



Neutral Citation Number: [2022] EWHC 1574 (Admin)

Case No: CO/3928/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 June 2022

Before :

MRS JUSTICE LANG DBE

Between :

WAHID NAZARI

Appellant

- and -

SOLICITORS REGULATION AUTHORITY

Respondent

Mansoor Fazli (instructed via **Direct Access**) for the **Appellant**
Natasha Tahta (instructed by **Legal and Enforcement**) for the **Respondent**

Hearing date: 12 May 2022

Approved Judgment

Mrs Justice Lang :

1. The Appellant appeals, pursuant to section 49 of the Solicitors Act 1974 (“the 1974 Act”), against the order of the Solicitors Disciplinary Tribunal (“the Tribunal”), dated 18 October 2021, that he be struck off the Roll of Solicitors, and pay costs in the sum of £1,000.
2. At the commencement of the hearing, I granted the Appellant’s application for extensions of time for filing the Appellant’s Notice to 16 November 2021, and for filing the Grounds of Appeal to 9 December 2021. The applications were not opposed by the Respondent. The delay in filing was more than trivial but there was a good reason for it, namely, the Appellant’s difficulties in finding legal representation, and his financial difficulties. I concluded that, in all the circumstances of the case, it was in the interests of justice for the extensions to be granted.

Factual background

3. The Appellant was admitted to the Roll of Solicitors on 17 June 2015. At the material time he was employed as a solicitor by Carpenters Limited, in Haywards Heath, West Sussex.
4. A disabled badge (“a blue badge”) was issued to his son (“A”) which could only be legitimately used for parking when the car was being used to transport A.
5. On 15 August 2018, the Appellant used his car to drop A off at a location. The Appellant then used the car to drive to his office, where he parked on a single yellow line during restricted hours. Two blue badge investigators noticed the Appellant exiting his vehicle, cautioned him, and asked if A was nearby. The Appellant stated he had dropped A off some distance away. The blue badge was confiscated.
6. Previously, on 20 June 2018, the blue badge investigators had seen the Appellant’s vehicle parked in the same street, on a single yellow line during restricted hours. On that occasion the Appellant had been observed sitting in the driver’s seat with a blue badge on display on the dashboard. As the investigators approached the vehicle, they saw that the Appellant had removed the blue badge from the dashboard. Upon returning later, they saw that the Appellant had left the vehicle, and replaced the blue badge on the dashboard.
7. The blue badge serial number was checked, and it was found to have been displayed on the Appellant’s vehicle at the same location, during restricted hours, on 21 June 2018, 22 June 2018, 25 June 2018, 27 June 2018, 29 June 2018, 4 July 2018 and 5 July 2018. Under the terms of the blue badge scheme the individual named on the blue badge must require access to the vehicle at the time it is parked. At the material times A did not have use of the vehicle as it was parked outside the Appellant’s place of work.
8. The Appellant was summonsed to the Magistrates Court and elected to be tried at Lewes Crown Court. He pleaded not guilty on three counts (covering 9 separate incidents) of using a blue badge with intent to deceive, contrary to section 115(1) of the Road Traffic Regulation Act 1984 (“RTRA 1984”), which provides as follows:

“(1) A person shall be guilty of an offence who, with intent to deceive –

(a) uses, or lends to, or allows to be used by, any other person, -

(i) any parking device or apparatus designed to be used in connection with parking devices;

(ii) any ticket issued by a parking meter, parking device or apparatus designed to be used in connection with parking devices;

(iii) any authorisation by way of such a certificate, other means of identification or device as is referred to in any of section 4(2), 4(3), 7(2) and 7(3) of this Act; or

(iv) any such permit or token as is referred to in section 46(2)(i) of this Act;

.....”

9. The Appellant was represented by counsel at the trial and gave evidence to the jury that he thought he was entitled to use the blue badge in those circumstances, and that he did not intend to deceive. On 15 February 2019, the jury found him guilty on all counts. He was fined £1,500 and ordered to pay prosecution costs in the sum of £6,000.
10. The Judge’s sentencing remarks included the following:

“On a number of occasions between June and August of 2018 - something at least at the order of eight - you improperly took advantage of the blue disabled badge that had been given to [A], to park close to your place of work.

I want to make very clear that you parked in a place where you gained no financial advantage because there was no price to pay and you gained no relief in any real sense from any difficulty of - of parking. You tell us, and I accept, that there was free parking somewhere else. What - what you did though was leave your car on a yellow line, just around the corner from your work, where the yellow line restricted parking to make the people who live there’s life easier for one hour in the morning - nine until 10 - and then one hour at lunchtime. And for the sake of not moving your car, or not parking it up at the free space and walking down, you have got yourself into this mess. And the mess is that by placing the blue card on the dashboard of your car, you intended on each of the occasions to deceive parking enforcement officers into thinking that someone who did have the right needed to use it.

It’s a stupid, stupid thing to have done - it’s a stupid, stupid thing to have done repeatedly - but it is an error of - of being lazy and

being idle. It is not an error where you were seeking to gain any great financial advantage at all - any financial advantage at all - and it didn't involve any sum of money coming to you or misappropriating any money in any way at all. There's no question of you behaving in such a way. Nor did it cause, on the face of it, any disadvantage to anyone of any substance, nor did it cause any harm to any public vehicle or anything of that sort. Further, it is abundantly clear that this is an offence where you had legitimate use of a blue card for [A]. You weren't pretending it was for you and you were disabled or anything of that sort, and you haven't misused anyone else's card. It was a card that would have been in the car with you. And I accept - and I sentence you on the basis - that at least you had had [A] in the car on those days, but where I and the jury draw issue with you is that we find that you knew that you shouldn't be using it in the circumstances that you did. So it's an error where you had decided to take advantage of a situation for ease and laziness. It is no worse than that and no one should view it as any worse than that. And I'm sure Mr Jenkins will understand why I spell it out as clearly as that, and it falls very much at the low end.

It could, in my judgment, have been dealt with by a strict liability offence, but I understand - and I don't criticise the prosecution for proceeding it in their way - in the way that they have because the blue card system is there as a benefit, and when society does confer a benefit it must be seen to make sure that the benefit is used in a proper way. And other people do misuse Blue Badges, and it must be seen that Blue Badges are being used in the right way. So I sentence you on that basis. I appreciate that once these charges were levied against you, you - you didn't have any great choice into your reaction to them, given the potential consequences, but you can't claim that to your credit. In sentencing you, I've considered my sentencing powers, which include sending you to prison, in theory. It - it would not, in any sense, be appropriate to do so, and that sort of sentence should be reserved for people who forge or steal other people's blue cards and use them in a deliberately dishonest and deceptive way - in distinction to your conduct, where you've taken advantage of something.

I've considered whether imposing a sentence in the community would make any sense, in your case. My view is that it would not. Your life is tough enough as it is and imposing either a requirement of probation is not going to rehabilitate you because you [are not] going to do this again, and imposing community service would just distract from your ability to look after your family and would also prevent you caring properly for [Person A]. So for all of those reasons, in my judgment, the appropriate sanction upon you in this court is one of a fine. ..."

11. After making some further remarks about costs and the Appellant's means, he Judge continued:

"I'm very sorry to see you in this court. I'm very sorry to see you in this court on charges which are serious, but they are what they are. And I suspect that you will leave here ashamed of your conduct and rightly so, but please put it behind you as best you can and look after [A] as best you can, and you deserve a future credit for doing so. You're free to go."

Disciplinary proceedings

12. The Appellant reported himself to the Solicitors Regulation Authority ("SRA") on 5 March 2019.

13. The allegation brought by the SRA against the Appellant was as follows:

"... while in practice as a Solicitor at Carpenters Limited:

1. The [Appellant] on nine occasions between 20 June 2018 and 15 August 2018 used a parking device, namely a disabled badge (Blue Badge), with intent to deceive, resulting in:

1.1 his conviction at Lewes Crown Court on 15 February 2019 of three counts of using a parking device with intent to deceive contrary to Section 115(1) of the [RTRA 1984];

1.2 him being sentenced at Lewes Crown Court on 15 February 2019 to, amongst other things, a fine of £1,500.

The [Appellant] therefore breached any or all of:

1.3 Principle 2 of the SRA Principles 2011 (the Principles)

1.4 Principle 6 the Principles

2. In addition, the allegation set out above is advanced on the basis that the [Appellant's] conduct was dishonest. Dishonesty is alleged as an aggravating feature of the [Appellant's] misconduct but is not an essential ingredient in proving the allegation."

14. The SRA relied on the Appellant's conviction at Lewes Crown Court, and upon the findings of fact upon which that conviction was based as proof of those facts.

15. The SRA Principles 2011 provide, so far as is material:

"Principle 2: You must act with integrity.

Principle 6: You must behave in a way that maintains the trust the public places in you and in the provision of legal services."

16. On 15 August 2021 the Appellant applied for an adjournment of the substantive hearing, which was listed for 23 August 2021. In his application he stated that he was informed of the fee for his representative to attend the hearing on 2 August 2021, and he was no longer represented by his solicitor as he could not afford the fee. The adjournment application was refused by the Tribunal, with reasons for the decision, on 18 August 2021.
17. The substantive hearing took place on 23 August 2021 and 4 October 2021. The Appellant attended and represented himself. The evidence relied on by the Respondent was entirely documentary. The Appellant gave evidence in his own defence and was cross examined.
18. The Appellant, at the stage in proceedings when he was represented by a solicitor, admitted all the allegations in their entirety, including dishonesty, as can be seen from his answer to the Rule 12 statement, dated 24 May 2021 and signed by his solicitor.
19. In the Tribunal's judgment it was noted that the Appellant accepted that the response of 24 May 2021 had been sent on his instructions, including the admission to dishonesty, but that he then denied the allegation of dishonesty at the Tribunal hearing. His explanation for this was that he was not sure that he had understood the concept of dishonesty correctly.
20. The Appellant also gave evidence to the Tribunal that he had not known he was not allowed to use the blue badge when his son was not in the car, that he had made an honest mistake, and that he had not intended to deceive.
21. The Tribunal found that the Appellant had breached Principles 2 and 6 and had acted dishonestly when seeking to deceive the parking enforcement officers into believing that he had the right to use the blue badge on the nine occasions that he was convicted of by the jury. The Tribunal gave detailed reasons as to how it reached its conclusions in paragraphs 17.10 – 17.24 of the judgment.
22. The Appellant submitted that his personal circumstances amounted to "exceptional circumstances" that should prevent the Tribunal ordering that he be struck off the Roll of Solicitors despite the finding of dishonesty.
23. The Tribunal considered all the mitigating circumstances and addressed the relevant caselaw when considering sanction and when assessing whether there were "exceptional circumstances" in the Appellant's case. The Tribunal held that it did not find the circumstances to be exceptional and concluded that "the repeated nature of the offending and the limited insight demonstrated by the Respondent led the Tribunal to the conclusion that there was nothing that would justify a lesser sanction than a strike-off".
24. The Tribunal reduced the amount of costs, assessed at £3,500, to £1000 having taken into account the Appellant's limited means.

Legal framework

25. The Appellant has a statutory right of appeal to the High Court against the order of the Tribunal, pursuant to section 49 of the 1974 Act. The High Court, on such an appeal, can make such order “as it may think fit” (section 49(4)).
26. The appeal is governed by CPR Pt 52 and PD 52D. Under CPR 52.21(3), the question for the Court is whether the decision of the Tribunal is “wrong” or “unjust because of a serious procedural or other irregularity in the proceedings in the lower court”.
27. The appeal proceeds by way of review unless the Court considers that it would be in the interests of justice to hold a rehearing: see CPR 52.21(1), and *Salsbury v Law Society* [2009] 1 WLR 1286, at [30]. The scope of the court’s powers on a review in most cases renders it unnecessary to hold a re-hearing: *Adesemowo v Solicitors Regulation Authority* [2013] EWHC 2020 (Admin), at [9]-[12].
28. The parties referred to helpful passages in the judgment of Morris J. in *Ali v Solicitors Regulation Authority* [2021] EWHC 2709 (Admin) at [94] – [96]:

“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.”

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).”

Ground 1: Refusal of adjournment application

29. Under Ground 1, the Appellant submitted that the Tribunal erred in refusing the Appellant’s application for an adjournment, which in turn denied him a fair hearing and caused an injustice.
30. On 15 August 2021, the Appellant applied for an adjournment of the substantive hearing which was listed for 23 August 2021, until further notice. He set out the reasons for his application as follows:

“.... I have previously instructed a solicitor advocate to deal with my matter and represent me at the hearing. However, my instructed solicitor advised me on 02/08/2021 of a very significant fee for attending the hearing. Unfortunately, due to my personal financial circumstances, I have not been able to arrange funding for the instructed solicitor to represent me at the hearing and therefore the instructed solicitor has ceased acting.

I have considered self-representation at the hearing; however, the Tribunal will note from my statement and supporting documentation that I am suffering from ongoing physical and mental health issues. I am the carer for my wife, who has a disability and her condition has significantly deteriorated recently. I am also caring for my disabled son, who is not currently attending the special school and I have to care for him. As a result, I am not in a position to self-represent myself at the hearing.

I have contacted chambers to arrange for a counsel to represent me at the hearing on a direct access basis; however, I was informed that because of the holiday season, no counsel is available to attend the hearing on 23/08/2021. In this circumstance, I am left with no option but to request an adjournment to enable me to attend the hearing, care for my family during this difficult period, seek medical help, and also to arrange for a direct access counsel to represent me at the hearing.

I apologise to the Applicant and the Tribunal for my application at this late stage. However, I will humbly submit that there is no prejudice to the Applicant...’

31. The SRA opposed the application and the Tribunal rejected it. On appeal, the Appellant submitted that the Tribunal did not properly consider the difficulties that he faced in looking after his ill wife and disabled son, and the impact of those difficulties on the Appellant’s own health, together with the stress of the ongoing Tribunal proceedings. The Appellant also submitted that being represented by a lawyer was a fundamental right that was essential for the just disposal of the proceedings. A lawyer might well have advised him on the need to obtain medical evidence in relation to his own health.

Case law

32. An application for a stay or adjournment on medical grounds must be supported by proper medical evidence: see the decision of Vos J. in *The Governor and Company of the Bank of Ireland v Jaffery* [2012] EWHC 734 (Ch) at [48-50].
33. An appeal against a refusal to stay or adjourn on medical grounds is an appeal against a case management decision, in respect of which a tribunal enjoys a wide discretion: see *Jaffery* at [48] and *Andreou v Lord Chancellor* [2002] EWCA Civ 1192 at [35]. In *Andreou*, Gibson LJ said at [35] – [38]:

“35. There is no doubt but that the exercise of discretion by a tribunal, particularly in relation to a case management matter such as whether there should be an adjournment, is one with which the EAT should be slow to interfere, and then only on limited grounds. There is no dispute but that such grounds include perversity. It is also clear that where the consequences of the refusal of the adjournment are severe, such as when it will lead to the dismissal of the proceedings, the Tribunal must be particularly careful not to cause an injustice to the litigant seeking an adjournment: see my remarks in *Teinaz v London Borough of Wandsworth (unreported) 16th July 2002* at paragraph 20. In that judgment I made some general observations on adjournments:

“21. A litigant whose presence is needed for the fair trial of a case, but who is unable to be present through no fault of his own, will usually have to be granted an adjournment, however inconvenient it may be to the tribunal or court and to the other parties. That litigant's right to a fair trial under Article 6 of the European Convention on Human Rights demands nothing less. But the tribunal or court is entitled to be satisfied that the inability of the litigant to be present is genuine, and the onus is on the applicant for an adjournment to prove the need for such an adjournment.

22. If there is some evidence that a litigant is unfit to attend, in particular if there is evidence that on medical grounds the litigant has been advised by a qualified person not to attend, but the tribunal or court has doubts as to whether the evidence is genuine or sufficient, the tribunal or court has a discretion whether or not to give a direction such as would enable the doubts to be resolved. Thus, one possibility is to direct that further evidence be provided promptly. Another is that the party seeking the adjournment should be invited to authorise the legal representatives for the other side to have access to the doctor giving the advice in question. The advocates on both sides can do their part in assisting the tribunal faced with such a problem to achieve a just result. I do not say that a tribunal or court necessarily makes any error of law in not taking such steps. All must depend on the particular circumstances of the case. I make these comments in recognition of the fact that applications for an adjournment on the basis of a medical certificate may present difficult problems requiring practical solutions if justice is to be achieved.”

36. Similarly, Arden LJ said at paragraph 37:

It is to be noted that the standard of review as respects the exercise of discretion involves the grant of considerable deference to the inferior tribunal. In particular, where several factors going either way have to be balanced by the inferior tribunal, the appellate tribunal does not interfere with the balancing exercise performed by the inferior tribunal unless its conclusion was clearly wrong.”

37. She also said in paragraph 39:

“While any tribunal will naturally want to be satisfied as to the basis of any last minute application for an adjournment and will be anxious not to waste costs and scarce tribunal time or to cause inconvenience to the parties and their witnesses, it may be that in future cases like this a tribunal or advocates for either party could suggest the making of further enquiries and a very short adjournment for this purpose.””

34. In *Brabazon-Drenning v UKCC* [2001] HRLR 6, a refusal to adjourn disciplinary proceedings in the Nursing and Midwifery Council, was successfully appealed. Giving the leading judgment of the Divisional Court, with which Rose LJ agreed, Elias J. held at [18]:

“... Save in very exceptional cases where the public interest points strongly to the contrary, it must be wrong for a committee which has the livelihood and reputation of a professional individual in the palm of its hands, to go on with a hearing when there is unchallenged medical evidence that the individual is simply not fit to withstand the rigours of the disciplinary process.”

35. Applying those principles to the facts of the case, Elias J. continued at [19]:

“...She clearly was unable to attend this hearing because she was too ill to do so. In those circumstances, I do not think there were any overriding public interest considerations which should have deprived her of her basic rights to be present when the case was put against her, and to be in a position where she could either of course examine herself, or have a representative with whom she could communicate cross examine on her behalf. It was a breach both of the principles of natural justice and Article 6.”

Conclusions

36. In my judgment, the Tribunal’s decision to refuse the adjournment did not disclose any error of law and was not unjust to the Appellant.
37. The Tribunal accepted the SRA’s submission that the primary reason for the application appeared to be the Appellant’s difficulties in securing legal representation. The SRA referred to paragraph 6(d) of the Solicitors Disciplinary Tribunal ‘Guidance Note: Adjournments’ (“the Guidance Note”) which states:

“The following reasons will not generally be regarded as providing justification for an adjournment;

Inability to secure representation. The inability of the Respondent for financial or other reasons to secure the services of a representative at the hearing or financial reasons for the non attendance of the Respondent.”

38. The SRA also referred to paragraph 10 of the Guidance Note which provides:

“Those appearing before the Tribunal should be conscious of the need to ensure that cases are heard with reasonable expedition so that the interests of the Public as well as the Profession can be protected. The efficient and timely determination of cases before the Tribunal will usually be in the best interests of all concerned and the Tribunal will always need to be satisfied that the interests of justice in any particular case will be best served by agreeing to and adjournment. The Tribunal can (and does, therefore, in appropriate cases) exercise its right under the Rules to reject an application for an adjournment and proceed with a substantive hearing on the date which has been previously fixed. The Rules

provide that such a hearing may take place in the absence of the Respondent.”

39. The SRA submitted to the Tribunal that the Appellant had not demonstrated that it was in the interests of justice to adjourn the hearing, and he relied upon a reason that was stipulated as unacceptable in the Guidance Note.
40. The Appellant was referred to the Tribunal on 5 January 2021, so he had sufficient time to instruct a suitable legal representative whose fees he could afford. He was legally represented by a solicitor advocate who served on his behalf, on 24 May 2021, a written answer to the “Rule 12 statement” issued by the SRA under rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 (“SDPR 2019”), and a lengthy witness statement on 4 July 2021. He stated that he only became aware of his solicitor advocate’s fee on 2 August 2021. However, the onus was on him to confirm the fees at an earlier date to ensure that he could afford them. By the time he applied for an adjournment, the hearing was imminent, and so an adjournment was clearly going to disrupt the Tribunal’s listings and incur costs. The Tribunal was entitled to apply the general rule in paragraph 6(d) of the Guidance Note which provided that inability to secure representation would not justify an adjournment.
41. The Tribunal also considered the medical issues raised by the Appellant in his application. The SRA’s submissions were as follows:

“Medical Issues

7. The Applicant has considered the Solicitors Disciplinary Tribunal (SDT) Guidance Note on Health Issues dated 23 July 2021 (the Health Guidance). Paragraph 4 states:

“If any party wishes to apply for an adjournment on the basis of their own or one of their witness’s health issues the Tribunal expects that application to be supported by a reasoned opinion of an appropriate medical practitioner. A doctor’s certificate issued for social security and statutory sick pay purposes only or other certificate merely indicating that the person is unable to attend for work is unlikely to be sufficient. It would assist the Tribunal if the medical evidence provided in support of the application detailed the diagnosis, prognosis and any reasonable adjustments that could be considered to enable the individual to participate in the proceedings. If the individual’s application is based on their capacity to participate in the proceedings or a witness’s ability to give evidence the medical evidence provided should also address this specific issue.”

8. The Applicant notes that the medical evidence exhibited to the Respondent’s witness statement dated 4 July 2021 [*confirms his wife and son’s diagnoses*].....

9. The Respondent has evidenced that he was offered CBT in 2018, he has provided Patient Access Medical Records that state inter alia he had significant anxiety and depression in 2019,

minor anxiety in January 2021 and chest pains in 2020, 2019 and 2017, they do not provide any further details of the diagnosis including if any medication was issued.

10. The Health Guidance stipulate that the evidence must be in the form of an opinion of a medical practitioner and detail the diagnosis, prognosis and if any reasonable adjustments could be considered. The evidence provided by the Respondent particularly in relation to his own medical issues is not in the requisite form and does not address if any reasonable adjustments could be made to enable him to participate in the proceedings.

11. Paragraph 5 of the Health Guidance states:

“The Tribunal’s role in protecting the public interest means that proceedings should be progressed in a timely and efficient manner and should be concluded as soon as possible, whilst ensuring fairness to all parties. In deciding whether or not to adjourn a hearing on health grounds the Tribunal will consider both its duty to protect the public and the importance of enabling a party to participate in the hearing.”

12. The Respondent has requested that the hearing be adjourned until further notice however, the Guidance expresses that matters should be concluded as soon as possible whilst ensuring fairness to all parties. It is submitted that it is in the public interest to progress the matter as directed and it will not prejudice the Respondent.”

42. In my view, the Tribunal was entitled to accept the SRA’s submissions that the medical evidence for the Appellant was inadequate and did not meet the requirement of the Health Guidance that “the evidence must be in the form of an opinion of a medical practitioner and detail the diagnosis, prognosis and if any reasonable adjustments could be considered”. It comprised a print-out of his medical history from his General Practitioner. He was diagnosed with “minor” anxiety disorder on 16 January 2021; and “significant” anxiety with depression, which was diagnosed on 23 August 2019 and was stated to have ended on 16 November 2019. The Appellant also had a history of chest pains and had been referred for a chest x-ray in 2020.
43. The print-out did not indicate whether any of these conditions were current, and if so, what the prognosis was. Nor did it indicate whether he had received, or was receiving treatment, including medication. There was no indication as to whether any current conditions might impact on his ability to attend the Tribunal hearing, and if so, what reasonable adjustments could be made to enable him to participate.
44. The conditions of his wife and son were confirmed by medical reports, and it was accepted that the Appellant had caring responsibilities for them. However, he was employed as a solicitor and so he was not a full-time carer. The Appellant would have to make arrangements for their care whenever the Tribunal hearing took place, as these

were not temporary conditions from which they were likely to make a recovery in the foreseeable future.

45. The SRA correctly submitted that such a late adjournment would incur costs, and therefore it was contrary to the overriding objective, set out in rule 4(3)(b) of the SDPR 2019.
46. There is no evidence to support the submission that the Appellant was denied a fair hearing and suffered injustice. It is common for solicitors to represent themselves at the Tribunal, and a practising solicitor, such as the Appellant, was capable of doing so effectively. The transcript of the hearing shows that the Appellant gave evidence to the Tribunal and made clear submissions on all issues. In my view, he was capable of obtaining the relevant Tribunal guidance and appreciating that medical reports were required to support an application to adjourn on medical grounds. He did not need a solicitor to advise him of this.
47. For these reasons, the Tribunal's decision to refuse the adjournment was lawful. Ground 1 does not succeed.

Ground 2: failing to go behind the conviction

48. On Ground 2 the Appellant submitted that the Tribunal erred in finding that the Appellant was dishonest. In the exceptional circumstances of this case, the Tribunal ought to have looked behind the conviction and considered whether the Appellant genuinely believed that he was entitled to use the blue badge in the way that he did. The Tribunal should have considered whether he was guilty of recklessness or conduct that lacked integrity, rather than dishonesty, on the evidence.
49. The Appellant relied upon the sentencing remarks of the Recorder, which made it clear that he had legitimate use of the blue badge, he did not gain any financial advantage or cause any harm, and the matter could have been dealt with by way of a strict liability offence where no intention to act dishonestly is required. The Appellant also referred to reports of other blue badge offences, where the facts were similar or more serious than the Appellant's offence, and yet the defendants were charged and convicted of the less serious offence of "wrongful use" of a disabled person's badge under section 117(1) RTRA 1984.

Conclusions

50. There are sound public policy reasons why criminal convictions are held to constitute conclusive proof of guilt in subsequent proceedings, *Hunter v Chief Constable West Midlands Police & Ors* [1982] AC 529, per Lord Diplock, at 541H – 542C. A departure from that approach is only justified where there is new evidence that entirely changes the nature of the case. The exceptional circumstances that might persuade a Tribunal to look behind the facts of a conviction must be more than just a submission that the Appellant was wrongfully convicted. The criminal appeal process exists for that reason.
51. The test for exceptional circumstances was considered in *El Diwany v Solicitors Regulation Authority* [2021] EWHC 275 (Admin), per Saini J. at [35], [38], [50], [51].

In *Shepherd v Solicitors Regulation Authority* (CO/3076/95), the Lord Chief Justice held that the principles in *Hunter* applied equally to disciplinary tribunal hearings.

52. Rule 32(1) of the SDPR 2019 provides:

“Previous findings of record

32(1) A conviction for a criminal offence in the United Kingdom may be proved by the production of a certified copy of the certificate of conviction relating to the offence and proof of a conviction will constitute evidence that the person in question was guilty of the offence. The findings of fact upon which that conviction was based will be admissible as conclusive proof of those facts save in exceptional circumstances.”

53. Counsel for the SRA at the Tribunal correctly set out the law in his opening, submitting that the findings of fact upon which the conviction was based were admissible as conclusive proof of those facts, save in exceptional circumstances.

54. The Tribunal was addressed by the Appellant on the approach that they should adopt towards his conviction. The Tribunal stated in its judgment, at paragraph 17.11, that they “listened carefully to the evidence and submissions of the Respondent but found no circumstances in which it would be appropriate to go behind the conviction”.

55. In my judgment, the Tribunal was entitled to reach this conclusion. The factors relating to the circumstances of the offence, on which the Appellant relied, are mitigating factors that were taken into account by the Recorder when sentencing at the Crown Court. They do not amount to exceptional circumstances. The fact that the Appellant could have been charged with a lesser offence, as others have been, does not amount to exceptional circumstances. Here, the Appellant was represented by counsel at the criminal trial and chose not to appeal his conviction. In my view, the Tribunal’s conclusions cannot be said to be wrong.

56. For these reasons, Ground 2 does not succeed.

Ground 3: Deception not distinguished from dishonesty

57. The Appellant submitted that the Tribunal erred in treating the issue of deception as if it were the same as the ordinary form of dishonesty. The Appellant referred to the definition of “deception” given in the immigration appeal of *Ahmed (general grounds of refusal – material non-disclosure) Pakistan* [2011] UKUT 00351 (IAC), at [9], namely, making false representations, or submitting false documents, or failing to disclose material facts. In the particular circumstances of this case, the Appellant’s conduct could not be regarded as dishonest in the conventional sense of the term. Applying the test of dishonesty in *Ivey*, ordinary people would be likely to regard his actions as a misuse of the blue badge, which was reckless or lacked integrity, but not acts of dishonesty. The jury did not have the option of so finding.

58. The Recorder recognised that the Appellant’s conduct was very different to that of “people who steal or forge other people’s blue cards and use them in a deliberately

dishonest and deceptive way – in distinction to your conduct, where you’ve taken advantage of something”.

Conclusions

59. The Tribunal’s findings and conclusions on the issue of dishonesty were as follows:

“Dishonesty

17.17 The test for considering the question of dishonesty was that set out in Ivey at [74] as follows:

“the test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: 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.”

17.18 The Tribunal applied the test in Ivey and in doing so, when considering the issue of dishonesty adopted the following approach:

- Firstly the Tribunal established the actual state of the Respondent’s knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held.
- Secondly, once that was established, the Tribunal then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

17.19 The Tribunal noted the nature of the conviction was “intent to deceive” and so the Tribunal found that the Respondent’s state of knowledge at the time had been an intention to deceive the parking officials into believing that he was entitled to use the Blue Badge on those occasions. The Tribunal noted the witness evidence before the Crown Court, which referred to the Respondent moving the Blue Badge when he saw the parking officials.

17.20 The Respondent was aware that the Blue Badge had been issued to Person A, not to himself. He would therefore have been aware of the circumstances when he could, and could not, use it.

17.21 The Respondent, in his Answer to the Allegations, had stated as follows:

“This Application to the Tribunal is based on the said convictions and he [the Respondent] accepts the jury found him guilty and that the Recorder found he knew he ought not to have been using the Blue Badge. The Respondent admits the allegation of dishonesty, consistent with the verdict and the Recorder’s findings. He has not appealed that decision.”

17.22 In his evidence the Respondent had moved away from that position and denied acting dishonestly. As discussed above, the Tribunal had relied on the conviction and had found that it was a conviction for an offence of dishonesty. The Respondent had invited the Tribunal to have regard to the sentencing remarks of the Judge. The Tribunal did so and noted the following:

“And for the sake of not moving your car, or not parking it up at the free space and walking down, you have got yourself into this mess. And the mess is that by placing the blue card on the dashboard of your car, you intended on each of the occasions to deceive parking enforcement officers into thinking that someone who did have the right needed to use it.”

17.23 The Judge clearly sentenced the Respondent on the basis that this was an offence of deception, consistent with the jury’s verdict. The fact that the SRA investigator had taken the view that the matter could be dealt with by way of a financial penalty and without referral to the Tribunal was not a relevant factor. The investigator was not a decision-maker and the Allegation had been properly brought.

17.24 The Tribunal found that the Respondent’s conduct would be considered dishonest by the standards of ordinary decent people, as indeed it had been by a jury in the Crown Court. The Tribunal therefore found the allegation of dishonesty proved.”

60. In my judgment, the Tribunal correctly directed itself in law and made findings and reached conclusions which it was entitled to reach on the evidence before them. The Tribunal clearly appreciated that this was an offence of deception, and correctly applied the test for dishonesty to the facts of the offence.
61. For these reasons, Ground 3 does not succeed.

Ground 4: striking the Appellant from the Roll

62. Under Ground 4, the Appellant submitted that the Tribunal was wrong to strike the Appellant off the Roll of Solicitors as this case involved exceptional circumstances. Striking off was disproportionate because of the nature of the offence.
63. The Appellant relied upon the Recorder's sentencing remarks, the submissions made under Ground 2 in respect of the strict liability offence under section 117(1) RTRA 1984, the report of the SRA Investigation Officer dated 20 May 2020, and the Appellant's difficult family circumstances. The Appellant submitted that the Tribunal's findings that the misconduct was deliberate, calculated and continued over a long period of time were inconsistent with the Recorder's sentencing remarks. The Tribunal's findings also failed to have regard to the fact that the parking officials allowed the Appellant to continue offending, instead of apprehending him on the first occasion he committed the offence. When he was approached by the parking officials he was open and frank. There was no calculated and deliberate dishonesty.

Conclusions

64. The Tribunal's conclusions on sanction were set out at paragraphs 25 to 31 of the judgment, as follows:

“The Tribunal referred to its Guidance Note on Sanctions (8th Edition) dated December 2020 when considering sanction. The Tribunal assessed the seriousness of the misconduct by considering the Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.

26. In assessing culpability, the Tribunal found that the Respondent's motivation had been laziness rather than financial. The offences were planned and the trust of the public was undermined as set out in the Tribunal's finding in relation to Principle 6.

27. In assessing harm, the Tribunal recognised that no harm was caused to any individual. However, there was harm to the reputation of the profession on account of the Respondent having committed a criminal offence of dishonesty.

28. The misconduct was aggravated by the dishonesty and the fact that the offences had been deliberate, calculated and had continued over a period of time. The nature of the offence was such that concealment was an integral part of it. The Respondent ought to have known that he was in breach of his professional obligations.

29. The misconduct was mitigated by the fact that the Respondent had self-reported and co-operated fully with the SRA's investigation. The Respondent had made admissions at an early stage, albeit he had backed away from some of those

admissions during his evidence. The Respondent had a previously unblemished career.

30. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the reputation of the profession from future harm by the Respondent. Coulson J, in Sharma, observed:

“34. there is harm to the public every time a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be “trusted to the ends of the earth”.”

31. The Tribunal noted that the usual sanction where misconduct included dishonesty would be a strike-off. The circumstances in which such a sanction was not imposed were exceptional, described in Sharma as follows:

“13. It seems to me, therefore, that looking at the authorities in the round, that the following impartial points of principle can be identified: (a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll, see Bolton and Salisbury, That is the normal and necessary penalty in cases of dishonesty, see Bultitude. (b) There will be a small residual category where striking off will be the disproportionate sentence in all the circumstances, see Salisbury. (c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was momentary, such as Burrowes, or other a lengthy period of time, such as Bultitude; whether it was a benefit to the solicitor (Burrowes), and whether it had an adverse effect on others.”

32. In Solicitors Regulation Authority v James [2018] EWHC 3058 (Admin) at [101], Flaux LJ set out the basis of which question of exceptional circumstances was assessed:

“First, although it is well-established that what may amount to exceptional circumstances is in no sense prescribed and depends upon the various factors and circumstances of each individual case, it is clear from the decisions in Sharma, Imran and Shaw, that the most significant factor carrying most weight and which must therefore be the primary focus in the evaluation is the nature and extent of the dishonesty, in other words the exceptional circumstances must relate in some way to the dishonesty.”

33. The Tribunal considered whether the circumstances in this case were exceptional, having regard to James and Sharma.

34. The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. The Tribunal had regard to the Respondent's personal circumstances at the time of the offences and in doing so took into account the medical evidence that he had submitted in relation to his family, while noting that he had not submitted any medical evidence in relation to his own health.

35. The Tribunal accepted that there had been no loss to any individual and it took full account of the Judge's sentencing remarks and the sentence itself, which was at the lower end of the range of sentences available to the Judge. However the Tribunal was considering a conviction for nine separate instances of using a Blue Badge with intent to deceive. The Blue Badge system was designed for the assistance and protection of vulnerable people and the Respondent's repeated abuse of that system was a serious matter. The Respondent had shown little insight into the seriousness of what he had done during the course of his evidence before the Tribunal. On the one hand he had told the Tribunal that he accepted the jury's verdict but he also continued to maintain he had made an honest mistake, something the jury had clearly rejected.

36. The Tribunal reviewed the factors set out in *Sharma* and applied them to the facts of this case. The nature, scope and extent of the dishonesty was that the Respondent had committed the offences on nine occasions and on one of those had removed the Blue Badge when he saw the parking officials. This could not be described as momentary as the offences spanned an eight-week period. The benefit to the Respondent was not financial but it did afford him a degree of convenience that he would otherwise not have enjoyed.

37. The Tribunal did not find the circumstances to be exceptional, unfortunate though they were. The repeated nature of the offending and the limited insight demonstrated by the Respondent led to Tribunal to the conclusion that there was nothing that would justify a lesser sanction than a strike-off. The only appropriate and proportionate sanction was that the Respondent be struck off the Roll."

65. In my judgment, the Tribunal correctly directed itself in law, in accordance with the leading Divisional Court cases on exceptional circumstances: *Solicitors Regulation Authority v Sharma* [2010] EWHC 2022 (Admin) and *Solicitors Regulation Authority v James* [2018] EWHC 3058 (Admin). It also directed itself in accordance with the 'Guidance Note on Sanctions'.
66. The Tribunal then proceeded to apply the relevant principles to the specific facts of this case. In its judgment, the Tribunal "took full account" of the Recorder's sentencing remarks (paragraph 35). It clearly had them well in mind since they were also referenced in the context of dishonesty (paragraphs 17.22 – 17.23), and the Tribunal set

them out in full at paragraph 10. On my reading of the judgment, the mitigating factors identified by the Recorder were considered by the Tribunal.

67. The Appellant submitted that the sentencing remarks, in particular the reference to an “error”, suggested that the Recorder did not consider that the offences were deliberate or calculated. The Recorder said:

“...where I and the jury draw issue with you is that we find that you knew that you shouldn’t be using it in the circumstances that you did. So it’s an error where you had decided to take advantage of a situation for ease and laziness...”

Thus, the Recorder made it clear that he and the jury found that the Appellant knew he was not entitled to use the badge as he did. In context, it is clear that the term “error”, as used by the Recorder, related to the Appellant having erred, as opposed to an error committed by mistake.

68. The essential difference between the offence under section 115(1) RTRA 1984 and the lesser strict liability offence under section 117(1) RTRA 1984 is that, in order to convict the Appellant, the jury must have been satisfied beyond reasonable doubt that the Appellant had the requisite “intention to deceive” on numerous occasions. That indicates that his actions were deliberate and calculated, as well as repeated. A conviction under section 115(1) RTRA 1984 was a much more serious matter than a conviction under section 117(1) RTRA 1984 because of the element of deception.
69. The Appellant submitted that there was no intention to conceal since he co-operated and made free and frank admissions, and therefore the Tribunal erred in finding that there was concealment. On my reading of the judgment, when the Tribunal stated (at paragraph 28) that “[t]he nature of the offence was such that concealment was an integral part of it”, it meant that an offence which requires an “intention to deceive” involves concealment, by its very nature. The Tribunal was not there referring to the Appellant’s co-operation and admissions after the offence was committed. The Tribunal had due regard to the Respondent’s co-operation with the SRA’s investigation.
70. The Tribunal correctly applied the principle in *James* that the most significant factor in the evaluation of exceptional circumstances is “the nature and extent of the dishonesty”. In my view, it was entitled to find that the Appellant’s misconduct, which led to a criminal conviction, harmed the reputation of the profession and undermined the public’s trust in it. Its conclusion that “the misconduct was aggravated by the dishonesty and the fact that the offences had been deliberate, calculated and continued over a period of time” was one which was clearly open to it on the evidence before it.
71. The Tribunal carefully considered all the relevant factors, including those factors which were in the Appellant’s favour. It found that the sanction of striking the Appellant off the Roll was appropriate and proportionate, for the reasons it gave. In my judgment, its conclusions cannot be said to be wrong.
72. For these reasons, Ground 4 does not succeed.

Ground 5: legitimate expectation

73. In his pleaded grounds of appeal, the Appellant submitted that the notice sent by the SRA investigator, on 20 May 2020, which recommended a financial penalty, without referral to the Tribunal, gave rise to a legitimate expectation on the part of the Appellant that he would not be referred to the Tribunal and that he would not receive a more severe sanction than a fine.
74. Without applying to amend his grounds of appeal, the Appellant added, in his skeleton argument, an allegation that the Appellant was not afforded a sufficient opportunity to address the allegation of dishonesty, which was not sufficiently particularised from the outset. It was therefore of paramount importance to grant the Appellant an adjournment to seek legal representation.

Case law

75. A legitimate expectation, whether procedural or substantive, may arise from an express promise or representation made by a public body. In order to found a claim of legitimate expectation, the promise or representation relied upon must be “clear, unambiguous and devoid of relevant qualification”: *R v Inland Revenue Comrs, Ex p MFK Underwriting Agents Ltd* [1990] 1 WLR 1545, per Bingham LJ at 1569G.
76. Bingham LJ’s classic test has been widely approved and applied. In *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No. 2)* [2009] AC 453, Lord Hoffmann said, at [60]:

“It is clear that in a case such as the present, a claim to a legitimate expectation can be based only upon a promise which is ‘clear, unambiguous and devoid of relevant qualification’: see Bingham LJ in *R v Inland Revenue Comrs Ex p MFK Underwriting Agents Ltd* [1990] 1 WLR 1545, 1569. It is not essential that the applicant should have relied upon the promise to his detriment, although this is a relevant consideration in deciding whether the adoption of a policy in conflict with the promise would be an abuse of power and such a change of policy may be justified in the public interest, particularly in the area of what Laws LJ called ‘the macro-political field’: see *R v Secretary of State for Education and Employment, Ex p Begbie* [2000] 1 WLR 1115, 1131.”
77. The onus of establishing a clear, unambiguous and unqualified representation rests on the person who seeks to rely upon it (*Re Finucane’s Application for Judicial Review* [2019] UKSC 7, at [64]).
78. The Courts have given guidance on how Bingham LJ’s test in *MFK* is to be applied. In *Paponette and Ors v Attorney General of Trinidad and Tobago* [2010] UKPC 32, Lord Dyson JSC, giving the judgment of the majority of the Board, said, at [30]:

“As regards whether the representations were “clear, unambiguous and devoid of relevant qualification”, the Board

refers to what Dyson LJ said when giving the judgment of the Court of Appeal in *R (Association of British Civilian Internees: Far East Region) v Secretary of State for Defence* [2003] QB 1397, para 56: the question is how on a fair reading of the promise it would have been reasonably understood by those to whom it was made.”

79. In *R (Patel) v General Medical Council* [2013] EWCA Civ 327, the court considered whether a statement made by the General Medical Council to the appellant was sufficiently clear, unambiguous and unqualified to give rise to a legitimate expectation.
80. Lloyd-Jones LJ (with whose judgment the Master of the Rolls and Lloyd LJ agreed), confirmed that the test was one of “objective intention” (at [43]). Lloyd-Jones LJ then went on to say:

“44. The question for consideration is how, on a fair reading of the statement, it would have been reasonably understood by those to whom it was made. (See *The Association of British Civilian Internees – Far Eastern Region v. Secretary of State for Defence* [2003] QB 1397 per Dyson L.J. para. 56.) In the present context the question is whether it would reasonably be understood as an assurance that the qualification would be recognised in the case of this appellant if he obtained it in a reasonable time.

45. The statement has to be considered in the context in which it was made

Conclusions

81. The SRA notice by Ms Kim Castro, investigation officer, dated 20 May 2020, was an investigator’s report, which set out the evidence, assessed the Appellant’s conduct, and submitted recommendations as to the action to be taken, to the SRA adjudicator. The investigation officer recommended that the Appellant be ordered to pay a financial penalty of £2,000, and costs, without referral to the Tribunal.
82. Ms Castro was not the decision-maker; she was the investigator, whose role was to investigate and make recommendations.
83. The authorised decision-maker did not accept the investigation officer’s recommendation of a fine. On 31 July 2020, the authorised decision-maker referred the case back to the investigation officer to consider whether the Appellant should be referred to the Tribunal, given the “elements of intention and deception that were proved to the criminal standard of proof”.
84. This decision was communicated to the Appellant by email dated 31 July 2020.
85. On 30 September 2020, the same investigation officer issued a revised notice recommending the authorised decision-maker to make a referral to the Tribunal. Paragraph 11 of this notice advised that:

“The factors in favour of referring the matter to the Tribunal outweigh those against doing so, because of the inherently dishonest nature of the conviction.”

86. On 1 October 2020, the revised notice was sent to the Appellant with a covering letter which invited him to respond with written representations. The Appellant made written representations against such a referral on 13 November 2020. On 19 November 2020, the investigation officer informed him that these representations had not changed the decision to recommend referral to the Tribunal.
87. The Appellant’s representations and the investigation officer’s response were included as part of the documentation sent to the authorised decision-maker, together with the notice.
88. On 5 January 2021, the authorised decision-maker made the decision, under rules 3.1 and 6.1 of the SRA Regulatory and Disciplinary Procedure Rules 2018, to refer the case to the Tribunal. Paragraphs (a) and (c) and the penultimate paragraph of the decision refer clearly to dishonesty, which is used 7 times on the second page of the decision.
89. Following receipt of the decision to refer his case to the Tribunal, the Appellant complained to the SRA on 10 January 2021. The SRA responded by letter, dated 21 January 2021, giving an explanation of the procedural steps taken in accordance with the SRA Regulatory and Disciplinary Procedure Rules 2018.
90. The Appellant was informed by letter dated 1 March 2021 of the contact details of the Legal Adviser in charge of the case and was informed that the Rule 12 statement, setting out the allegations against him, would be lodged with the Tribunal within the following 8 weeks.
91. The Rule 12 statement was sent to the Tribunal on 1 April and uploaded to “Caselines” (the electronic case management system to which the Appellant and Respondent both had access) on 7 April 2021. It clearly alleged dishonesty.
92. On 24 May 2021 the Appellant served his answer to the Rule 12 statement through his legal representative, Mr David Barton of DB Law. In this response to the allegations the Appellant admitted the allegations, specifically accepting the allegation of dishonesty.

Legitimate expectation

93. In support of the claim of legitimate expectation, the Appellant relied upon the investigator’s notice dated 20 May 2020, and the covering letter dated 20 May 2020 which stated:

“Following our investigation, we are recommending that a decision is made that you pay a fine. I enclose a notice setting out the allegations, the facts in support, the reasons for our recommendation and the evidence and documentation that we consider to be relevant to the allegations. This notice is being

sent to you in accordance with rule 2.3 of the Regulatory and Disciplinary Procedure Rules.” (Emphasis added)

94. Rule 2.3 of the SRA Regulatory and Disciplinary Procedure Rules 2018 states:

“Before making a decision under rule 3, the SRA shall give notice to the relevant person.....(c) where appropriate, making a recommendation as to the decision to be made under rule 3,.....and inviting the person to respond with written representations within such period as the SRA may specify (which must be no less than 14 days from the date of the notice).”
(*Emphasis added*).

95. In my judgment, it was clear from the terms of the report and the covering letter, and the statutory context in which they were sent, that this was only a recommendation, not a decision, and that a decision was to follow. Therefore the report and the letter were not clear and unambiguous statements, devoid of relevant qualification, which were capable of giving rise to a legitimate expectation on the part of the Appellant that he would not be referred to the Tribunal, and that he would not receive a more severe sanction than a fine. In my judgment, no legitimate expectation has been established by the Appellant.

Procedural unfairness

96. It is apparent from the chronology of events that I have set out above that the SRA alleged dishonesty in the notice dated 30 September 2020, which was sent to the Appellant on 1 October 2020. The Appellant responded to that notice on 13 November 2020.

97. On 5 January 2021, the decision referring the case to the Tribunal was issued. It clearly alleged dishonesty. The Appellant made written representations to the SRA in January 2021. At the Tribunal hearing, the Appellant accepted under cross-examination that he knew from 5 January 2021 that the SRA were intending to charge him with dishonesty.

98. The Rule 12 statement, which included allegations of dishonesty, was available to the Appellant from 7 April 2021. His solicitor served the Appellant’s response to the Rule 12 statement on 24 May 2021, in which he admitted the allegations, including the allegation of dishonesty.

99. In the light of this history, it is apparent that the Appellant had ample opportunity to consider and respond to the allegation of dishonesty, with the benefit of legal advice, and in fact did so. In my judgment, there was no procedural unfairness.

100. For these reasons, Ground 5 does not succeed.

Final conclusion

101. Grounds 1 to 5 do not succeed, and so the appeal is dismissed.

102. As I stated at the hearing, the principle of open justice applies, and there are no grounds to depart from it in this case. The Appellant's criminal trial will have been held in public too. Details of the Appellant's wife's and son's medical conditions have been redacted from this judgment, but the Appellant's own medical conditions must be included, as he relied upon them in his appeal.

103. The general rule is that costs follow the event and there are no grounds to depart from that rule in this case. The Appellant has lost his appeal on all grounds and the Respondent is entitled to its costs. Given the Appellant's limited means, the Appellant should ask the Respondent to agree a realistic timetable for payment. The costs claimed by the Respondent, which I summarily assess in the sum of £18,000, are proportionate and reasonable given the amount of work involved in responding to the grounds of appeal.