant on 13 June 2017.

40. In June 2017 the SRA was provided with the TV programme (although in fact it appears that it had seen it much earlier, in 2015: see paragraph 9 above). At the same time, Hardcash indicated to the SRA that ITV had agreed for the SRA to be given access to the "rushes footage". It is not clear whether in fact the SRA did *view* the footage at that time. It appears however that it was not *disclosed* to the SRA at that time. On 25 July 2017 Hardcash confirmed that ITV would not disclose the rushes footage without a court order.

41. On 31 August 2017, the SRA sent to the Appellant an "Explanation with Warning" letter (EWW) concerning the Property Matter. The Appellant responded on 15 September 2017.

Tribunal proceedings in respect of the Property Matter

42. On 30 October 2017 the SRA referred the case to the Tribunal in relation to the Property Matter.

43. On 31 October 2017 the SRA applied to the Court to obtain the footage from ITV. On 28 November 2017 Master Price ordered disclosure against the ITV of all recorded material and copies of transcripts in relation to the TV programme that contained footage of the Appellant (and the other two solicitors). The SRA received the ITV disclosure (namely the audio and video recordings and a transcript of them) in mid-January 2018. According to the SRA, this was the first time that the SRA had received or seen any of this material.

Tribunal proceedings in respect of the Immigration Matter

44. On 9 March 2018 the SRA sent an EWW letter to the Appellant concerning the TV programme. The letter attached the footage and the transcript, which it stated had "recently been made available to us". On 29 March 2018 the Appellant responded to that EWW letter. On 18 April 2018 the Immigration Matter was referred to the Tribunal. The SRA's original Rule 5 Statement was served on 29 June 2018. In January and February 2019 the SRA obtained statements from Ms Taylor, Mr Carruthers, Ms Jones and others.

Evidence about the first investigation

Mr Carruthers' statement before the Tribunal

45. In his statement dated 18 January 2019, which was before the Tribunal at the First Tribunal hearing and also at the hearing in July 2020, Mr Carruthers explained his role in relation to the investigation in January 2016. He had visited the Appellant on 26 and 27 January to conduct an inspection of the firm's books of accounts and other documents. Minor accounts rules issues had been identified which the Appellant had undertaken to address. No formal forensic investigation report resulted from his visit and his investigatory role concluded at that stage. He had not been involved in the investigation into the matters that gave rise either to the Immigration Matter or the Property Matter. The Property Matter had been investigated by Ms Taylor and post-dated his involvement and he had no knowledge of her investigation. He went on to state as follows in relation to the Immigration Matter:

> *"I was aware of concerns regarding the Respondent's immigration work however during my inspection the SRA had not at that stage been provided with any footage of the Respondent's activities. I therefore cannot provide any comment or evidence concerning allegations 1.3 and 1.4 which were investigated after my role concluded."*

46. In his Amended Answer to the Rule 5 Statement dated 1 May 2020 ("the May Answer"), the Appellant contended that "the video recordings issue has been dealt with already by Home Office and SRA", referring to Mr Carruthers' 2016 monitoring visit and the fact that Mr Carruthers was satisfied with his work. In its response, Reply to the Respondent's Answer dated 13 May 2020, the SRA addressed the issue of the previous SRA inspection and in particular the Appellant's case that the Immigration Matter "has been dealt with already by the SRA". The SRA referred to, and largely repeated the content of, Mr Carruthers' witness statement. On that basis, the SRA did not accept that it had previously dealt with the Immigration Matter.

47. However, on 15 June 2020, the Appellant served an updated version of his Answer to the Rule 5 Statement ("the Updated Answer"), to be read in place of the May Answer. The Updated Answer had removed all reference to the first investigation and the Immigration Matter having been "already dealt with". In the event the Appellant did not advance any such argument before the Tribunal, which as a result did not consider the issue.

48. In a further recent statement for the present proceedings dated 30 July 2021, Mr Carruthers confirmed that, at the time of his visit, he was aware that there was some background of a covert TV recording associating the Appellant with sham marriages, but it formed no part of his investigation at the time. In substance, he confirmed what he had said in his first statement.

The Proceedings and the Allegations

49. Following the First Tribunal hearing, on 8 April 2020 a new Rule 5 Statement was filed and served.

50. Before turning to the specific allegations of professional misconduct against the Appellant, I identify the relevant parts of the SRA Principles 2011 and the SRA Code of Conduct 2011 which the SRA alleged that the Appellant had breached. The SRA Principles provide, inter alia, as follows:

> *"You must:*
>
> *1. uphold the rule of law and the proper administration of justice;*
>
> *2. act with integrity;*
>
> *…*
>
> *6. behave in a way that maintains the trust the public places in you and in the provision of legal services;*

> *7. comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner;*
>
> *…"*

In Chapter 7 of the SRA Code of Conduct 2011 headed "*management of your business"*, the mandatory outcomes provide, inter alia, as follows:

> *"You must achieve these outcomes*
>
> *…*
>
> *7.4 You maintain systems and controls for monitoring the financial stability of your firm and risks to money and assets entrusted to you by clients and others, and you take steps to address issues identified."*

The Allegations

51. The allegations made by the SRA against the Appellant as set out in the Rule 5 Statement were as follows (the Appellant being there referred to as the Respondent).

The Property Matter

52. Allegations 1.1 and 1.2 concern the Property Matter as follows:

> *"1.1 Whilst acting in relation to a property development scheme at 87-89 Plashet Road, London the Respondent caused and/or permitted client money, which included purchaser's deposit money, to be paid into his office account and thereby breached Rule 13.1 and/or 14.1 of the SRA Accounts Rules 2011.*
>
> *1.2 The Respondent made payments out and facilitated transactions which were dubious and/or bore the hallmarks of fraud when acting on behalf of his client Inner Court in relation to a property development scheme at 87-89 Plashet Road, London. The Respondent transferred a minimum of £828,796.00 of purchaser's deposit monies to Inner Court notwithstanding that he was aware that Inner Court did not own 87-89 Plashet Road, London and that purchasers deposit monies were being placed at risk. The Respondent thereby breached any or all of Principles 2 and 6 of the SRA Principles 2011 and failed to achieve Outcome 7.4 of the SRA Code of Conduct 2011"*

The Immigration Matter

53. Allegations 1.3 and 1.4 concern the Immigration Matter and state as follows:

> *"1.3 On 30 January 2015 and/or on or around 1 April 2015 the Respondent advised Person A (an undercover reporter posing as an immigration client) regarding methods for circumventing the UK immigration system, namely by entering into a sham marriage. The Respondent thereby breached Principle 1, 2 and 6 of the SRA Principles 2011.*
>
> *1.4 On 30 January 2015 and/or on or around 1 April 2015 during a surreptitiously recorded conversation with Person A, the Respondent stated that he could prepare and/or submit paperwork in support of Person A and/or others marriage and U.K. residency, notwithstanding that the Respondent was aware that the marriage would be bogus and arranged for the purpose of circumventing the UK immigration system. The Respondent thereby breached Principle 1, 2 and 6 of the SRA Principles 2011."*

The Rule 5 Statement went on to state, at paragraph 2, that dishonesty was alleged in relation to allegations 1.3 and 1.4, although proof of dishonesty was not an essential ingredient for proof of those allegations. The Rule 5 Statement then went on to set out in detail the facts and matters in support of each of the allegations. Allegation 1.1 was admitted by the Appellant. The remaining Allegations were denied.

The Case Management Hearing: February and March 2020

54. A case management hearing ("CMH") had taken place on 28 February 2020 before a differently constituted tribunal.

Tribunal's ruling on "severance"

55. At that hearing the Tribunal considered, inter alia, the Appellant's submission that the Property Matter and the Immigration Matter should be considered separately by the Tribunal. By its Memorandum of Case Management Hearing dated 11 March 2020, following that hearing, the Tribunal, after setting out the parties' oral arguments, rejected that application to sever.

The Parties' arguments on severance

56. In his written application dated 18 February 2020 the Appellant contended that the Property Matter concerned recklessness and competency and the Immigration Matter concerned dishonesty. There was no factual connection between the two matters. At the First Tribunal hearing this had caused embarrassment and prejudice by the two sets of the allegations being heard at the same time. The Appellant went on to point out that the Rules are silent on joinder and severance, but that there are rules in criminal proceedings to prevent allegations being wrongly joined together, which he referred to. He submitted that it would be fair, just, equitable and reasonable to have separate proceedings for separate allegations.

57. In oral argument as recorded in the Memorandum, the Appellant further emphasised that the Tribunal should not be influenced in respect of one matter by information relating to the other. He was concerned that the Tribunal would be influenced in respect of the Immigration Matter by the Property Matter, even though the former preceded the latter in time. The case of *Reza v General Medical Council* [1991] 2 AC 182 ("*Reza*") could be distinguished because the allegations there were based on similar matters, whereas in the present case the Immigration Matter was totally different. Further, if the Immigration Matter was separated, he would find it easier to be represented by counsel.

58. In its letter dated 26 February 2020, the SRA opposed the application to sever, submitting as follows. First, the SRA is able to bring whatever conduct issues it wants to the Tribunal. Secondly, it is for the professional tribunal properly to consider the separate allegations as they stand. The Tribunal is adept at being able to review matters independently from one another. Thirdly, it would not be practical for the regulator to regulate if there needed to be separate trials for each subject matter. Fourthly, because of possible prejudice to a defendant in criminal proceedings there are certain rules designed to regulate the joint trial of two or more charges. However in *Reza* it was held that such rules did not apply to disciplinary proceedings. Whilst in the present case the allegations pertain to different subject matters, they both involve the work of the Appellant carried out whilst practising solicitor. The SRA relied upon the statement in *Reza* that "separate charges may be appropriate in certain circumstances but they should all be heard by the same committee". There is little sense in having two separate proceedings, because if there were the findings of one tribunal panel, they would be likely to have an impact on the sanction of the next tribunal panel. In oral argument, as recorded in the Memorandum, the SRA further argued that under the Tribunal's rules allegations of a different nature could properly be brought; there is no need to obtain permission under rule 7 to add further allegations. The SRA responded on *Reza* and also referred to *O'Brien v Chief Constable of South Wales Police* [2005] UKHL.

The ruling on severance

59. At paragraph 13 of the Memorandum, the Tribunal set out its determination on the application to sever the allegations in the following terms:

> *"The Tribunal determined that [the Appellant] had confused the criminal jurisdiction with disciplinary/regulatory proceedings. This was not a case involving a hearing by a jury. The Tribunal, comprising its solicitor and lay members both of whom were well trained in Tribunal procedure was a professional, expert and specialist Tribunal and was well able to make the distinction between allegations and did not allow its findings in respect of one set of allegations to influence its judgment upon others. This Tribunal was well used to hearing allegations of a different nature and type and adjudicating upon them as separate matters, each to be proved in this case beyond reasonable doubt. The Tribunal agreed that it was for the Applicant to determine what allegations it would include in a Rule 5 Statement and provided they were certified as showing a case to answer it was for the Tribunal to determine its*

> *findings upon the allegations. It was also for the Tribunal to ensure that each Respondent had a fair trial whether represented or not. The Tribunal was accustomed to dealing with unrepresented Respondents. It would consider each of the allegations separately upon its merits. The allegations in this matter related to different issues occurring at different times but all of them related to [the Appellant's] conduct as a solicitor. The Tribunal refused the [Appellant's] application for severance."*

Video footage of the TV programme

60. At the CMH, the Appellant also raised a concern that all the video footage of the TV programme should be included in the hearing bundle. The Tribunal stated that the Appellant would be able to advise the SRA of any further documents, including the video evidence, that he wished to have included in the hearing bundle and that the Appellant might wish to email the SRA to put it on notice about service of any documents, including the video evidence, that he wanted included.

The course of the main hearing and the evidence

61. The main hearing took place over three days between 6 and 8 July 2020. The Tribunal considered a bundle of documents as set out in the Judgment, including witness statements from the Appellant, Ms Taylor, Mr Carruthers and Ms Jones and Ms Victoria Double (production co-ordinator at Hardcash**)**. As regards the Meetings, it had before it the transcripts, and the video footage of Meeting Two. The Tribunal heard oral evidence from Ms Taylor of the SRA, from Ms Jones and from the Appellant. The Appellant gave evidence for most of day 2. On day 3, the Tribunal announced that it had found all four allegations proved and went on to consider mitigation and sanction. At the end of day 3, the Tribunal announced its decision to strike off the Appellant from the Roll. The decision was published in the Judgment dated 10 September 2020. The findings in the Judgment are set out in more detail in the next section.

The Tribunal's findings on the Allegations

Allegation 1.1 and 1.2: the Property Matter

62. Allegation 1.1 was admitted and the Tribunal considered that the admissions were properly made. No issue is taken with the Tribunal's findings in respect of this allegation.

63. Allegation 1.2 is addressed at paragraphs 12.1 to 12.31 of the Judgment. The Tribunal set out at some length the SRA's case and the Appellant's case, at paragraphs 12.1 to 12.13 and 12.14 to 12.23 respectively. The Tribunal's decision is at paragraphs 12.24 to 12.31.

64. At paragraph 12.24 the Tribunal expressed surprise that IC had instructed the Appellant in respect of a reasonably large property development in circumstances where the Appellant did not advertise that he acted in that field of expertise.

65. At paragraph 12.25, the Tribunal did not consider that the fact that the Appellant had been acting as agent, rather than stakeholder, affected his professional duties. Significantly the Tribunal went on to find as follows:

> *"[The Appellant's] evidence was that IC had been open about the fact that they did not own the property when they approached him. [The Appellant] had stated in his oral evidence that he was first informed by IC in his first meeting in September 2016 that exchange of contracts had not yet taken place. This sworn evidence contradicted the position set out in the letter of 15 August 2016 from Chamber of Legal Advisors LLP, purporting to demonstrate that contracts for the sale of the property had been exchanged (which had been received by [the Appellant] on 26 October 2016). By the time [the Appellant] stated that he received this letter, it had, on his evidence, been contradicted by what he had been told in a meeting with his client. Further, the letter was considerably out of date by the time he received it and was unsigned. This combination of factors should have raised [the Appellant's] suspicions and prompted further queries."* (*emphasis added*)

66. At paragraph 12.26, the Tribunal did not consider that, in itself, information revealed by the Companies House search, that the director he had met had been recently appointed and that the company had been dormant suggested fraud. Nevertheless it should have triggered greater vigilance. The Appellant had not complied with the firm's written anti-money laundering processes. At paragraph 12.27 the Tribunal agreed that a developer prepared to apply pressure for the solicitors to breach the requirements of the Solicitors Accounts Rules must also raise concerns.

67. At paragraph 12.28 the Tribunal observed that neither pre-marketing the site before it is owned nor the high level of deposits were of themselves a hallmark of fraud. On the other hand the Appellant accepted that the completion date had been repeatedly put back and that that was another factor which should have raised concerns. The Tribunal went on to state:

> *"[The Appellant] acknowledged that the arrangements did in fact raise concerns, as he had stated that he would not have advised his clients to proceed without "some kind of surety that [IC] have acquired the property". The Tribunal considered this demonstrated that [the Appellant] was aware of the risk to the deposit monies, but, as he had emphasised in his pleadings and evidence, he did not consider there was an obligation on him to act to mitigate this risk on the basis that the buyers were separately legally represented."* (*emphasis added*)

68. At paragraph 12.29, the Tribunal made a central finding of fact, as follows:

> *"There was a crucial difference in the bases on which [the Appellant] and the buyers' solicitors were operating. As stated above, Ms Jones' evidence was that she received an email from the [Appellant] on 20 December 2016 which she stated*

> *"assured me that exchange had taken place and that [IC] would hold the freehold title on completion in early January [2017]". As also stated above, the Appellant's oral evidence during the hearing was that he had been told in September 2016 that exchange of contracts had not yet happened. Contrary to the submissions made on his behalf, [the Appellant] was in possession of this highly significant information for some months whilst the buyers' solicitor was operating on the basis that contracts had been exchanged. The Tribunal considered that this changed the complexion of the risk profile significantly."* (*emphasis added*)

69. At paragraph 12.30, the Tribunal made its finding of breach of Principle 6 and Outcome 7.4 in the following terms:

> *"On the basis of the cumulative effect of the 'red flags' described and accepted by the Tribunal above and [the Appellant's] own evidence that he would advise clients to ensure surety was obtained before proceeding, the Tribunal was satisfied to the requisite standard that [the Appellant] was aware that there was a significant risk to the deposit monies paid by the purchasers. The Tribunal accepted the submissions made by the [SRA] that a solicitor cannot assign responsibility for risk to the purchasers' solicitors entirely and pay no heed to the wider implications and risks posed by his instructions, particularly where those risks were known to him and not to the purchaser's solicitors. The sums that the [Appellant] have put at risk by transferring them in the circumstances were significant, amounting to £828,796. The Tribunal accepted the submission that the public would not expect a solicitor to accept instructions and continue to act in a property development when he was aware that purchasers' deposits were being placed at risk. The Tribunal found beyond reasonable doubt that by facilitating these payments, the [Appellant] failed to behave in a way that maintains the trust of the public placed in him and in the provision of legal services in breach of Principle 6. Similarly, the Tribunal found beyond reasonable doubt that his conduct in releasing the deposit monies failed to achieve Outcome 7.4 of the Code which required him to monitor and take steps to address risks to money and assets entrusted to him by clients and others."*
> (*emphasis added*)

70. Finally at paragraph 12.31, the Tribunal made its finding of breach of Principle 2 in the following terms:

> *"As set out above, the Tribunal considered that there were sufficient grounds for the [Appellant] making further enquiries and taking steps to address the risk at which the deposit monies were put. The deposit monies which the [Appellant] had received would only be required by IC for the building works*

> *involved in the development of Property P. Before providing the deposit monies, which could only be legitimately required for this purpose, the Tribunal considered that the [Appellant] should have satisfied himself that IC owned the building. The Tribunal considered that the ethical standards of the profession required this. He had placed £828,796 at risk on the strength of due diligence consisting of a photocopy of a driving licence and a Company House search which revealed a company until recently dormant and with a newly appointed director. The Tribunal referred to the test set out in Wingate, and was satisfied beyond reasonable doubt that by paying out the purchasers' deposit monies to IC in the circumstances set out above, the [Appellant] had failed to adhere to a fundamental ethical standard of the profession and failed to act with integrity in breach of Principle 2 of the Principles."*
>
> (*emphasis added*)

Allegations 1.3 and 1.4: Immigration Matter

71. Allegations 1.3 and 1.4 are addressed together at paragraphs 13.1 to 13.44 of the Judgment. The Tribunal set out at some length the SRA's case and the Appellant's case at paragraphs 13.1 to 13.17, and 13.21 to 13.30, respectively. In the course of these paragraphs, the Tribunal set out substantial passages from the transcripts of the two Meetings (and additionally referred to other passages), including those relied upon by the Appellant. The Tribunal's decision on the allegations is at paragraphs 13.32 to 13.41. Again in those paragraphs the Tribunal referred to substantial parts of the exchanges in the two Meetings, identifying in particular, as significant, seven illustrations of the exchanges which underpinned their conclusions.

72. As regards the issue of dishonesty, the Tribunal set out the SRA's case and the Appellant's case at paragraphs 13.18 to 13.20, and 13.31 respectively and the Tribunal's decision is at paragraphs 13.42. to 13.44.

Conclusions on allegations of fact: advising on non-genuine marriage

73. At paragraph 13.32 the Tribunal stated that it "had read both transcripts in full very carefully". It was clear that, taken in their totality, everything required for a sham marriage had been discussed. It was accepted that Person A's sole intention had been to explore the issue of a non-genuine marriage and the Appellant's willingness to advise and assist with such an arrangement.

74. At paragraphs 13.33 and 13.34 the Tribunal addressed the Appellant's case and his evidence as follows:

> *"The Tribunal also accepted that there were individual elements of the transcripts which supported the suggestion that the [Appellant] had been discussing a hypothetical genuine situation - such as his reference to dating sites in the context of how an individual may begin the process of establishing a relationship that may make marriage an option. Similarly, the Tribunal noted the references to which it was referred where*

> *the [Appellant] had mentioned getting married in a "proper way", the process being done "a legal way" and the marriage being "kept". Considered in the context of the entire exchange, and having carefully considered the [Appellant's] written and oral evidence, the Tribunal found the interpretation that it was being invited to give to the conversation by the [Appellant] was implausible and not credible.*
>
> *As well as reading both transcripts, the Tribunal had the benefit of seeing the video footage of the second meeting, and assessing the [Appellant's] live evidence. The Tribunal did not find the [Appellant] a compelling or credible witness on the conversations he had had with Person A. The contrast in the quality of the [Appellant's] evidence of matters where he was providing a straightforward factual answer and those elements where he was seeking to explain the comments highlighted and relied upon by the [SRA] was marked. The character reference supplied by the [Appellant], which the Tribunal reviewed with care, did not alter this assessment."*

75. At paragraph 13.35, the Tribunal stated that, as a matter of basic principle, it did not consider that a solicitor could simply turn a blind eye where a client is proposing to take unlawful action. Whilst all solicitors act on instructions, they are not free to do so in all circumstances without regard to any wider professional obligations.

76. At paragraph 13.36, the Tribunal stated as follows:

> *"The Tribunal found that it was clear that what was being discussed in both meetings was a non-genuine or sham marriage, and that the [Appellant] was aware of this and gave advice on that basis. His answers to various questions demonstrated this. At the outset of their first conversation the [Appellant] was told that Person A did not have any relationship such that marriage was an immediate legitimate option. By way of illustration of the exchanges which underpinned the Tribunal's conclusions the Tribunal considered the following to be significant…"*

The Tribunal then set out in seven bullet points, and in some detail, particular aspects of the transcripts from the Meetings. In particular the Tribunal referred to passages in the interview where payment to "the girl" (who Person A was to marry) by Person A was discussed and included as part of the Appellant's costs estimate for obtaining the visa; where the Appellant had said that "technically" Person A would have to live with the spouse and the "risk of getting caught" was discussed; where the Appellant referred to Person A wishing that the girl would die within a short period of time; where there was discussion about Person A marrying either a male or a female and the Appellant advising on the effect of gay marriage; where the Appellant had shown indifference as to whether or not the marriage was genuine; and where the Appellant referred to the client needing to take a risk.

77. At paragraph 13.37, the Tribunal addressed the Appellant's case and made its findings as to what was being discussed, in the following terms:

> *"The Tribunal did not find the submission that the [Appellant] and Person A were at cross purposes and the [Appellant] was advising on hypothetical scenarios and offering to assist only on the basis that the marriage was genuine to be plausible. There would be no need to advise on the risk of "getting caught" if that was the nature of the conversation. The Tribunal found that the conversation and the [Appellant] strayed well beyond discussing options. It would be legitimate to advise that marriage was one of the grounds for acquiring the right to stay in the UK, as the [Appellant] stated this was publicly available information; there was no place in such a legitimate conversation for advising on the risks of getting caught. The Tribunal found beyond reasonable doubt that the [Appellant] was aware that the marriage-based residency application being discussed in both meetings was non-genuine and he provided advice on that basis."*

78. At paragraph 13.38, the Tribunal set out its conclusion on allegation 1.3, finding that it was plain in both meetings that the purpose of the advice given regarding a non-genuine marriage was to circumvent the UK immigration system.

79. At paragraph 13.39, the Tribunal set out its conclusion on allegation 1.4. After referring to passages in each of the meetings in which preparation of paperwork for a marriage-based application was discussed, the Tribunal concluded that "*the [Appellant] had offered to prepare paperwork as alleged in relation to a marriage-based residency application that he knew would not be genuine*."

80. The Tribunal finally turned to the application of the Principles to the facts as found. At paragraph 13.40, in relation to Principles 1 and 6, the Tribunal found as follows:

> *"The Tribunal had found that the [Appellant] had advised on entering into a non-genuine marriage, and offered to prepare the relevant paperwork, with a view to circumventing the UK immigration system. The Tribunal found beyond reasonable doubt that he thereby breached Principle 1 of the Principles which requires all solicitors to uphold the rule of law and the proper administration of justice. The Tribunal accepted the submission that this is such a fundamental requirement of the profession that the trust placed by the public in the [Appellant] and the provision of legal services would be undermined by such conduct. The Tribunal found beyond reasonable doubt that the [Appellant] had thereby breached Principle 6 of the Principles."*

81. At paragraph 13.41, in relation to Principle 2, the Tribunal found as follows:

> *"Principle 2 of the Principles requires solicitors to act with integrity. The Tribunal referred to the relevant test set out in*

> *Wingate in which it was said that integrity connotes adherence to the ethical standards of one's own profession. The Tribunal accepted the submission that a solicitor acting with integrity would not have provided advice and offered assistance with paperwork relating to entering into a non-genuine marriage in order to circumvent UK immigration rules. The Tribunal found that the [Appellant's] conduct as summarised above fell well below the standard expected and found beyond reasonable doubt that he thereby breached Principle 2 of the Principles."*

Conclusions on dishonesty

82. As regards dishonesty, at paragraph 13.42, the Tribunal referred to, and applied the test as set out at §74 of *Ivey* and set out the two stage approach it would take in accordance with that test. Then at paragraph 13.43, the Tribunal addressed the first stage of the *Ivey* test concerning the Appellant's actual knowledge as follows:

> *"[The Tribunal had found that the [Appellant] had provided advice and offered assistance with paperwork relating to entering into a non-genuine marriage in order to circumvent UK immigration rules.] The Tribunal had found that the [Appellant] was aware that what was being discussed in both meetings was a non-genuine marriage. The Tribunal had rejected as implausible in the face of the evidence of the transcript that the [Appellant] believed he was advising on hypothetical scenarios on the basis he would only accept instructions based on a genuine marriage."* (*emphasis added*)

83. Finally, at paragraph 13.44 the Tribunal addressed the second stage of the *Ivey* test in the following terms:

> *"The clear purpose of the advice and offer of assistance was to help a client circumvent the UK immigration system. Applying the second element of the Ivey test, the Tribunal had no doubt that ordinary decent people would regard such conduct as dishonest. The Tribunal found beyond reasonable doubt that the [Appellant] had acted dishonestly in providing advice and offering assistance with paperwork relating to entering into a non-genuine marriage in order to circumvent UK immigration rules."*

The Naqvi case

The Proceedings before the Tribunal

84. The SRA brought proceedings against Mr Naqvi in respect of allegations arising out of the TV programme, very similar to those in the Immigration Matter. He too had been interviewed by the undercover reporter, Person A seeking advice concerning sham marriages. The Tribunal found the allegations proved and, by order dated 12 May 2019, the Tribunal struck him off the Roll. His appeal against that decision was dismissed by the Divisional Court on 2 June 2020. Before the Tribunal (and before

the Court) Mr Naqvi contended that the interviews amounted to entrapment and for that reason the proceedings should be struck out as an abuse of process. Ms Potts, the producer of the TV programme at Hardcash was called by the SRA to give oral evidence on the abuse of process issue and was cross-examined. Whilst Person A himself was not called to give evidence, the Tribunal concluded that that there was nothing that he could have usefully added to the evidence given by Ms Potts (*Naqvi* Judgment §41). The Tribunal rejected the case on entrapment, both as a matter of law and fact. Person A's questions had been open and not leading. Person A had not led Mr Naqvi into saying what he had said (*Naqvi* Judgment §§43, 44 and 52). It also found that there was no evidence to support the argument that the transcripts of the interviews were inaccurate or had been manipulated, relying on Ms Potts' evidence as to the circumstances of the recording and the handling of the recordings thereafter. Mr Naqvi could have, but had not, adduced expert evidence as to the authenticity of the footage and transcripts (*Naqvi* Judgment §§45 and 50).

The *Naqvi* Judgment

85. On appeal Mr Naqvi raised a number of grounds, including the issue of entrapment and failure to call Person A to give evidence, and inaccuracy of the transcripts of interviews, and disputing the nature of the advice given as recorded in the transcripts. The Divisional Court rejected all these arguments and dismissed his appeal.

86. As to the issue of entrapment, the Divisional Court upheld the Tribunal's decision that there had been no entrapment, either in law or in fact. Flaux LJ held (at §§106 to 111) that the principles enunciated in *R v Loosely* [2001] UKHL 53 did not apply. Those principles apply to misconduct by a state agent, such as the police. Where the evidence has been elicited by a non-state agent, such as a private journalist, the principles set out in *The Council for the Regulation of Healthcare Professionals v General Medical Council and Saluja* [2006] EWHC 2784 (Admin); [2007] 1 WLR 3094 ("*Saluja*") apply. I summarise these principles at paragraph 166 below. On that basis, there was no case of entrapment as a matter of law. Flaux LJ also upheld the Tribunal's conclusion that the questions asked by Person A were open and fair and so, on the facts, his role had not amounted to entrapment (§111). As regards the failure to call Person A, the Divisional Court held, relying on *R (Bonhoeffer) v General Medical Council* [2011] EWHC 1585, that there is no absolute entitlement to cross-examine a witness and that the Tribunal's judgment on that could not be faulted, because Ms Potts was available to answer questions in relation to entrapment and further because the Tribunal had the unusual advantage of the availability of the complete transcript of the interviews (§§114-117). It also upheld the Tribunal's conclusion that the transcripts were unedited, finding that Mr Naqvi's contention was mere assertion and speculation (§118). Further it upheld the finding that how other solicitors had been treated by the SRA was irrelevant to the issue which the Tribunal had to decide (§120). At §129 the Divisional Court made clear that the effect of *Ivey* was to "clarify" the law on dishonesty. In relation to the substantive findings concerning the content of the interviews, the Divisional Court rejected Mr Naqvi's case that his advice had been generic. The Tribunal, as they were entitled to, disbelieved his evidence to that effect "as contrary to the clear terms of the transcript" (§132).

The Appeal and the Grounds

87. By Appellant's Notice filed on 24 September 2020, the Appellant appealed against the Order, accompanied by Grounds of Appeal and skeleton argument. Since then, the Appellant has filed revised grounds of appeal and revised and updated versions of his skeleton argument.

88. The principal grounds of appeal relied upon by the Appellant at the hearing are those set out in his Revised/Updated Grounds of Appeal as follows:

Ground 1: The Tribunal erred in not separating different categories (property and immigration) of allegations in separate proceedings. It was unfair to the Appellant to join these two categories of case into one proceeding. The members might have been influenced by the facts of two separate categories.

Ground 2: The Tribunal erred in finding the Appellant lacked integrity in relation to allegation 1.2, in breach of principles 2 and 6, without considering all relevant material.

Ground 3: The Tribunal erred in finding the Appellant lacked integrity in relation to allegation 1.2. Both solicitors had the same information on which they relied. It was unfair to penalise one solicitor (i.e. the Appellant).

Ground 4: The Tribunal erred in finding the Appellant dishonest in relation to Allegations 1.3 and 1.4. In considering the evidence, the Tribunal only accepted the SRA's claim and did not consider the evidence in its totality.

Ground 5: The Tribunal erred in accepting the undercover reporter's evidence. (i) The interview was an entrapment. (ii) The SRA failed to produce a forensic report about the authenticity of the video and audio, and whether they were edited or not.

Ground 6: The Tribunal erred making its judgment on mere available evidence. The SRA did not adduce all material evidence; especially the TV programme was not disclosed to Members of the Tribunal. The public saw the TV programme and not the interview.

Ground 7: The Tribunal erred in not taking account of the Appellant's personal references and client's account of the facts. If the Tribunal had taken account of these references, they might have found the Appellant honest in his dealings.

Ground 1 addresses the distinct issue of severance of the Property Matter and the Immigration Matter. Grounds 2 and 3 concern the Property Matter. Grounds 4 to 7 address the Immigration Matter. Parts of Grounds 2 to 7 are expanded upon, by a number of sub-points, in the original grounds of appeal, the Appellant's detailed Skeleton Argument and in oral argument. I address these under each ground as necessary. In his original grounds of appeal, the Appellant also contended (1) that the Tribunal erred in applying the wrong standard of proof and (2) was wrong to award full costs against him.

Events since the Order

89. In response to an enquiry from the Appellant, on 12 November 2020 the SRA informed him that in the 40 cases analysed in its August 2020 report on "Dubious Investment schemes", 13 of the solicitors were acting for buyers.

90. In the recent letter dated 26 February 2021, in response to concerns expressed by the Appellant that the SRA had discriminated against him in taking action against him and not against JPG, the SRA refuted the allegation of bias and discrimination and explained that it did investigate JPG for its involvement in the Property Matter but did not find evidence to show that it had acted unethically or in breach of professional standards. The reason for not taking further action in relation to JPG was because the SRA had not identified any evidence of misconduct. The letter went on to invite the Appellant to complete a report form on its website if he believed that JPG had committed misconduct. However no such further report was made by the Appellant.

The Relevant Legal Framework

Appeals

91. As regards the relevant principles which apply to appeals to this Court under s.49, first, the SRA bears the burden of proof and the relevant standard of proof is the criminal standard.

92. Secondly, CPR 52.10 and 52.11 apply to an appeal under s.49 of the 1974 Act. It is an appeal by way of review and not by way of rehearing: see special provision for a s.49 appeal is not made in CPR Practice Direction 52D. However where the appeal court is being asked to reverse findings of fact based on oral evidence, there is little, if any difference, between "review" and "rehearing": see *Assicurazioni Generali SpA v Arab Insurance Group* [2002] EWCA Civ 1642 §§13, 15 and 23.

93. Thirdly, the Court will only allow the appeal if the decision of the Tribunal was "wrong" or "unjust because of a serious procedural or other irregularity in the proceedings in the lower court" (CPR 52.21(3)(a) and (b)).

94. Fourthly, as regards the approach of the Court when considering whether the Tribunal was "wrong", I refer in particular to *Solicitors Regulation Authority v Day* [2018] EWHC 2726 (Admin) at §§61-78, *Solicitors Regulation Authority v Good* [2019] EWHC 817 (Admin) at §§28-32, the *Naqvi* Judgment at §83, citing *Solicitors Regulation Authority v Siaw* [2019] EWHC 2737 (Admin) at §§32-35, and most recently, *Martin v Solicitors Regulation Authority* [2020] EWHC 3525 (Admin) at §§30-33. From these authorities, the following propositions can be stated:

    (1) A decision is wrong where there is an error of law, error of fact or an error in the exercise of discretion.

    (2) The Court should exercise particular caution and restraint before interfering with either the findings of fact or evaluative judgment of a first instance and specialist tribunal, such as the Tribunal, particularly where the findings have been reached after seeing and evaluating witnesses.

(3) 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. 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.

(4) 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.

(5) The Tribunal 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.

Finally, as regards reasons, decisions of specialist tribunals are not expected to be the product of elaborate legal drafting. Their judgments should be read as a whole; and in assessing the reasons given, unless there is a compelling reason to the contrary, it is appropriate to take it that the Tribunal has fully taken into account all the evidence and submissions: *Martin*, supra, §33.

Dishonesty

95. The legal test for dishonesty is set out by Lord Hughes JSC in *Ivey v Genting Casinos (UK) Ltd* 2017] UKSC 67 at §74 (25 October 2017 disapproving of the previous test in *R v Ghosh*).

> *"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 knowledgeable 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."*

Lack of integrity: the Wingate case

96. The test for integrity is set out in the judgment of Jackson LJ in *Wingate v Solicitors Regulation Authority* [2018] 1 WLR 3969 at §§96 to 103. In summary, whilst a more nebulous concept than dishonesty, 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". It connotes adherence to the ethical standards of one's own professions. Examples Jackson LJ gave include, in the context of conducting negotiations, taking particular care not to mislead and being more scrupulous than a member of the general public not allowing the firm to become involved in conveyancing transactions which bear the hallmarks of mortgage fraud; and not making false representations on behalf of the client. In line with paragraph 94(3) above, a professional disciplinary tribunal is well placed to identify want of integrity and the decisions of such a body on that issue must be respected, unless it has erred in law (§103).

The Grounds

Ground 1: Severance

The Parties' contentions

The Appellant's case

97. The Appellant contends that he should have been "prosecuted" separately for the Property Matter and for the Immigration Matter. The Tribunal was wrong to refuse his application to sever the proceedings. The failure to do so amounted to procedural unfairness. The case of *Reza* concerned proceedings brought by the GMC; the approach there should not be read across to the different regulatory scheme for solicitors. He did not challenge the CMH decision at the time because he considered it would be more appropriate to raise the issue on an appeal, in the event that the Tribunal decided against him, substantively. *Wisson v Health Professions Council* [2018] EWHC 122 (Admin), where joinder of allegations was upheld, fell to be distinguished because in that case there were a number of areas of commonality between the allegations; in the present case, there was no such commonality. The finding in relation to the Property Matter might have influenced the Tribunal's view of him in relation to the Immigration Matter.

The SRA's case

98. The SRA contends, first, that the Appellant cannot appeal against the Order on this ground. The issue was raised and resolved by a differently constituted tribunal at the CMH on 28 February 2020. No further application was made at the substantive hearing before the Tribunal and so the Tribunal did not deal with it in the Judgment. Any challenge to the CMH decision on severance should have been made by way of judicial review.

99. Secondly, the substance of the grounds has no merit. It was not wrong or unjust nor procedurally irregular for the two Matters to be heard together.

    (1) Regulatory proceedings, such as proceedings before the Tribunal, envisage one panel or tribunal dealing with all issues against a practitioner and the totality of any conduct alleged, given that it is the overall picture of how the professional conducts his or her practice which is ultimately in question.

(2) The SRA is not obliged to seek formal joinder of matters which have been referred against one solicitor. There is thus no such provision within the Rules. This indicates an intention that different matters against one solicitor, if arising or referred at the same or similar time, should be dealt with together. A purpose of Rule 7 is to enable joinder and it is not subject to any requirement of similarity of allegations.

(3) Ultimately a Tribunal is considering sanction, which must be considered holistically, in view of all matters of misconduct; previous/other matters would therefore become relevant at the sanction stage in any event, but practically and in fairness to the practitioner, different allegations should be dealt with together to avoid unnecessary cost, delay and 'duplication' of sanction: see *Reza* supra, *Wisson* supra, and *Gilchrist v The Law Society* [2001] EWHC Admin 122.

(4) Repeated prosecutions of the same solicitor, based on different allegations but which are all known at the same time, could be an abuse of process.

(5) The criminal law is not of direct application in fitness to practise proceedings and, whilst it provides helpful guidance, panels should not take the analogy too far. The criminal rules on joinder exist in part because a defendant will be tried by a jury which might not have the expertise to differentiate between conduct on one occasion from that on another. That does not apply when dealing with a tribunal comprised of specialists: see *Wisson* §§15-16. The case of *Reza* distinguished criminal proceedings and regulatory proceedings.

Whilst there is no case authority on this issue in relation to the SRA, the principles set out in *Reza* apply to all types of disciplinary proceedings in general, subject to any different rules of the disciplinary body in question. The SRA asserts that in practice, in the case of the SRA and the Tribunal, all matters against one solicitor are dealt with by the Tribunal in one go, including allegations of a different type. However the SRA accepts, that if there are separate tribunal proceedings, a finding of misconduct in proceedings A would not be admissible at the misconduct stage in any proceedings B. It would be only admissible on any issue of sanction.

Discussion and analysis

100. There are two issues arising on Ground 1:

(1) whether the matter can properly be brought as a ground of appeal against the Order in circumstances where the decision to hear the Allegations together was made at a prior hearing by a differently constituted tribunal;

(2) the substance of whether or not the Case Management decision dated 11 March 2020 on joinder/refusing severance was wrong and/or amounted to a serious procedural or other irregularity, as a matter of fact and/or law.

Issue (1)

101. As to issue (1), this is a challenge to the CMH decision in March 2020. That was an interlocutory ruling made in the course of the proceedings and by a differently

constituted Tribunal. The issue of severance formed no part of the argument before the Tribunal, nor of the Judgment. I accept the SRA's submission that an appeal against the Order under section 49 of the 1974 Act lies only against that order. Interlocutory rulings are not within the ambit of section 49. They can only be challenged by way of judicial review, brought within the time limit. Appeal rights are given only in respect of formal and final orders of the Tribunal, orders duly filed with a statement of findings: see *Re A Solicitor*, CA judgment 27 April 1994 [1994] 4 WLUK 22 at pp145 to 147. There is no part of the Order which, either expressly or implicitly, made any determination of the issue of severance. A challenge to the CMH ruling, being a prior interlocutory ruling, could only be made by way of appeal against the CMH's ruling, or more likely, by way of judicial review. No such challenge has been made. In any event, the time for making such a challenge has long expired – at most 3 months, in the case of judicial review. For these reasons, I conclude that the Order and the Judgment cannot be impugned in this appeal on the ground that the refusal to sever at the CMH was wrong.

Issue (2)

102. I consider issue (2) in the alternative.

The Solicitors (Disciplinary Proceedings) Rules 2007

103. Rule 5 of the Solicitors (Disciplinary Proceedings) Rules 2007 ("the Rules") provides that an application to the Tribunal in respect of any allegation or complaints made in respect of a solicitor must be in specified form and supported by a Statement setting out the allegations and the facts and matters supporting the application and each allegation contained in it. This is "the Rule 5 Statement". By rule 5 (3) the application must be delivered to the clerk with additional copies.

104. Rule 7 provides that the applicant may file supplementary Statements containing additional facts and matters on which the applicant seeks to rely or "*further allegations and facts or matters in support of the application*". Any supplementary Statement containing further allegations against the respondent shall be treated as though it were an application for the purpose of, inter alia, rule 5 (3).

The relevant legal principles

105. First, whether or not different allegations against a professional may be joined so as to be heard at the same time by the same disciplinary body will be subject to the procedural rules of the body in question. Different bodies have different rules. In the case of the Tribunal, the only relevant rules are Rules 5 and 7 set out above. Under Rule 7, there is a general and wide discretion to allow the SRA to pursue, and the Tribunal to entertain, additional and different allegations.

106. Secondly, there is no court case authority on the approach to be adopted by the Tribunal to joinder (or severance) of distinct allegations against one and the same solicitor falling to be considered together by a tribunal.

107. Thirdly, the two leading authorities are *Reza* and *Wisson* which deal with different professional disciplinary bodies. Those cases have some relevance, but subject to their particular rules. In *Reza* the rules of the GMC contemplated an inquiry by one

committee into every matter relating to the practitioner in order for it to determine overall sanction to be imposed.

108. Fourthly, those cases establish that the analogy with the approach to joinder (or severance) of charges in criminal cases goes only so far. First, a disciplinary body has to consider sanction, taking account of all relevant conduct. Secondly, the rules in criminal proceedings act as a safeguard where a defendant is being tried by a jury who cannot expect necessarily to have the expertise to be able to differentiate and might be adversely affected by a joinder of charges where there is no proper link. That is less likely to be the case with a panel of specialists: see *Wisson* supra, §§15-16.

109. Fifthly, in the reported cases, where separate allegations have been held to have been properly heard by the same body, it appears that there was some commonality or common features between the different factual allegations of misconduct. In *Wisson* the relevant rules conferred an express discretion to determine two or more allegations against the same professional; and, in a practice notice, expressly stated that joinder would be appropriate *only* where the allegations were linked in nature, time or by other factors. I have not been referred to any case where the position of distinct allegations which had no such link has been considered. For my part, I therefore conclude that, where there is no factual link between allegations, there is certainly a discretion in the disciplinary body, and in the Tribunal in particular, to direct that separate allegations *should* be considered by differently constituted tribunals. The cases of *Reza* and *Wisson* are not authority to the contrary. Such a discretion might be exercised in a case where a finding in respect of one allegation based on credibility might have an influence on consideration of a second set of charges, where those charges depend crucially on credibility.

110. Applying those principles to the present case, had the issue arisen, I would have concluded that even if the Tribunal hearing the CMH had a discretion to sever, the Judgment and the Order were neither wrong nor unjust because of a serious procedural or other irregularity:

(1) As the CMH Tribunal held, the Tribunal is an expert tribunal and not a jury hearing a criminal trial. It is capable of being alive to the risks of influence of findings in relation to one allegation upon other allegations.

(2) Most significantly, in the present case, the Tribunal's determination on the Immigration Matter did not ultimately depend on the credibility or character of the Appellant, but rather upon the objective evidence of the contents of the transcripts and the Tribunal's assessment of those contents. As pointed out below, the Tribunal considered that those transcripts provided clear evidence supporting Allegations 1.3 and 1.4. Further there is no evidence that the finding of lack of integrity in relation to the Property Matter influenced the Tribunal's decision on the Immigration Matter. The Tribunal considered the allegations quite separately and assessed the credibility of the Appellant in respect of the Immigration Matter by reference to the specific evidence he gave in respect of the transcripts: see Judgment, paragraph 13.34.

Conclusion on Ground 1

111. For the foregoing reasons, Ground 1fails.

Ground 2: Property Matter and lack of integrity

The Parties' contentions

The Appellant's case

112. The Appellant puts forward a number of distinct points under this ground, as follows:

(1) The Tribunal failed to establish characteristics of fraud; this is a general challenge to its findings on Allegation 1.2. ("the general challenge").

(2) It was unfair and unreasonable to make a finding of lack of integrity against him, given that there was no insurance claim made against the Appellant by the purchasers or by JPG for the loss of £828,796. If the loss had been his fault, the purchasers would have made a claim against him. In any event any claim would have failed. It was not his duty to advise on the commercial merits of the transaction: *Orientfield Holdings v Bird & Bird LLP* [2015] EWHC 1963 (Ch). By contrast, in *Newell-Austin* [2017] EWHC 411 (Admin) the Tribunal relied upon the fact that clients had made a claim on the solicitors' insurers, which claim had been refused on grounds of participation in the fraud on the part of the solicitor. ("No claim by purchasers").

(3) The Tribunal was wrong to find breaches of Principles 2 and 6 and in particular failed to apply properly the principles set out in *Wingate* to the facts of this case. The present case is distinguishable on the facts. In *Wingate* the solicitors themselves provided incorrect information to the lender. Here, the Appellant did not provide any documents himself or give any surety to the purchasers or JPG. All information and documents were supplied by the client, IC and forwarded to JPG for their information and approval. Professional negligence alone does not give rise to a breach of Principle 6: *Wingate* at §§105 to 106; and here the absence of any claim against him shows there was not even any issue of professional negligence. ("Wrong application of *Wingate* principles").

(4) The Tribunal was wrong to find a breach of Principle 6 since the public had put their trust in JPG and not in the Appellant, nor in ZA Solicitors. In January 2020 the Legal Ombudsman had refused to entertain a complaint from one of the purchasers, on the ground that she was not a client of the Appellant, but rather had the assistance of her own lawyer. The Appellant had been acting, in respect of the deposits paid, as an agent for IC and not as a stakeholder. He had no responsibility to keep separate the funds on behalf of JPG pending their further instructions. ("Principle 6 and public trust").

(5) The Tribunal did not consider all relevant material. ("All relevant material").

(6) The Tribunal's conclusion in the penultimate sentence of paragraph 12.29 of the Judgment (as to "asymmetry of knowledge") was wrong. In his email of 20 January 2016 the Appellant had made it clear to JPG that Mr Pabani was still the owner of the property and, in cross-examination, Ms Jones had duly endorsed that fact. The Appellant and JPG had the same information. JPG and the purchasers were happy to exchange contracts and pay the deposits

before IC had completed on its purchase of the Property P. Further, relying upon the Contract Document, there was, in fact, an exchange of contracts, which he had been provided with, and which he passed on to JPG. ("No asymmetry of knowledge").

(7) At paragraph 12.30, the Tribunal was wrong to refer to the Appellant's evidence "*that he would advise clients to ensure security was obtained before proceeding*". In that evidence, the Appellant was referring to email and correspondence received from *other* solicitors whose clients had wanted to buy the same property. Those solicitors asked for further documentation instead of relying on some documents as relied upon by JPG. In the same paragraph, the Tribunal was wrong to give "a clean chit" to JPG; JPG was at least jointly responsible. ("Challenge to paragraph 12.30").

(8) At paragraph 12.31, the Tribunal was wrong to conclude, beyond reasonable doubt, that "*before providing the deposit monies, which could only be legitimately required for this purpose, the Tribunal considered that the Respondent should have satisfied himself that IC owned the building*". That was an expectation of the Tribunal and not a requirement in the contract. As a matter of fact there was no clause that he should hold the money as stakeholder or until IC owned the Property. Both solicitors were fully aware, before exchange of contracts, that IC did not own the Property. The Appellant acted legitimately, in accordance with the agreement, signed by both parties represented by legal professionals. If the Tribunal were satisfied beyond reasonable doubt as stated in paragraph 12.30, the Tribunal should have used the word "must have" instead of "should have". The phrase "should have" shows doubt about handling the matter. There was no obligation in the contract between IC and the purchasers not to hand over the deposit moneys without proof of ownership at that time. ("Challenge to paragraph 12.31").

The SRA's case

113. As to points (1) and (2) above, paragraphs 12.24 to 12.31 of the Judgment demonstrate a careful and fully reasoned decision on the factual aspects of this allegation. The Tribunal did not accept all aspects of the case as put forward by the SRA and in fact accepted some of the Appellant's contentions. At paragraph 12.30, the Tribunal accepted the cumulative effect of the 'red flags' as set out by the SRA and therefore that they did indeed establish that the transactions had relevant characteristics to lead to a conclusion that they were 'dubious and/or bearing the hallmarks of fraud'. The fact that the purchasers and/or JPG did not take legal action against the Appellant had no impact on the Tribunal's findings in respect of his conduct and is wholly irrelevant.

114. As to point (3) above, whilst the facts of the case might be different, it is the principles derived from *Wingate* that apply and assist any tribunal in how to approach the issue of integrity across many different factual circumstances and allegations. The Tribunal's application of Principles 2 and 6 is at paragraphs 12.30 and 12.31. There was here ample basis for this decision on the evidence before the Tribunal and there is nothing wrong in the way the Tribunal applied the correct principles.

115. As to point (4), the Appellant's argument appears completely to misunderstand the concept of maintaining public trust in the individual solicitor concerned and in the profession. The 'public' does not refer to – in this instance – the purchasers. Rather 'the public' refers to the public at large and their perception of the solicitor's misconduct, and the reputation of the profession in dealing with such conduct.

116. As to point (5), the Appellant has not expanded upon this argument. The Tribunal had considered all material placed before it and there is no basis for this ground of appeal.

117. As to point (6) (paragraph 12.29), the Tribunal found that "*there was a crucial difference in the bases on which [Mr Ali] and [JPG] were operating*". The Tribunal was correct to find, on the evidence, that on the one hand, the Appellant knew that contracts had not been exchanged, whilst JPG believed that they had been exchanged. Ms Jones' evidence was that the Appellant's email of 20 December 2016 had assured her that exchange had taken place and that IC would hold the freehold title on completion in early January. It was only in February 2017 that she developed concerns which she investigated and which revealed the fraudulent nature of the scheme. Ms Jones' oral evidence (when cross-examined) was consistent with her statement; she accepted that she knew that a Mr Pabani, and not IC, owned the Property but that she was acting under the impression that contracts had been exchanged. In the 20 December 2016 email the Appellant responded to enquiries stating that the 'exchange has happened already, we will be completing in January' – when he knew at that stage that exchange had not yet in fact taken place. The key difference was that JPG were acting under the understanding that contracts had been exchanged; and that, as the Tribunal concluded, changed the complexion of the risk profile significantly. Furthermore, in his oral evidence, the Appellant confirmed that he was aware that IC did not own the Property when he made the Land Registry checks on 23 November 2016.

118. As to point (7), in his interview with Ms Taylor, the Appellant had said that if he had been acting for a buyer for this Property, he would have advised them not to go ahead without some kind of surety, and that the buyer he was there referring was to a purchaser client of JPG's. The Tribunal's finding at paragraph 12.30 that he was aware of the risk to the deposit moneys paid by those purchasers was therefore sound. This was clearly alleged in the Rule 5 Statement and was not challenged by the Appellant. The Tribunal was entitled to rely on it in reaching its judgment.

119. As to point (8) and the third sentence of paragraph 12.31, the first two sentences in paragraph 12.31 explain why the Tribunal reached the conclusion it did. The remaining sentences then set out why that was the Tribunal's expectation, which was a reasonable expectation for a solicitor acting in accordance with the standards and principles of his profession. Thus, paragraph 12.31 should be read in its entirety. There is nothing in that paragraph which undermines the Tribunal's decision in respect of Allegation 1.2 and its finding of a lack of integrity.

Discussion and analysis

120. I deal with the Appellant's eight points under this Ground in turn.

Point (1): The general challenge

121. The factual basis of Allegation 1.2 is that the Appellant made payments out and facilitated transactions which were dubious and/or bore the hallmarks of fraud. It is IC's conduct which was fraudulent. It is not alleged that the Appellant himself was fraudulent, but rather he was aware, or should have been aware, of risk. At paragraphs 12.25 to 12.29 the Tribunal assessed in detail the features of the transactions and the Appellant's knowledge and involvement in them. In doing so, it identified aspects which it regarded as "red flags" or "hallmarks of fraud". Its assessment was fair and considered. Some features did not, on their own, amount to "hallmarks", but when seen in the context of other features, did put the Appellant on notice to be more vigilant. The Tribunal found at paragraph 12.28 that the Appellant was aware of the risk to the deposit monies. Then at paragraph 12.29 it identified the "crucial" finding of the asymmetry of knowledge as between himself and JPG relating to exchange of contracts, culminating in its conclusion that that factor "changed the complexion of the risk profile completely". The Tribunal then went on to make its final conclusions at 12.30 and 12.31 based on the cumulative effect of the "red flags" and the Appellant's own evidence.

122. In my judgment, the Tribunal's analysis, leading to its findings in respect of Allegation 1.2 was considered and cogent. The Appellant's general challenge to those findings is unfounded. There is no reason to doubt that IC's transactions were fraudulent. The Tribunal's findings were that the Appellant was aware of the risk to deposit moneys, as a result of the "red flags" relating to those transactions. Those "red flags" meant that the transactions were "dubious" and/or "bore the hallmarks of fraud". Where there are "indicia" of fraud or possible fraud, it is professional misconduct to act, or continue to act, without carrying out further enquiries to satisfy oneself that the transaction is not fraudulent. In such a case there is a heightened need for due diligence to be undertaken: *Bryant v Law Society* [2007] EWHC 3043 (Admin) at §172. In this way, the Tribunal was entitled to find Allegation 1.2 (and in particular the allegation that the Appellant made payments to and facilitated transactions which were dubious and/or bore the hallmarks of fraud) proved. I conclude that there is nothing in the general challenge which can lead to the conclusion that the Tribunal's findings and conclusions in respect of this allegation were "plainly wrong", that it had misunderstood the evidence or had failed to consider relevant evidence, or that its conclusion could not reasonably be explained or justified.

Point (2): No claim by purchasers

123. In my judgment, the fact that neither the purchasers nor JPG took legal action against the Appellant in respect of the lost deposits does not indicate that the transactions were not fraudulent or even dubious, nor that the Appellant himself did not, in his involvement with the transactions, act with a lack of integrity. First, there might be many reasons why no such claims were made. Secondly as regards the case of *Newell-Austin* the facts there were very different. Their claims were made directly against the firm of solicitors in respect of fraudulent transactions in which one of the partners in the firm was involved and which claims arose out of dishonest conduct which the partners in the firm had committed or condoned. Even though the particular solicitor appellant had not herself been dishonestly involved in the fraudulent

transactions, at least one of her partners had been, and the claims were made against *the firm* on that basis. The Appellant's case here is unfounded.

Point (3): Wrong application of Wingate principles

124. First, lack of integrity is a broader concept than honesty. It concerns ethical standards and being scrupulous in dealings: see paragraph 96 above. The Tribunal (at paragraph 12.31) specifically referred to the ethical standards of the profession which is at the heart of the requirement to act with integrity. Secondly, the issue on the facts here is also considered under point (8). On the facts here and in particular in relation to the question of exchange of contracts, the Appellant failed in his duty not to mislead and indeed made false representations: see further my observations in paragraphs 135 to 137 below. At the very least the Appellant failed to correct the false impression that JPG had that contracts had been exchanged, an impression which the Appellant knew was held by JPG. In fact he went further and made positive express representations to JPG (in his email of 20 December 2016) that contracts had been exchanged. Contrary to the Appellant's submission, the Appellant did not merely forward information provided by IC; he knowingly provided incorrect information. He passed on the 15 August Letter, in circumstances where he knew that contracts had not been exchanged as at the date of that letter. Further another aspect of the Appellant's lack of integrity was his wider involvement in transactions which bore the hallmarks of fraud (see paragraph 96 above and *Wingate* at §101 (v)): the Appellant's conduct by transferring the deposit moneys to IC knowing that IC had not exchanged contracts also lacked integrity because it placed the purchasers' money is at risk.

125. The decision of a professional disciplinary tribunal on lack of integrity must be respected unless it has erred in law: see paragraph 96 above. Here, there is nothing to indicate that the Tribunal erred in law and the decision that the Appellant's conduct amounted to breaches of Principles 2 should therefore not be interfered with.

Point (4): Principle 6 and public trust

126. I accept the SRA's submission that the Appellant's contention here is based on a misunderstanding of Principle 6. Principle 6 is concerned with maintaining the trust of the public at large both in the particular solicitor in question and in the provision of legal services as a whole and in general. It is not directed towards the trust placed in the solicitor by the solicitor's own client for any specific transaction or indeed by other particular individuals involved in particular transactions. The issue as to what duties and responsibilities the Appellant owed to the particular purchasers from IC who were clients of JPG either generally or in respect of their deposits is not determinative of whether, by his conduct, the Appellant had maintained the trust of the public. That the Tribunal was addressing the general standards of conduct expected of any solicitor by the public in general is made clear in an earlier part of paragraph 12.31 where it states "*the public would not expect a solicitor to accept instructions and continue to act in a property development when he was aware that purchasers' deposits were being placed at risk.*" The Appellant's argument here is unfounded.

Point (5): All relevant material

127. The Appellant did not expand upon this argument. In any event, there is no reason to consider that, in reaching its conclusions on Allegation 1.2, the Tribunal did not take account of all the relevant material. At paragraph 9 of the Judgment, the Tribunal set out all the evidence it considered and expressly confirmed that it had read all the documents, made notes of the oral evidence and that the absence of reference in the Judgment to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Point (6): Asymmetry of knowledge

128. The key issue in respect of Allegation 1.2 is what I term as "the asymmetry of knowledge" in relation to the position on *exchange of contracts*, rather than the respective knowledge and understanding, of the Appellant and of JPG, as to ownership of Property P. The Appellant's submissions on point (6) do not fully address that key issue.

129. The evidence establishes clearly and consistently that, whilst both the Appellant and Ms Jones of JPG equally knew that at the relevant time IC did not own Property P, the Appellant also knew that IC had not exchanged contracts for its purchase, whilst JPG believed, as a result of what they had been told by the Appellant himself, that contracts had been exchanged. As regards the Appellant's knowledge, whilst the 15 August Letter stated that contracts had been exchanged, in oral evidence the Appellant stated that at the time of his initial conversations with IC in September 2016, he knew that contracts had *not* been exchanged. Thus when he received the 15 August Letter in October 2016 (and when he passed it on to JPG in December 2016) he knew that its contents were not true. As to JPG's knowledge, they were told in the 20 December 2016 email, and believed, that contracts had been exchanged (albeit that IC was not at that time the owner). This state of knowledge was confirmed by Ms Jones' evidence in her witness statement and in cross-examination. She also stated in her witness statement that the Appellant also subsequently sent JPG a further copy of a fake/fraudulent copy of an exchanged contract between IC and the true owner (i.e. the Contract Document) after JPG pressed to see a copy when they became suspicious and when the Appellant was attempting to reassure them.

130. The Appellant relied upon the answer given by Ms Jones in cross-examination, where she accepted that JPG knew that Mr Pabani was the owner of Property P. However he failed to refer to the crucial part of her answer in cross-examination, where she added "*and we also understood there to be an exchanged contract for purchase*.[2]

131. Thus, from September 2016, the Appellant knew that IC had not exchanged contracts to own the Property and yet on 20 December 2016 he was inaccurately stating to JPG that they IC had exchanged contracts. It was this information on which JPG were operating, when in fact that was not the case, which changed the risk profile for JPG and the purchasers. In my judgment the Tribunal was therefore correct in finding that the Appellant was in possession of knowledge that the contracts had not yet in fact been exchanged, when JPG were operating on the basis that they had been. There is

[2] Transcript, Day 1 page 80 ll. 7-8.

no evidence that at the time that the deposits were paid, JPG knew that there had been no exchange of contracts between Pabani and IC.

132. As regards the Contract Document between Mr Pabani and IC, the document does not establish that exchange of contracts between Mr Pabani and IC had taken place at any time up to the payment of deposits, nor does it establish that as at 20 December 2016 or the date of transfer of deposits the Appellant knew or even believed that exchange of contracts had taken place. As to the former, the evidence from the parties' "solicitors" strongly suggests that the Contract Document was not a genuine document. As to the latter point, the "Contract Document" had not come into the Appellant's possession, on his own evidence, until March 2017, well after he had transferred the deposits to IC. (See paragraph 31 above.)

133. In these circumstances, there was no error of fact made by the Tribunal, nor indeed a demonstrable misunderstanding of, or failure to consider, relevant evidence by the Tribunal. In fact the Tribunal's conclusion can be reasonably explained or justified.

Point (7): Challenge to paragraph 12.30

134. First, the reference in the first sentence of paragraph 12.30 to the Appellant's "own evidence" is a reference to a passage in the Appellant's interview with Ms Taylor. (That evidence is in turn referred to more directly at paragraph 12.28: see underlined passage in paragraph 67 above). On a reading of the relevant part of that interview, I consider that, when indicating the advice he would have given if he had been acting for a buyer, it is a fair reading that he was referring to a buyer client of JPG. Secondly, in oral argument the Appellant was unable to explain why he would have been referring to other buyers, who *had* sought other documentation; the risk, which he would have advised on, arose because no such documentation was asked for by JPG. Thirdly and in any event, it makes no difference if, in fact, the Appellant was referring to purchasers other than those for whom JPG were acting. The point made by the Tribunal is a general one - he accepted it looked risky and he would have advised clients generally to obtain surety if he had been acting on the buyer side.

Point (8): challenge to paragraph 12.31

135. I consider that the breach of ethical standards, found at paragraph 12.31 of the Judgment to arise from the transfer of money, is not particularly clearly expressed. In that paragraph there is no express reference to the Appellant's misleading statements about exchange of contracts. Further I am not convinced that, on its own, there was a duty upon the Appellant to be satisfied *as to ownership of the property* before exchange of contracts and prior to passing on the deposit moneys to IC. I accept the Appellant's observations that there was no term in the contract between IC and the purchaser to that effect and that the Appellant was acting as agent for IC and not as stakeholder.

136. However, in the final sentence of paragraph 12.31 the Tribunal concludes it was the passing on of the moneys "in the circumstances set out above" which constituted the breach of Principle 2. Those "circumstances" included not only failing to satisfy himself as to ownership, but also all the features identified in paragraphs 12.25 to 12.29 and in particular the "crucial" finding on asymmetry of knowledge in paragraph 12.29. The lack of integrity also arose from placing the purchaser's deposit money at

risk by him transferring it to IC knowing that IC had not exchanged contracts with Mr Pabani. (If IC had exchanged contracts with Mr Pabani (as JPG believed to be the case), IC would effectively have had title to Property P and thus would have been able to complete on the contract for leases with the purchasers and therefore the purchasers would have got value for their money).

137. In these circumstances, there is no basis for finding the Tribunal's ultimate conclusion at paragraph 12.31 that the Appellant failed to act with integrity in breach of Principle 2 was plainly wrong, that it had misunderstood the evidence or had failed to consider relevant evidence, or that its conclusion could not reasonably be explained or justified.

Conclusion on Ground 2

138. For the foregoing reasons, each of the points raised by the Appellant is unfounded and Ground 2 fails.

Ground 3: Property Matter: Failure to refer JPG to the Tribunal

The Parties' contentions

The Appellant's case

139. In support of Ground 3, the Appellant contends that lack of integrity should not have been found in respect of Allegation 1.2 when the solicitors acting for the buyers were not also referred to the Tribunal. It was therefore unfair to penalise the Appellant. The Appellant relies upon the SRA's report on Dubious Investment Schemes and the fact that the SRA had investigated solicitors acting for buyers as well as solicitors acting for sellers. Whilst the SRA had said in correspondence that it had investigated JPG, Ms Taylor's forensic investigation report made no reference to JPG and the SRA has not provided any evidence that it had investigated JPG.

The SRA's case

140. The conduct of other solicitors is irrelevant to the Appellant's conduct. The Tribunal was seized with considering the Appellant's conduct and was therefore perfectly entitled to reach the decision that he had acted without integrity on the basis of the evidence before it. Ms Jones from JPG was a witness called on behalf of the SRA and was cross-examined. The Appellant therefore had the opportunity to challenge her evidence, credibility and 'integrity'.

Discussion and analysis

141. First, the task before the Tribunal was to consider *the Appellant's* conduct, which it did, setting out a reasoned review of the evidence and explanation of its conclusions. It was no part of the Tribunal's task to consider the conduct of anyone else, including JPG. As regards the SRA, the failure to investigate another solicitor is not a reason not to investigate the Appellant, if there were substantive grounds for doing so. The failure to investigate JPG is irrelevant to the decision to investigate the Appellant. As pointed out in §120 *Naqvi* Judgment (in the context of that case), how other solicitors were treated is irrelevant to the Tribunal's consideration of whether the Appellant was

guilty of the professional misconduct alleged against him. Secondly, on the facts, there was a significant difference in the respective positions of the Appellant and JPG, namely the asymmetry of knowledge regarding exchange of contracts. Thirdly, as pointed out in its letter of 26 February 2021, the SRA did consider the position of JPG, but found no evidence to suggest that it had acted in breach of professional standards. There is no evidence to support the Appellant's assertion that this was not true. For these reasons, Ground 3 fails.

Ground 4: dishonesty in relation to the Immigration Matter

The Parties' contentions

The Appellant's case

142. In support of Ground 4, the Appellant contends as follows:

(1) The Tribunal did not consider the evidence in its totality. The Tribunal wrongly "picked and chose" the parts it wished to rely upon. The scenario in the Meeting was hypothetical; there were no real events or documents. It was not clear that Person A was saying he would definitely enter into a sham marriage. The advice was to find a proper person, study or claim asylum. The Appellant did not act, by making an application to the Home Office or preparing documents for Person A. He points to passages in the transcripts which demonstrated that he was not considering, nor advising, on sham marriages.

(2) As is clear from its letter of 20 January 2016, the SRA investigated the Immigration Matter at the stage of its first investigation in 2016 and decided to take no further action at that point of time. He relied on the sequence of events between the broadcast of the TV programme in 2015 and the letter of January 2016, involving the Home Office and the SRA. He suggested that the SRA had seen the tapes of the Meetings and/or the TV programme by early 2016. It was therefore an abuse of process and/or a breach of legitimate expectations for the SRA to reopen the Immigration Matter in February 2017, in circumstances where the issue could have been raised earlier and where there was subsequently no new evidence. As regard abuse of process, he relied upon the principle in *Henderson v Henderson* as explained in *Johnson v Gore Wood* [2002] 2 AC 1. He further relied upon *R (B) v Nursing and Midwifery Council* [2012] EWHC 1264 (Admin), where it had been held that the NMC was unable to resile from its earlier positive finding of no case to answer against a professional.

(3) In 2015 and early 2016 **t**he Appellant had been investigated by the Home Office under section 25 Immigration Act 1971 in relation to the Immigration Matter. The Home Office had decided to take no action. It was therefore a breach of the principle of "double jeopardy" for the SRA to "prosecute" him for the same matters.

(4) The Tribunal was wrong to apply the *Ivey* test of dishonesty (and should instead have applied the *Ghosh* test) because of culpable delay on the part of the SRA. If, as it should have done, the SRA had properly investigated the

Immigration Matter and taken action in 2015 and 2016, the matter would have been decided under the *Ghosh te*st which, as a matter of law, applied at that time. He relied on Article 7 ECHR and the principle against the retrospective operation of criminal law.

(5) Further as a result of the delay, the Appellant was no longer able to get a witness statement from his supervisor at Denning Solicitors, to explain that at that time any instructions from a client could only be confirmed by the supervisor and to explain the internal procedures and documents they would send out.

The SRA's case

143. As to point (1), the Tribunal's approach at paragraphs 13.42 to 13.44 was entirely correct; it was the correct application of the correct law and a structured and soundly reasoned decision. The Tribunal was thus entitled to find dishonesty in respect of allegations 1.3 and 1.4, based upon the evidence before it, including the Appellant's own oral evidence, which the Tribunal broadly disbelieved. Those findings of fact were made to the criminal standard of proof and cannot reasonably be characterised as wrong or perverse. There is no identifiable error of law and the approach of the Tribunal cannot be faulted.

144. It is not the case that the Tribunal only accepted the SRA's 'claim' and did not consider the evidence in its totality. The Judgment set out the Tribunal's consideration of the Appellant's case and then its application of the correct test of *Ivey*. The Judgment shows the Tribunal considered the Appellant's witness statement, his Answer, character references and his oral evidence. The Judgment sets out extracts from transcripts referred to by both parties, including those relied upon by the Appellant and took account of the parts said to be favourable to him.

145. The Tribunal's judgment is to be read as a whole; and in assessing its reasoning it is appropriate to take it that the Tribunal had fully taken into account the Appellant's submissions: *SRA v Day*, supra, at §78. There is no compelling reason to the contrary to assume that the Tribunal did not take the whole of the evidence into consideration. See also *Naqvi* Judgment at §127.

146. The Appellant cannot begin to show that the Tribunal's interpretation of the transcripts was arguably wrong.

147. As to points (2) to (5) concerning the first investigation and delay, there was no relevant representation, and no abuse of process; no clean bill of health was ever given. There was no representation at the time of the close of the first investigation that the Immigration Matter was decided or resolved. In any event this issue was not raised before the Tribunal. The Appellant did not seek the attendance of Mr Carruthers to give oral evidence. Mr Carruthers' witness statement was relied on and placed before the Tribunal.

148. In any event there was no delay between the decision of the authorised decision maker to refer the matter to the Tribunal and the hearing. The footage/tapes of the Meetings were only obtained in January 2018 and it was only after that date that the Immigration Matter could be pursued. The Immigration Matter was referred to the

Tribunal on 18 April 2018 and the first hearing took place in February 2019. The matter was remitted back to the Tribunal in October 2019 and heard in July 2020.

149. As regards the first investigation, the SRA initially submitted before the Court that it did not investigate the Immigration Matter in 2016 and decide then, at that time, to take no further action. Without the footage, the SRA could not review it. The Immigration Matter could form no part of the first investigation. This was addressed in the SRA's Reply to the Respondent's Answer and in Mr Carruthers' first statement (see paragraphs 45 and 46 above). His was not an investigation into the immigration matters giving rise to Allegations 1.3 and 1.4 and Mr Carruthers was not involved in the investigation of any matters leading to the allegations before the Tribunal.

150. However, in the light of the further information provided in the course of the hearing before this Court, the SRA accepted that in 2016 it did initially open an investigation into the Immigration Matter, but that investigation did not proceed because the SRA had not obtained the footage. In this regard it accepted that its statement in the Rule 5 Statement that the SRA became aware of the Immigration Matter in February 2017 was not correct (and has subsequently informed the Tribunal of its error: see paragraph 34 above). The Immigration Matter had previously been investigated and closed and not pursued by the SRA.

151. The SRA also relied upon its internal guidance at the time, where it is pointed out that where a previous report has been closed *without* a formal adjudication on the facts and the later report raises substantively new information about the closed matter, the SRA may nonetheless decide to investigate and may in certain circumstances revive the old case too. In all such cases, the SRA's overriding consideration is whether action is appropriate in the public interest – although it would need to balance that against the need to act fairly. That guidance was sent to all members of the profession.

152. As to the Home Office investigation, the Appellant misunderstands the concept of double jeopardy. He was not prosecuted for the same offence twice. Further, even if the Home Office had taken any action against him, the fact that the SRA then brought professional disciplinary proceedings against him before the Tribunal would not amount to prosecuting Mr Ali for the same offence twice.

153. The *Ivey* test is the correct test for dishonesty in cases heard after that judgment was handed down in October 2017, whenever the dishonest act took place. Article 7 does not apply because the conduct was unlawful at the time that it occurred. Further, as to delay having resulted in the application of the *Ivey* test being applied, rather than the *Ghosh* test, this argument was not made before the Tribunal. No abuse of process argument in relation to delay was made then and no challenge to the bringing of Allegations 1.3 and 1.4 on grounds of unfairness or procedural irregularity as to amount to an abuse of process. The Appellant is thus once again seeking to criticise the Tribunal for not ruling on something that he did not raise with them. To do so is wholly inconsistent with the overriding principle that this appeal is a review, not a rehearing.

Discussion and analysis

Point (1): "picking and choosing"

154. In the Judgment, the Tribunal referred to substantial parts of the transcripts of the two Meetings, including identifying the important passages, which the Appellant relied upon in the course of the hearing. Whilst the Appellant referred me to passages not referred to in the Judgment, the Tribunal also stated expressly that it had considered *all* the evidence. There is no basis for the suggestion that the Tribunal did not consider the transcripts in their entirety. It made a careful overall assessment of what they showed and why it concluded that the Appellant was advising on, amongst other things, sham marriages. In doing so, it had assessed the detail of the transcripts, together with taking full account of the Appellant's oral evidence: see Judgment paragraphs 13.33 and 13.34, assessing the credibility of his explanation of the transcripts. Before this Court, the Appellant has made the same case as he made before the Tribunal, but has not explained why the Tribunal's overall assessment of the transcripts and his oral evidence was so wrong as to warrant this Court overturning its conclusions. As was the case in the *Naqvi* Judgment, the Appellant has not begun to show that the Tribunal had reached conclusions which it was not entitled to reach. I am satisfied that there was no error in the Tribunal's finding of facts and evaluative judgment.

Point (2): The first investigation in 2016 and delay

155. In the course of the hearing before this Court, the detailed events of 2015 and 2016 have been gone into in much greater detail and the picture which emerged is not as straightforward as suggested by the SRA to, or as found by, the Tribunal.

(1) The SRA's position, and the facts, were not entirely clear until the provision of further evidence and material during the course of the hearing before this Court.

(2) It is now clear that the SRA *did* investigate the Immigration Matter at an earlier stage, in 2015 and 2016. Both the Denning file and the ZA file initially covered the Appellant's involvement in the TV programme. I do not accept that the SRA's submission that the Immigration Matter was no more than a catalyst for a more general investigation into the Appellant's immigration business or that the reference to "immigration" in the January 2016 letter is a reference only to his immigration practice more generally. However that was not proceeded with at that time specifically because the SRA did not have the relevant evidence. It is unfortunate that at the time the Appellant was not informed of this.

(3) The Appellant did not pursue this issue before the Tribunal. He did raise it expressly in the May Answer (thus causing the SRA to respond with Mr Carruthers' witness statement). However the point was dropped in the Updated Answer and not pursued before the Tribunal. Had the matter been raised before the Tribunal, the SRA could have produced the evidence which it has now produced and, if need be, Mr Carruthers and others could have been called to give evidence.

(4) The SRA's assertion in the Rule 5 Statement that it only became aware in February 2017 was incorrect. This led to the Tribunal's finding to similar effect in the Judgment at paragraphs 8 and 13.1. This is now accepted by the SRA. I am not fully satisfied by the SRA's explanation to me as to why those presenting the case to the Tribunal appeared not to be aware of the events between June 2015 and March 2016 in circumstances where the Appellant had clearly asserted that the Immigration Matter had already been decided. Nevertheless, unfortunate though this is, in my judgment, ultimately it made no difference to the outcome before the Tribunal or to this appeal.

(5) There is no evidence at all that the SRA saw the footage of the Meetings or the transcripts in 2016 or at any time before January 2018. The evidence now provided by the SRA sets out clearly the sequence of events and difficulties, leading to SRA finally obtaining the footage in January 2018. The Appellant's assertion to the contrary, and his contention that the SRA was deliberately misleading the Court, were rightly objected to by the SRA and are without evidential foundation.

(6) In this way, in my judgment, the SRA was entitled to reopen its investigation into the Immigration Matter in February 2017 and to proceed once the SRA obtained the footage in January 2018. This was consistent with the guidance referred to in paragraph 151 above.

(7) Thus, it was not abuse of process for the SRA to investigate the Immigration Matter from 2017 onwards. By that time, there was new evidence and the matter was not, and could not have been, investigated in the first investigation.

(8) Nor did the Appellant have a legitimate expectation that, because the SRA had decided that there was no case to answer or had otherwise "dealt with" the Immigration Matter in 2016, he would not be the subject of further investigation in 2017 and 2018. The SRA made no representation to him to that effect in 2016; indeed it was not even made clear to him expressly that the SRA was investigating the TV programme specifically. The case of *R(B) v NMC* does not apply to facts here; in that case, unlike the present, there was an unambiguous decision, and representation made to the professional involved, of no case to answer and no other change of circumstances**.**

Point (3): Home office investigation and "double jeopardy"

156. There is no question of the Appellant facing "double jeopardy" arising from the fact that he was investigated by the Home Office in relation to the TV programme in August 2015. That was an entirely separate matter, concerning a possible criminal offence under the Immigration Act 1971. The SRA's investigation was directed toward professional misconduct, and was not a "prosecution". Further, the Home Office took no action in any event. This contention has not foundation.

Point (4): Ivey and "retrospective effect"

157. First, the effect of the Supreme Court's decision in *Ivey* (in October 2017) is to clarify and "declare" the law as it has always been: see *Naqvi* Judgment §129. From the date of that judgment, the law as there declared applies to conduct whenever it took place,

including the Appellant's conduct in 2015. Secondly, in any event the footage was only received by the SRA in January 2018 and it is only after January 2018 that any allegation in relation to the TV programme could have been pursued by the SRA. Thirdly, in any event, the Appellant has not explained why on the evidence, under the previous *Ghosh* test, his conduct could not have been found to be dishonest.

Point (5): evidence of supervisor at Denning Solicitors

158. Even if, by the time of the hearing in July 2020, the Appellant's supervisor at Denning Solicitors was not available, there is no reason why the Appellant could not himself have given evidence to the Tribunal as to his role as an associate and even as what his supervisor would have said about instructions having to be confirmed by the supervisor. No such evidence was given.

Conclusion on Ground 4

159. For the foregoing reasons, each of the points raised by the Appellant is unfounded and Ground 4 fails.

Ground 5: Admissibility of evidence relating to the interviews

160. Ground 5 involves two contentions:

(1) The evidence from the undercover reporter, Person A, should not have been admitted as it was obtained by means of entrapment.

(2) There was no evidence of the authenticity of the video/audio recordings of the Meetings.

(1) Entrapment

The Parties' contentions

The Appellant's case

161. The Appellant submits that the evidence was obtained by entrapment. Person A wanted to get the material and the Appellant was dragged into the conversation, without him being willing to work for Person A in respect of a sham marriage. There was no evidence at all from Person A. By contrast, in the case of *Saluja* the undercover journalist was available to give evidence and to be cross-examined. A covert recording is not allowed in criminal proceedings. As to the fact that this point was not raised before the Tribunal, the Tribunal, as a specialist tribunal, should have raised the point of its own motion. As to the position of Person A, *Saluja* holds that entrapment can apply where a non-state agent is guilty of gross misconduct amounting to commercial lawlessness. A disciplinary tribunal does have the power to stay for abuse of process. The principles derived from criminal law should be applied to regulatory proceedings, giving appropriate weight to the purpose of regulation and the public interest: *Disciplinary and Regulatory Proceedings: Foster, Treverton-Jones and Hanif* (10th edn) §5.55. Applying the principles set out in *Saluja* §§79-88, Person A's evidence was required to be excluded.

162. Further and in any event, the Appellant contends that, given the proximity in timing, following the discontinuance, in November 2014, of the prosecution against him, the police or the CPS or the Home Office must have tipped off Person A and/or Hardcash about the Appellant. In this regard he relied on §17.34 of the Tribunal's judgment in the *Naqvi* case. In this way, Person A was, in fact, acting at the behest of the police or the CPS and thus as a state agent.

The SRA's case

163. First, no legal argument was made on the admissibility or provenance of the evidence from Person A before or at the substantive hearing before the Tribunal. No application was made to stay proceedings. The Appellant is thus seeking to criticise the Tribunal for not ruling on something that was not raised before them. To do so is inconsistent with the overriding principle that this appeal is a review, not a rehearing.

164. Secondly, in any event, there was no relevant entrapment, and the evidence was admissible. Therefore there was no error of law made by the Tribunal to allow such evidence to be admitted, even without it being raised as a legal argument before them: see *Naqvi* Judgment, *R v L(T*) [2018] 1 WLR 6037 and *Saluja*, supra. The decision in the *Naqvi* Judgment dealing with the same Person A, is directly applicable to the facts of the present case. Applying the accepted principles from those authorities, in this case, Person A's conduct as a 'non-state agent' was not so serious so as to compromise the Tribunal's integrity if the SRA relied on it in the Tribunal's proceedings and there was no state involvement in the proceedings being brought. The SRA brought proceedings against the Appellant in order to protect the public, uphold professional standards, and maintain confidence in the profession. These are different considerations from those that apply to a criminal prosecution and misuse of executive powers by the state's agents. There was no gross misconduct or commercial lawlessness on the part of Person A as an undercover reporter, and his role was separate from that of the SRA, who, when they became aware of the conduct concerned, properly sought to refer this for consideration by the Tribunal. Furthermore, as in *Naqvi*, which arose from the same TV documentary, the Tribunal could very well have properly concluded that the questions posed by Person A were open and fair so that his role had not amounted to an entrapment. However, even if the court considered that it did amount to an entrapment, the principles as established by *Saluja* – confirmed by *Naqvi* Judgment – lead to the conclusion that such evidence is not inadmissible.

165. As regards the absence of evidence from Person A, the Appellant made no complaint about this at the hearing and in any event such evidence was not necessary.

Discussion and analysis

The relevant legal principles

166. The relevant legal principles relating to entrapment are derived from *R v Loosely* [2001] UKHL 53 [2001] WLR, *Saluja*, supra, and *R v L(T)*, supra, all fully summarised, and applied in the *Naqvi* Judgment at §§106 to 111. They can be stated as follows:

(1) Entrapment occurs when an agent of the state – usually a law enforcement officer or controlled informer – causes someone to commit an offence in order that he should be prosecuted.

(2) It is not an abuse of process justifying a stay of proceedings for an undercover journalist to obtain evidence from a professional, because the journalist is not acting as state agent; and so, in such a case of a non-state agent, the law on entrapment does not apply to the same effect to exclude evidence.

(3) However proceedings may be stayed in the very rare case where there is "gross misconduct" or "commercial lawlessness" on the part of the non-state agent.

(4) In any event, in professional disciplinary proceedings there is no state involvement in the proceedings being brought.

(5) Thus, the Court will only stay proceedings as an abuse where the alleged entrapment entails gross misconduct or commercial lawlessness on the part of the non-state agent in question.

Application to the facts of this case

167. In my judgment, applying the foregoing principles, the Appellant's case on entrapment is unfounded both in law and in fact, for the following reasons.

(1) There is in this case no entrapment defence available to the Appellant in law because Person A was acting as a non-state agent.

(2) There is no evidence that Person A was acting on a tip-off from the police, the Home Office or the CPS (and was thus a state agent). The Appellant's assertion to the contrary was, again, unfounded in any evidence. Paragraph 17.34 of the Tribunal's judgment in *Naqvi* provides no support. It states that Hardcash conducted initial research, reading official reports and undertaking online research. There is no reference to Hardcash being provided information directly by any of these state authorities.

(3) The conduct of Person A and/or Hardcash did not amount to "gross misconduct or commercial lawlessness". The decision in the *Naqvi* Judgment to that effect (and on essentially the same facts) applies with equal force to the present case. No basis for distinguishing that decision has been suggested.

(4) In any event, it is not "the State" which is seeking to rely upon the evidence of the Meetings. The SRA is a private body regulating professional conduct; it is not the State nor an agency of the State.

(5) On the facts, there was no entrapment. The questions posed by Person A were not "leading", but rather open and fair. For same reasons as given in the *Naqvi* Judgment at §111, the defence would have failed on the facts.

168. Further, unlike the position in *Naqvi*, the Appellant did not raise the issue of entrapment before the Tribunal. Whilst I do not accept that, as a matter of principle, the fact that this appeal is by way of review, rather than rehearing, makes a relevant difference, nevertheless on the facts here, this is important. As a result, potentially

relevant evidence was not called. If the Appellant had raised the issue, the SRA could have called further evidence, including further evidence from Hardcash (including Ms Potts) and Ms Double could have been cross-examined. As to the Appellant's complaint that there was no opportunity to cross-examine Person A, that was the result of the Appellant himself not raising the issue at all. In any event Ms Potts or Ms Double could have been cross-examined.

(2) Authenticity

The Parties' contentions

The Appellant's case

169. The Appellant submits that the audio and video evidence of the Meetings should not have been admitted because there was no forensic report before the Tribunal verifying its authenticity. The Meetings were recorded five years earlier, without the Appellant's knowledge and the Appellant was not provided with an original copy of the recordings soon after, so he was not in a position to verify their authenticity.

The SRA's case

170. The Appellant did not previously challenge this and in any event, the authenticity of the evidence was established with witness statements from the production company which the Appellant did not challenge. As set out at paragraph 50 of the Rule 5 Statement, the SRA secured an Order from the Court to obtain the documentary footage on 28 November 2017 and Hardcash subsequently disclosed it to the SRA pursuant to that Order.

Discussion and analysis

171. The Appellant does not suggest that the Meetings did not take place nor that he did not say what he is recorded as there saying. The Appellant does not deny the contents of the transcripts and in fact relies on their contents, at least in part. As in *Naqvi*, the Appellant's case here is pure speculation and there is no evidence that the recordings and the transcripts are not authentic. In *Naqvi* both the Tribunal and the Divisional Court were satisfied that the transcripts were authentic and complete.

172. Secondly, unlike the position in the *Naqvi* case, this was not raised before the Tribunal. To allow it to be raised now would unfairly prejudice the SRA. If it had been raised, then, if need be, the SRA could have called further evidence e.g. from Ms Potts to explain the provenance of the recordings and the transcripts, as it did in *Naqvi*.

173. Thirdly, in fact there was evidence of authenticity. There was before the Tribunal the unchallenged evidence of Ms Double. In her witness statement, she confirmed that she had provided to the SRA 'all the footage captured', and un-edited; continuity and authenticity of evidence is therefore well evidenced. A hearsay notice was served for Ms Double's statement and there was no reply or no indication that she was required to attend the hearing. Her statement was agreed.

Conclusion on Ground 5

174. For the foregoing reasons, neither of the Appellant's contentions under Ground 5 is well founded.

Ground 6: Failure to view the TV programme

The Parties' contentions

The Appellant's case

175. The Appellant contends that the SRA did not play the TV programme during the proceedings. At the CMH, the Appellant had raised a concern about this, arising from the First Tribunal hearing. Without considering the TV programme, the Tribunal was not in a position to understand the real motive of Person A. Moreover the TV programme would have shown that he had no involvement with other individuals appearing in the programme who were shown to have been actually arranging sham marriages. Further, at the outset of the hearing before this Court, the Appellant invited me to view the TV programme.

The SRA's case

176. The TV programme was specifically referenced in the Rule 5 Statement, with the link provided. It was available to view. Neither the Appellant nor his counsel asked for it to be viewed by the Tribunal. At the CMH, the Appellant raised the issue of it being played, but no directions were made and the issue was not raised again by the Appellant. At the hearing, the parties agreed that the material the Tribunal would view were the translations of the transcripts of the Meeting One and the video and transcript of Meeting Two. As regards the former, the audio recording itself (a copy of which the Appellant had) was not placed before the Tribunal because the conversation was not in English. As regards the latter, the conversation was in English. The SRA did not play the TV programme as the transcripts and video of the full Meetings were the original material and provided the full account of what happened, rather than an edited TV documentary which did not play the Meetings in full. Furthermore the TV programme was not just about the Appellant, so most of it would have been irrelevant for the Tribunal and potentially prejudicial to the Appellant. The SRA thus ensured that the best evidence was placed before the Tribunal and this approach was not challenged by the Appellant at the hearing. The Appellant cannot now criticise the Tribunal for something with which it was not seized as an issue. In any event, there was nothing wrong or unjust because of a serious procedural or other irregularity in the way the Tribunal conducted itself in terms of the evidence it received and considered. Finally, as regards the suggestion that I should view the TV programme, the SRA submitted that it did not object, although it was not necessary.

Discussion and analysis

177. First, as regards the Tribunal not viewing the TV programme, this does not provide a ground for appeal. First, the TV programme was available to be viewed. The Appellant did not ask the Tribunal to view it. Secondly, since what was considered by the Tribunal was the full transcript of the two Meetings, I cannot see how viewing the TV programme, which included only a very small part of those Meetings, would have assisted the Tribunal. Thirdly, it was no part of the SRA case that the Appellant was

involved with or knew others shown in the TV programme. For these reasons the Judgment was neither wrong nor unjust for serious procedural irregularity on this ground.

178. Secondly, I declined to view the TV programme, for two reasons: first, the SRA accepted before me that the Appellant had no connection with the others in the programme – that being the basis of the Appellant's application before me; secondly, and in any event, in so far as this amounted to the admission of fresh evidence, the application did not satisfy either of the first two conditions in *Ladd v Marshall* [1954] 1 WLR 1489; it was available to "the court below" and, in any event, it would not have had an important influence on the result of the case.

179. For these reasons, Ground 6 fails.

Ground 7: his evidence and character witnesses

The Parties' contentions

The Appellant's case

180. The Appellant submits that the Tribunal did not consider the Appellant's character references, his credibility, the fact that he returned money to a client who did not want to go ahead and the fact that he was open and transparent in the Property Matter. He had always observed SRA rules and regulations and there had been no complaint against him by the SRA or the Legal Ombudsman. In the first investigation his work was found satisfactory. Good character can be relevant to credibility.

The SRA's case

181. There is simply no foundation to this ground of appeal. The Tribunal referred extensively to the Appellant's evidence and therefore had regard to it; what weight it attached to it, or whether it chose to accept it or not, was a matter for it.

Discussion and analysis

182. The Tribunal considered the Appellant's character references. The Tribunal had the benefit of seeing the Appellant give evidence, of hearing his evidence under cross-examination and therefore of evaluating him as a witness. In relation to the Immigration Matter in particular, at paragraph 13.34, the Tribunal made an express assessment of the Appellant's credibility, taking account of these character references. The Court should therefore exercise particular caution and restraint before interfering with the findings of fact or evaluative judgment of the Tribunal. There are no grounds upon which this Court should interfere with the Tribunal's well-reasoned and sound decision in respect of the Appellant's character and the dishonesty demonstrated by his conduct in respect of the Immigration Matter. An appellate court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. In this instance, there is no compelling reason to the contrary to indicate that the Tribunal did not take the whole of the evidence into consideration. For these reasons, Ground 7 fails.

Other matters raised

Standard of proof

183. First, the Appellant has not explained or substantiated his contention that the Tribunal applied the wrong burden and standard of proof. In any event, there is no basis for such a contention. At paragraph 10 of the Judgment, the Tribunal directed itself that it was for the SRA to prove the allegations beyond reasonable doubt.

Working as an associate at Denning

184. The Appellant contends that the Tribunal was wrong to find at paragraph 6 of the Judgment that he practised "at all material times" as ZA Solicitors. Between 2011 and 2015, including at the time of the Immigration Matter, he was working as an associate at Denning Solicitors under supervision. The Appellant's contention is factually correct. However, this error is not relied upon directly as a ground upon which the Judgment is impugned as being wrong or unjust. It is clear from the transcript of the hearing that the Tribunal was informed of his employment at Denning Solicitors. I do not accept the Appellant's further suggestion that, because he was working only as an associate at Denning Solicitors, he was not fully responsible for the content of his advice given, as a solicitor, in the course of the two Meetings or that, more generally, the Tribunal should have taken into account his role as an associate only. In my judgment, as a fully qualified solicitor, he was responsible for complying with the appropriate standards of professional conduct in the SRA Principles 2011.

Costs

185. Finally, the Appellant puts forward no clear basis for contending that the Tribunal was wrong to have ordered him to pay the SRA's costs. Both at the close of Day 3 of the hearing and a paragraphs 29 to 33 of the Judgment, the Tribunal gave detailed consideration to the parties' submissions on costs. Counsel for the Appellant did not contend that in principle the SRA was not entitled to its costs or only part of them. The argument was as to the assessment of those costs and as to the Appellant's means. Having considered those submissions, the Tribunal made a modest reduction from the amount sought by the SRA and awarded costs in the sum of £26,500. The Appellant has advanced no argument before this Court contesting the award in principle or the assessed amount. (He did not substantiate a suggestion made in his original grounds of appeal that, in relation to the Property Matter, the SRA made an offer not to proceed; that argument was not made before the Tribunal either). For these reasons, there is no basis to impugn the Tribunal's order for costs.

Conclusion

186. In the light of my conclusions at paragraphs 111, 138, 141, 159, 174, 179 and 182 above, I conclude that the Order was neither wrong on the facts nor unjust because of any serious procedural or other irregularity. This appeal is therefore dismissed. I will hear argument in due course on any consequential matters.