

IN THE MATTER OF ABUL HASNATH MOHAMMED ASHRAF UDDIN, ABID ELAHI
KHOKHAR MEHMOOD and ANAND KUMAR SHARMA, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr J C Chesterton (in the chair)
Mrs E Stanley
Mr S Howe

Date of Hearing: 10th June 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority by Stuart Roger Turner, solicitor and partner in the firm of Lonsdales Solicitors, 7 Fishergate Court, Fishergate, Preston, PR1 8QF on 29th January 2009 that Abul Hasnath Mohammed Ashraf Uddin, of 10 Burges Road, East Ham, London, E6 2BH, Registered Foreign Lawyer, Abid Elahi Khokhar Mehmood, C/o Loxford Solicitors, 168 High Street, North London, E6 2JA, solicitor, and Anand Kumar Sharma, C/o Sharma & Co, 214a High Street, North London, E6 2JA, solicitor, might be required to answer the allegations contained in the statement which accompanied this application and that such Order might be made as the Tribunal should think right.

The allegations against the Second and Third Respondent, Mr Abid Elahi Khokhar Mehmood and Mr Anand Kumar Sharma were withdrawn with the permission of the Tribunal.

The allegations against the First Respondent, Abul Hasnath Mohammed Ashraf Uddin were that he had been guilty of professional misconduct in that:

- 1, The partnerships that existed between the First and Second Respondent and the First and Third Respondent at London Law Chambers were sham partnerships;

2. The First Respondent, a Registered Foreign Lawyer, ("RFL"), undertook "reserved activities" which were prohibited, in breach of Rule 18 of the Solicitors Practice Rules 1990 and Rule 12.03(5) of the Solicitors Code of Conduct.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 10th June 2009 when Stuart Roger Turner, solicitor and partner, appeared as the Applicant, Abul Hasnath Mohammed Ashraf Uddin appeared and was represented by David Giles of Counsel, Mr Abid Elahi Khokhar Mehmood appeared and was represented by Richard Nelson and Mr Anand Kumar Sharma appeared and was represented by Christopher Harding of Counsel.

The evidence before the Tribunal included the admissions of the First Respondent Mr Uddin, in relation to allegation 1 and in relation to one matter concerning allegation 2. The Tribunal also had before it schedules of costs provided by all parties, a bundle documents from Mr Mehmood, a letter from Mr Sharma to the Solicitors Regulation Authority dated 13th November 2007 and a witness statement from Mr Uddin.

At the conclusion of the hearing the Tribunal made the following Orders:

The Tribunal Orders that the Respondent Abul Hasnath Mohammed Ashraf Uddin of 10 Burges Road, East Ham, London, E6 2BH, solicitor, do pay a fine of £3,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,531.16 against the First Respondent.

The Tribunal Orders that the Solicitors Regulation Authority, 8 Dormer Place, Leamington Spa, Warwickshire, CV32 5AE do pay the costs of Abid Elahi Khokhar Mehmood, to be subject to detailed assessment if not agreed.

The Tribunal Orders that the Solicitors Regulation Authority, 8 Dormer Place, Leamington Spa, Warwickshire, CV32 5AE do pay the costs of Anand Kumar Sharma's Counsel's fees fixed in the sum of £1,150.00.

The facts are set out in paragraphs 1 – 14 hereunder:

1. The First Respondent, Mr Abul Hasnath Mohammed Ashraf Uddin, born in 1953, had been a Registered Foreign Lawyer ("RFL") since 14th December 2001. At all material times he carried on practice at London Law Chambers, 10 Burges Road, East Ham, London, E6 2BH.

Allegation 1

2. An investigation was commenced on 4th February 2008 by the Solicitors Regulation Authority ("SRA") into London Law Chambers where the Mr Uddin practised "ostensibly in partnership" with Mr Sharma. A copy of the Investigation Officers' ("IOs") Report was before the Tribunal.
3. During the initial interview on 4th February 2008 it was apparent to the IOs that there had been little or no participation of either Mr Mehmood or Mr Sharma in the practice despite the SRA records indicating that Mr Mehmood was a partner from 25th April

2007 to 26th April 2007 and Mr Sharma was a partner from 27th September 2007 to the 12th November 2007.

4. Mr Uddin in answer to questions put to him by the IOs confirmed, firstly in relation to Mr Mehmood, that amongst other things:
 - (i) Mr Mehmood did not work on any files;
 - (ii) he did not supervise Mr Uddin's work;
 - (iii) he did not see any clients;
 - (iv) his only responsibilities were as a Money Laundering Officer;
 - (v) there was only an oral agreement between them;
 - (vi) Mr Mehmood had his own practice in addition to this one;
 - (vii) the agreement was that Mr Mehmood would take 100% of any fees earned and that once the business was growing he would take £1,000 per month; and
 - (viii) that as an RFL Mr Uddin knew he needed to have a partner in place.
5. Mr Uddin confirmed that the parties went their separate ways due to the difficulty he had in obtaining the commitment of Mr Mehmood. He admitted that Mr Mehmood had only attended Mr Uddin's office once or twice.
6. The IOs interviewed Mr Uddin regarding the position with Mr Sharma. He told them, amongst other things that:
 - (i) Mr Sharma was a partner from 27th September 2007 until 13th November 2007 when he became a consultant;
 - (ii) there was an oral agreement that Mr Sharma would join the practice as a partner and Mr Uddin would pay Mr Sharma £250 per month;
 - (iii) his role was to be the Money Laundering Officer and no more;
 - (iv) Mr Uddin admitted to dealing exclusively with clients; and
 - (v) Mr Sharma did not supervise his work.
7. Mr Mehmood had written to the SRA on 29th November 2007 denying that at any stage had he authorised Mr Uddin to hold him out as a partner. Mr Uddin explained that he had responded to that letter stating that Mr Mehmood was a partner and that Mr Mehmood had encouraged Mr Uddin to go into practice as London Law Chambers.

Allegation 2

8. The IOs during the course of their inspection exemplified three matters where Mr Uddin acted for clients in respect of litigation matters when he was not qualified to do so. In one case Mr Uddin represented a client in the defence of a claim by a bank. A client care letter sent confirmed that for the payment of Mr Uddin's fee, litigation services would be provided. Pleadings were filed on behalf of the client by Mr Uddin including a defence, amended pleadings and the negotiation of a settlement.
9. In the second case, Mr Uddin again wrote a client care letter confirming litigation services that would be provided.
10. In the third case, Mr Uddin represented a college in the Employment Tribunal. On 8th May 2007 a client care letter was sent to the college confirming that for payment of a fixed fee, services amounting to litigation services would be provided.
11. Mr Uddin was interviewed on 6th February 2008. He admitted he was carrying out reserved work and that he continued to do so after he saw that Mr Mehmood was not active in the partnership because he considered his client's interests to be paramount.
12. Mr Mehmood in a letter dated 26th June 2008 to the SRA denied being in partnership with Mr Uddin although he did say that there had been some talk of a partnership in the future.
13. Mr Sharma in a letter dated 9th July 2008 to the SRA denied being anything other than a "strategic partner" and enclosed a copy of an agreement.
14. Mr Uddin in a letter from his solicitors dated 11th July 2008 to the SRA denied practising outside of the limitations imposed upon RFL's. He also denied entering into sham partnerships. Rather, he maintained there was a real partnership firstly with Mr Mehmood and thereafter with Mr Sharma.

The submissions of the Applicant

15. The Applicant confirmed that the allegations had been withdrawn against Mr Mehmood and Mr Sharma that morning as there had been a change of position by Mr Uddin who had now accepted allegation 1, and had accepted allegation 2 in relation to one particular matter. The Applicant still intended to pursue two other matters in relation to allegation 2 before the Tribunal.
16. The Applicant confirmed that he now accepted that whilst there was an agreement between Mr Uddin and Mr Mehmood to form a partnership, no partnership actually existed. Mr Uddin would say he made an honest mistake and thought he did have a partnership with Mr Mehmood and this was the reason why he notified The Law Society of the partnership. However, as time went on, Mr Uddin realised there was not a partnership and therefore terminated the partnership with Mr Mehmood. This was a case where Mr Uddin thought there was a partnership but Mr Mehmood said there was no partnership. Mr Uddin now accepted that he believed there was a partnership but in actual fact there was not.

17. In relation to Mr Sharma, it was a similar position. Mr Uddin had thought there was a partnership but Mr Sharma had said there was not. A Strategic Agreement had been entered into between Mr Uddin and Mr Sharma and Mr Uddin thought this was a partnership agreement whereas Mr Sharma said it was not. Indeed, Mr Sharma wrote to Mr Uddin asking him not to represent Mr Sharma as a partner.
18. The Applicant confirmed that Mr Uddin was a Registered Foreign Lawyer (“RFL”) and was therefore unable to practise alone. He needed a solicitor and in this case, it appeared Mr Uddin made a mistake in believing Mr Mehmood was a partner and in believing the Strategic Agreement concerning Mr Sharma was a partnership agreement.
19. In relation to the allegation 2, the Tribunal was referred to three specific matters which were set out in the IO's Report. The Applicant submitted that Mr Uddin had conducted litigation in relation to all three matters in circumstances where he was not permitted to do so. The Applicant requested an Order for his costs. He provided the Tribunal with a schedule confirming his costs came to a total of £15,554.93.

The submissions of the First Respondent, Mr Uddin

20. Mr Giles on behalf of Mr Uddin confirmed Mr Uddin admitted the allegations, however, in relation to allegation 2, he only admitted one matter and not the other two. Mr Giles referred to the Tribunal to the witness statement of Mr Uddin.
21. Dealing firstly with allegation 1, Mr Uddin had been discussing the possibility of a partnership with Mr Mehmood and Mr Sharma in late 2006/early 2007. He honestly believed he had a concluded oral agreement with Mr Mehmood and that they were partners. Mr Sharma had provided Mr Mehmood with documents which Mr Mehmood had thought were necessary to deal with the procedural aspects of formalising the partnership.
22. Mr Uddin accepted that after April 2007, Mr Mehmood was not taking any substantial active role in the partnership and that notwithstanding his honest belief of the partnership between them, there was no meeting of minds. Mr Uddin now accepted that their relationship was seen differently by Mr Mehmood. He accepted that as it had become apparent to him that Mr Mehmood was not taking an active role in the partnership and was therefore not his "partner" he ought to have closed down the practice and informed the SRA or found himself a genuine partner.
23. In relation to Mr Sharma, Mr Uddin accepted they had signed a Strategic Partnership Agreement and the Tribunal was referred to the agreement. It was not a model of clarity but, there did appear to be a business arrangement. It was intended London Law Chambers would move into bigger and better premises. The agreement had been drafted by Mr Sharma who had tried to draft it in a manner so that it would not be viewed as two legal practitioners practising together. Indeed, the agreement provided that the firm should not take any new instructions in any matters and must not represent Mr Sharma to be a partner in the legal practice. Mr Uddin had put Mr Sharma's name on his letterhead but had not taken any new instructions. The agreement had ended in mid November 2007, having been entered into on 27th September 2007. By this time Mr Uddin was winding down London Law Chambers,

he had not taken on any new cases and any existing cases were being transferred to Mr Sharma. On 12th November 2007 Mr Sharma had written to Mr Uddin ending the agreement and immediately on receipt of Mr Sharma's letter, Mr Uddin had notified the SRA of Mr Sharma's departure from the firm. He also promptly closed down his practice as he had been advised to do so by Mr Sharma.

24. The Tribunal was referred to a letter from Mr Sharma to the Solicitor's Regulation Authority dated 13th November 2007 in which he had advised the SRA:

"My name has been incorrectly identified as a Partner in the firm, whereas I have only given permission to the Principal to identify myself in the firm as a consultant".

This letter had not been provided in the Applicant's bundle when proceedings had been issued at the Tribunal.

25. In relation to allegation 2, Mr Uddin accepted that he had represented a client in the defence of a claim by a bank when he ought not to have. The client had been an existing client of Mr Uddin and had asked Mr Uddin to deal with the matter. Mr Uddin agreed to do so although now accepted that he should not have done so.
26. Regarding the second case where a client care letter was written by Mr Uddin confirming litigation services would be provided, Mr Uddin submitted that there was no litigation as the matter did not progress to court proceedings. Litigation must be in courts and tribunals where there are restrictions on rights of audience but this was a matter which had not become litigious.
27. Regarding the third case involving the employment tribunal, Mr Giles reminded the Tribunal that unqualified representatives frequently acted on behalf of parties in employment tribunals, for example, union representatives, without any difficulty at all. It was submitted that this particular work was not restricted work. In any event, Mr Uddin had not appeared before the Employment Tribunal. However it was submitted that Mr Uddin would have been entitled to appear before the Employment Tribunal in any event.

The Findings of the Tribunal

28. The Tribunal found the allegations to have been substantiated, indeed they were not contested although there was a dispute about two matters before the Tribunal in relation to allegation 2. One of those matters related to a client care letter that had been written by Mr Uddin to his client, Mr K. In that letter Mr Uddin confirmed that the fee paid was for the following:

“

- Perusal of documents in detail;
- Acknowledgement of service;
- Brief for Counsel
- All sorts of Correspondences
- All sorts of Consultation and Advice;
- lodging the claim

- Searching of relevant documents
 - Preparing case 8 submission
 - Allocation questionnaire;
 - Amendment if necessary
 - Opinion on merit
 - Engaging technical expert
 - Attempt of Negotiation if possible
 - Take necessary steps to resolve the matter out of the Court
 - Hearing if necessary
 - Any disbursement ”
29. The Tribunal noted that the client care letter confirmed Mr Uddin would have the day to day conduct and responsibility of the case. The Tribunal had been referred to Rule 12.03(5) of the Solicitors Code of Conduct which stated:
- "(5) Whether practising in your capacity as an RFL or not, you must not:
- (a) undertake work which you are not qualified or entitled to undertake by the law of England and Wales; or
- (b) appear as advocate before any court or tribunal in England and Wales in which you have no right of audience."
30. The guidance to Rule 12 in paragraph 4 stated that:
- “(b) If you are an RFL you are not a "qualified person" under the Solicitors Act 1974. Becoming an RFL does not confer any right of audience, right to conduct litigation or right to do or supervise reserved conveyancing, probate, trust or litigation work. An RFL who is a partner in an MNP cannot even do certain work which an employee of the MNP could do - appearing in chambers as a solicitor's clerk, or doing reserved conveyancing, probate, trust or litigation work under the supervision of a solicitor. However, an RFL who is a director of a recognised body which is a company or a member of a recognised body which is an LLP can do reserved conveyancing, probate, trust or litigation work under the supervision of a "qualified person" in the recognised body. If the recognised body is a company that person must be a co-director and if the recognised body is an LLP that person must be a fellow member."
31. Mr Uddin was an RFL and accordingly the Tribunal found that this particular matter was substantiated in that he had conduct of a matter where he had agreed to carry out litigation work which he was not entitled to do.
32. The second matter that had not been admitted under allegation 2 related to Mr Uddin representing a college in the Employment Tribunal. Again, a client care letter had been sent to the college stating that for payment of a fixed fee Mr Uddin would:

"deal with your matter up to final settlement and/or hearing including preparing brief to counsel, preparing case, procuring documents, making tribunal bundles, conference with counsel, consultation, advice and representation."

The Tribunal found that The Guide to the Professional Conduct of Solicitors was not clear as to whether appearing in an Employment Tribunal amounted to litigation. Chapter 8 at paragraph 8.01 (4) stated:

“RFL status does not confer any right of audience or right to conduct litigation in the Courts of England and Wales, nor any right to undertake activities reserved to solicitors by the Solicitors Act 1974.”

The Solicitors Act 1974 did not assist, however, the Tribunal was assisted by the Guidance to Rule 11 of the Solicitors Code of Conduct which stated at paragraph 3:

"If you are an RFL you do not have any rights of audience or right to conduct litigation (or the right to supervise or assume responsibility for the exercise of any such right) other than those rights which are not reserved by law to any category of persons but are open to any individual."

In the circumstances the Tribunal found this particular matter not to have been proved as an Employment Tribunal was a tribunal where rights were not reserved by law to any category of person but were open to any individual.

33. The Tribunal was concerned however that if Mr Uddin had not been a RFL and, had in fact, been unqualified, he would have found himself in a better position than he was as an RFL. This was because a legal executive could exercise rights of audience or conduct litigation whereas an RFL could not.

Mitigation of the First Respondent Mr Uddin

34. Mr Uddin had not appeared before the Tribunal previously and indeed, in Bangladesh where he had previously practised, he also had a clean record. This was a case where there had been no loss to anybody as the firm had not had any clients. Mr Uddin was a good lawyer providing a reasonable level of service to his clients. He had re-established London Law Chambers in November 2008 from new offices in Bethnal Green and had spent about £650,000 on the new premises. He had a partner and employees and had made a substantial investment to his new practice. Financially he was in a difficult position, he had a mortgage, a child of ten years old and he carried out immigration, housing and welfare rights matters making no profit. He was just keeping his head above water.
35. Mr Uddin accepted that he had got into a muddle when setting up London Law Chambers the first time. He had made mistakes and he had turned a blind eye when he should not have done. The Tribunal was asked to treat Mr Uddin sympathetically as he was a good lawyer. There had been no problems with his accounts and this was just a situation he had got into due to a misunderstanding.

36. In relation to the question of costs, the Tribunal was asked to bear in mind Mr Uddin's financial circumstances and only award such costs as were considered to be reasonable. A considerable amount of the costs incurred related to proceedings against Mr Mehmood and Mr Sharma, which of course had subsequently withdrawn.

The submissions of the Second Respondent Mr Mehmood

37. Mr Nelson on behalf of Mr Mehmood, submitted it was a great relief to Mr Mehmood that allegations had been withdrawn concerning the sham partnership. These proceedings had been going on for about 21 months and had caused a great deal of disharmony both in Mr Mehmood's business and at home. The Authority had imposed conditions on his ability to practise and he had lived in fear of the outcome of today's Hearing. The important issue was that the SRA had overlooked key factors notwithstanding they had been provided with ample evidence by Mr Mehmood. The Tribunal was referred to a bundle of documents from Mr Mehmood that had been sent to the Solicitors Regulation Authority, none of which had been passed by the SRA to the Applicant. Mr Nelson submitted that a solicitor was entitled to have high expectations of the SRA to prosecute where it was appropriate to do so and they should have properly investigated and looked at all the evidence before proceeding.
38. The background to this was that Mr Mehmood had contacted The Law Society himself and discovered he was being held out as a partner in London Law Chambers. On the same day he had immediately taken action to notify the SRA in writing that he was not a partner in the practice and the Tribunal was referred to the appropriate letters. These letters had not been provided to the Applicant and it was not clear whether the IO's had been provided with copies. During the investigation Mr Mehmood was not interviewed and was not given any opportunity to address the issues raised. Had the SRA contacted Mr Mehmood, matters could have been dealt with then. Subsequently, conditions were imposed on Mr Mehmood's practising certificate despite the fact that his position had remained consistent throughout. This was a case where there was a clear bankruptcy of evidence and the SRA had only proceeded on the comments of Mr Uddin, who at that time had not been seen as truthful. Clearly these were matters that should have been addressed much earlier with Mr Mehmood.
39. Mr Nelson submitted that this was a bizarre situation. In effect, any solicitor could telephone the SRA, put the name of another solicitor on to his or her letterhead and subject that solicitor to all kinds of risks. Mr Mehmood pointed this out to the SRA who simply said they were reviewing their position.
40. This was a case where there had been no thorough investigation and no fulfilment of the high expectations of an SRA investigation. Mr Mehmood had incurred substantial costs as a result of this. To date his costs amounted to just over £10,500 plus VAT. Mr Mehmood and Mr Nelson had attended the Tribunal today ready to proceed to trial and deal with cross-examination of witnesses. Had there been any liaison between the case workers and the IOs, the matter could have been dealt with very differently. Correspondence was being sent to Mr Uddin but not to Mehmood or Mr Sharma and indeed, they only saw correspondence when it was included in reports to which they replied promptly.

41. This was a case where it was appropriate for Mr Mehmood's costs to be paid by the Solicitors Regulation Authority in order to achieve a fair outcome. The Tribunal was referred to the case of Baxendale-Walker and The Law Society [2007] EWCA Civ 233 in which the Court of Appeal had reiterated the comments of Lord Justice Moses in the Divisional Court stating:

"....a costs order should not be made against such a regulator unless there is a good reason to do so..... In considering an award of costs against a public regulator the court must consider on the one hand the financial prejudice to the particular complainant, weighed against the need to encourage public bodies to exercise their public function of making reasonable and sound decisions without fear of exposure to undue financial prejudice, if the decision is successfully challenged."

42. Mr Nelson submitted that the regulator should not have financial immunity where it had not acted fairly and properly. The Court of Appeal had stated in Baxendale-Walker:

"Section 47(2) of the Solicitors Act 1974 undoubtedly vests it with a very wide costs discretion. An order that The Law Society itself should pay the costs of another party to disciplinary proceedings is neither prohibited nor expressly discouraged by section 47(2) (i). That said, however it is self-evident that when The Law Society is addressing the question whether to investigate possible professional misconduct, or whether there is sufficient evidence to justify a formal complaint to the Tribunal, the ambit of its responsibility is far greater than it would be for a litigant deciding whether to bring civil proceedings.....the Tribunal is dependent on The Law Society to bring properly justified complaints of professional misconduct to its attention."

43. The Court of Appeal went on to say:

"Unless the complaint is improperly brought or, for example, proceeds as it did in Gorlov as a "shambles from start to finish", when The Law Society is discharging its responsibilities as a regulator of the profession, an order for costs should not ordinarily be made against it on the basis that costs follow the event."

44. Mr Nelson submitted that had there been a proper investigation with all the documents provided to the IOs and the Applicant, Mr Mehmood would not have been here today. There was nothing more that he could have done and he should receive his costs.

The Submissions of the Third Respondent Mr Sharma

45. Mr Harding on behalf of Mr Sharma, adopted the submissions of Mr Nelson and requested the Tribunal to order the Authority to pay Mr Sharma's costs. This was a case where allegations had been withdrawn and the case had been successfully defended.

46. It was not submitted there had been bad faith in these proceedings but the proceedings had been misconceived and unfounded on the face of the documents against Mr Sharma.
47. Mr Sharma had never been interviewed by the IOs and his own practice had not been the source of any investigation. There had only been one reference to Mr Sharma when Mr Uddin was interviewed and when matters were brought to Mr Sharma's attention, he had provided the SRA with a number of letters and a copy of the Strategic Partnership Agreement which clearly set out what Mr Sharma's expectations had been and the limitations of his relationship with Mr Uddin.
48. There was no evidence that Mr Sharma had entered into any sham partnership agreement, the application had been misconceived and withdrawn today. The Tribunal was referred to a letter dated 13th November 2007 from Mr Sharma to the SRA which had only been provided by Mr Sharma to the Applicant this morning. That letter was Mr Sharma's notification to the SRA that his name was incorrectly identified as a partner in the firm of London Law Chambers and that he had only given permission to identify himself in the firm as a consultant.
49. This was a case where Mr Sharma had incurred costs and the Tribunal was invited to make an order that the SRA pay Mr Sharma's costs which amounted to approximately £5,000. The Tribunal was provided with a costs schedule from Mr Sharma which showed that he had dealt with matters himself up until today's Hearing when Counsel had been instructed.
50. Mr Harding did not wish to criticise the Applicant but submitted that this was a case which fell outside Baxendale-Walker in that it was reasonable for a costs order to be made against the regulator, particularly as these were circumstances where all relevant documents were available to the Authority at an early stage and therefore a referral should not have been made to the Tribunal.

The Applicant's submissions on costs

51. The Applicant referred the Tribunal to the Divisional Court's comments in the case of Baxendale-Walker:

"A regulator brings proceedings in the public interest in the exercise of a public function which it is required to perform. In those circumstances the principles applicable to an award of costs differ from those in relation to private civil litigation."
52. The Applicant reminded the Tribunal that the position was that until 10.00 am that morning, the sham partnership allegation had been denied by Mr Mehmood and Mr Sharma on the basis that there was no partnership and it was denied by Mr Uddin on the basis that there was a partnership. In those circumstances, it was incumbent on the regulator to get to the bottom of the matter.
53. The Applicant accepted that there were letters he had not seen and perhaps the IOs could have been made aware of them but the reality of the situation was that this was a case of one person's word against another's and, without testing the evidence in

these proceedings, the matter could not be resolved. This had been an unusual case but it was right and proper to bring the case against all the Respondents. Had discussions not taken place this morning between the parties, the Tribunal would have had to make a decision on whose evidence it preferred and the Applicant submitted this was a good reason to prosecute the case.

54. The Applicant submitted that there should be no order for costs regarding Mr Mehmood and Mr Sharma but that Mr Uddin should pay all of the costs of the action which amounted to £15,554.93.

The decision of the Tribunal

55. The Tribunal, in considering the question of Mr Mehmood and Mr Sharma's application for costs, had heard from the parties and had been invited to consider the judgments in the case of Baxendale-Walker both in the Divisional Court and the Court of Appeal.
56. It was common ground between Mr Mehmood and Mr Sharma that the Applicant's case was neither dishonest nor lacking in good faith, but that nevertheless there was a good reason to award costs against the regulator.
57. The Applicant had said this was an unusual case where Mr Uddin had said one thing and Mr Mehmood and Mr Sharma had said another and it was therefore up to the Tribunal to adjudicate, although as it happened, the Tribunal did not have to do so.
58. Mr Mehmood and Mr Sharma's grounds for costs to be awarded in their favour were inter alia as follows:
- (i) The allegations were withdrawn without contest;
 - (ii) Whilst Mr Uddin was interviewed as to the alleged partnership arrangements, nobody interviewed the other two Respondents as to their position. Throughout the process in correspondence both Mr Mehmood and Mr Sharma have consistently maintained that they were not in partnership with Mr Uddin, a position now accepted by the Applicant.
 - (iii) Mr Sharma maintained that the case was misconceived on the face of genuine contemporaneous documents which were available to the regulator at the time that decisions against Mr Sharma were made.
 - (iv) The regulator did not give the Applicant important documentation from Mr Mehmood drawing attention to the misuse of his name by another firm. The Tribunal noted, at this stage, that quite recently the SRA had written to Mr Mehmood saying that they had changed their procedures to ensure there would be no repetition of this. Mr Sharma complained that one letter dated 13th November 2007 was not made available to the Applicant. Both Mr Mehmood and Mr Sharma had been consistent in their responses from the outset, and had not changed their positions or explanations.

59. The Tribunal concluded that the Applicant would have been better able to weigh up the strength of his case against Mr Mehmood and Mr Sharma if this critical evidence had been provided to him by the regulator prior to the issue of proceedings in the Tribunal. As a consequence, through no fault of their own, Mr Mehmood and Mr Sharma had found themselves before the Tribunal where a more thorough investigation and complete instruction of their solicitor by the regulator would have avoided the costs, stress and embarrassment caused to Mr Mehmood and Mr Sharma.
60. The Tribunal made it clear that there was no criticism of Mr Turner. However in this case, the Tribunal found that there were good reasons why an order for costs should be made against the regulator. The Tribunal also required the conditions which had been placed on Mr Mehmood's practising certificate to be lifted immediately or as soon as practicably possible.
61. In all the circumstances, the Tribunal Ordered that the regulator should pay Mr Mehmood's costs to be subject to detailed assessment if not agreed, and pay Mr Sharma's Counsel's fees fixed in the sum of £1,150.
62. Turning to Mr Uddin, the Tribunal had already expressed the view that if Mr Uddin had not been an RFL and if he had been unqualified, he would have been in a better position than he was in today. The Tribunal noted he had had an honest belief that he was in partnership with Mr Mehmood and Mr Sharma albeit a mistaken belief, as he now accepted that that was not the position. This had been a case where he had held out that Mr Mehmood and Mr Sharma were partners in his practice, in the case of Mr Mehmood for one day and in the case of Mr Sharma for about one and a half months. Mr Uddin had also undertaken "reserved activities" which he was prohibited from doing as an RFL.
63. The Tribunal reminded Mr Uddin that the Rules were there to ensure clients were properly represented and protected, though the Tribunal noted in this case, there had not been any loss to any client and no client had suffered from Mr Uddin's conduct. Indeed, he had promptly taken steps to close down the practice as soon as he had been notified by Mr Sharma that the Strategic Partnership Agreement had ended. In the circumstances, the Tribunal considered the appropriate order was to fine Mr Uddin £3,000.
64. In relation to the question of the Applicant's costs, these were assessed in the sum of £10,531.16 and an Order was made for Mr Uddin to pay this amount.
65. The Tribunal Ordered that the Respondent Abul Hasnath Mohammed Ashraf Uddin of 10 Burges Road, East Ham, London, E6 2BH, solicitor, do pay a fine of £3,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,531.16 against the First Respondent.
66. The Tribunal Ordered that the Solicitors Regulation Authority, 8 Dorner Place, Leamington Spa, Warwickshire, CV32 5AE do pay the costs of Abid Elahi Khokha Mehmood, to be subject to detailed assessment if not agreed.

67. The Tribunal Ordered that the Solicitors Regulation Authority, 8 Dormer Place, Leamington Spa, Warwickshire, CV32 5AE do pay the costs of Anand Kumar Sharma's Counsel's fees fixed in the sum of £1,150.00.

Dated this 15th day of January 2010
On behalf of the Tribunal

Mr J C Chesterton
Chairman