The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding and Sanction
Case Reference: 2015/0143/D5

Peter Matthew James GRAY

The Director-General of the Bar Standards Board

The Chair of the Bar Standards Board

The Treasurer of the Honourable Society of: Lincoln's Inn

Disciplinary Tribunal

Peter Matthew James GRAY

1. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 20 November 2025, I, HH Martyn Zeidman KC sat as Chairman of a Disciplinary Tribunal on 10 December 2025 to hear and determine seven charges of professional misconduct contrary to the Code of Conduct of the Bar of England and Wales against Peter Matthew James Gray, barrister of the Honourable Society of Lincoln's Inn.

Panel Members

2. The other members of the Tribunal were:

   Tracy Stephenson (Lay Member)

   Melissa West (Lay Member)

   Yusuf Solley (Barrister Member)

   Scott McDonnell (Barrister Member)

Charges

3. The following charges were proved

   Charge 1

   Statement of Offence

   Professional misconduct, contrary to paragraph 301(a)(i), 301(a)(ii) and/or 301(a)(iii) and pursuant to 901.7 of the Code of Conduct of the Bar of England and Wales (8th Edition).

Particulars of Offence

Peter Matthew James Gray, an unregistered barrister, engaged in conduct which was dishonest or otherwise discreditable to a barrister, prejudicial to the administration of justice and / or likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute, in that, while in practice as a solicitor and in the course of acting in litigation before the High Court on behalf of "Client A", on or about 4 September 2013, Mr Gray swore an affidavit in support of Client A's application to the High Court for a freezing injunction and other orders ("the Application") which was misleading as to matters of fact known to him, and known by him to be material to the Application, and in doing so allowed the court to be misled, for which conduct, charges of professional misconduct were found proved, and Mr Gray was struck off the Roll of Solicitors by the Solicitors Disciplinary Tribunal in its written decision dated 5 May 2021.

Criminal Standard

Charge 2

Statement of Offence

Professional misconduct, contrary to paragraph 301(a)(i), 301(a)(ii) and/or 301(a)(iii) and pursuant to 901.7 of the Code of Conduct of the Bar of England and Wales (8th Edition).

Particulars of Offence

Peter Matthew James Gray, an unregistered barrister, engaged in conduct which was dishonest or otherwise discreditable to a barrister, prejudicial to the administration of justice and / or likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute, in that, while in practice as a solicitor and in the course of acting in litigation before the High Court on behalf of "Client A", on or about 10 and/or 11 September 2013, during the hearing before the High Court of Client A's application for a freezing injunction and other orders ("the Application"), Mr Gray allowed submissions to be made to the Court by Leading Counsel acting for Client A which were known by him to be misleading, for which conduct, charges of professional misconduct were found proved, and Mr Gray was struck off the Roll of Solicitors by the Solicitors Disciplinary Tribunal in its written decision dated 5 May 2021.

Criminal Standard

Charge 3

Statement of Offence

Professional misconduct, contrary to Core Duty 3 of the Conduct Rules (Part 2 of the Bar Standards Board's Handbook - Version 1).

Particulars of Offence

Peter Matthew James Gray, an unregistered barrister, failed to act with honesty and/or integrity, in that, while in practice as a solicitor and in the course of acting in litigation before the High Court on behalf of "Client A", on or about 7 November 2014, Mr Gray sent, or caused or allowed to be sent, written correspondence to Byrne and Partners that he knew to be misleading, for which conduct, charges of professional misconduct were found proved, and Mr Gray was struck off the Roll of Solicitors by the Solicitors Disciplinary Tribunal in its written decision dated 5 May 2021.

Criminal Standard

Charge 4

Statement of Offence

Professional misconduct, contrary to Core Duty 5 and/or rC8 of the Conduct Rules (Part 2 of the Bar Standards Board's Handbook – Version 1).

Particulars of Offence

Peter Matthew James Gray, an unregistered barrister, acted in a manner which was likely to diminish the trust and confidence which the public places in him or the profession, and/or acted in a manner which could reasonably be seen by the public to undermine his honesty and/or integrity, in that, while in practice as a solicitor and in the course of acting in litigation before the High Court on behalf of "Client A", on or about 7 November 2014, Mr Gray sent, or caused or allowed to be sent, written correspondence to Byrne and Partners that he knew to be misleading, for which conduct, charges of professional misconduct were found proved, and Mr Gray was struck off the Roll of Solicitors by the Solicitors Disciplinary Tribunal in its written decision dated 5 May 2021.

Criminal Standard

Charge 5

Statement of Offence

Professional misconduct, contrary to Core Duty 3 of the Conduct Rules (Part 2 of the Bar Standards Board's Handbook – Version 1).

Particulars of Offence

Peter Matthew James Gray, an unregistered barrister, failed to act with honesty and/or integrity, in that, while in practice as a solicitor and in the course of acting in litigation before the High Court on behalf of "Client A", on or about 11 November 2014, Mr Gray swore an affidavit in litigation before the High Court which was known by him to be misleading, for which conduct, charges of professional misconduct were found proved, and Mr Gray was struck off the Roll of Solicitors by the Solicitors Disciplinary Tribunal in its written decision dated 5 May 2021.

Criminal Standard

Charge 6

Statement of Offence

Professional misconduct, contrary to Core Duty 5 and/or rC8 of the Conduct Rules (Part 2 of the Bar Standards Board's Handbook – Version 1).

Particulars of Offence

Peter Matthew James Gray, an unregistered barrister, acted in a manner which was likely to diminish the trust and confidence which the public places in him or the profession, and/or acted in a manner which could reasonably be seen by the public to undermine his honesty and/or integrity, in that, while in practice as a solicitor and in the course of acting in litigation before the High Court on behalf of "Client A", on or about 11 November 2014, Mr Gray swore an affidavit in litigation before the High Court which was known by him to be misleading, for which conduct, charges of professional misconduct were found proved, and Mr Gray was struck off the Roll of Solicitors by the Solicitors Disciplinary Tribunal in its written decision dated 5 May 2021.

Criminal Standard

Charge 7

Statement of Offence

Professional misconduct, contrary to Core Duty 1 of the Conduct Rules (Part 2 of the Bar Standards Board's Handbook – Version 1).

Particulars of Offence

Peter Matthew James Gray, an unregistered barrister, failed to observe his duty to the court in the administration of justice, in that, while in practice as a solicitor and in the course of acting in litigation before the High Court on behalf of "Client A", on or about 11 November 2014, Mr Gray swore an affidavit in litigation before the High Court which was known by him to be misleading, for which conduct, charges of professional misconduct were found proved, and Mr Gray was struck off the Roll of Solicitors by the Solicitors Disciplinary Tribunal in its written decision dated 5 May 2021.

Criminal Standard

Parties Present and Representation

4. The Respondent wad not present and was not represented. The Bar Standards Board ("BSB") was represented by Mark Harries KC.

Preliminary Matters

Proceeding in the Absence of the Respondent:

5. It had been anticipated that the Respondent would be both present and be represented by Leading Counsel. The hearing was set down for an anticipated seven days. However, in correspondence dated 5th December 2025 to the Applicant and the Bar Tribunals and Adjudication Service ('BTAS') the Respondent indicated that he would not be appearing before the Tribunal and had withdrawn instructions for his counsel to attend on his behalf.
6. We do not in this written ruling set out the full contents of the letter but in short the Respondent explained with great emphasis that (a) he has at no time acted dishonestly but that (b) the strain of the proceedings accentuated by the delay, is such that he cannot face the prospect of giving evidence and being cross examined (c) he is not seeking an adjournment and (d) he wishes the hearing to go ahead in his absence.
7. We have no doubt that all pre-hearing procedures have been followed and that documents have been properly served on the Respondent; indeed there is no suggestion to the contrary.
8. We have considered and applied the criteria set out in the criminal authority of **R -v- Jones [2002] UKHL 5.** It is clear that the Respondent has chosen to waive his right to attend and to be represented. However, his waiver is not necessarily determinative. Our duty is to

stand back and reach a judgment as to whether the proceedings can fairly proceed in his absence and whether we should exercise our discretion to do so.

9. In our view there would be no advantage in adjourning the proceedings. We have in our Tribunal bundles full and lengthy submissions from the Respondent together with transcripts and many other documents. The BSB argue that it would be 'appropriate, fair and reasonable to proceed.'
10. We agree unanimously with that view.
11. We have reminded ourselves that the Respondent's decision not to appear or be represented is not a point against him. It is an entirely neutral factor. That said, it does mean in practical terms there is no new testimony from the Respondent to contradict, clarify or explain evidence already before us.

Evidence and findings

The Significance of the Decisions Reached by the SDT and Mr Justice Flaux.

12. Before coming to any detail, we consider a fundamental submission which affects the whole of these proceedings.
13. It is common ground that the 7 charges brought by the Applicant are based upon the findings of the Solicitors Disciplinary Tribunal ('SDT'). The SDT reached their conclusion that the Respondent, whilst acting as a solicitor in the Djibouti -v- Boreh litigation, acted in a misleading and dishonest manner. Given the age of the charges, the SDT rightly worked on the basis of the criminal burden and standard of proof.
14. The fundamental question is the extent to which we should adopt those findings of fact by that different tribunal (the SDT) or whether (as the Respondent contends) we should be looking into the matters 'afresh'.

The Respondent's Position

15. On the first page at paragraph 1 of his written submission of the 10th September 2025, the Respondent puts the matter in this robust way:
16. 'On occasions the legal system is vulnerable to the problem of compounding an erroneous or per incuriam decision by adoption of previous reasoning overtaken by facts that subsequently have come to light. The ability to launch and sustain regulatory prosecution

based purely on the conclusion of other bodies exacerbates this vulnerability. From time-to-time courts and tribunals must face up to this.'

17. He goes on to quote the words of Lord Legatt in the criminal case of **R -v- Hayes [2025] UKSC 29:-**

'The history of these two cases raises concerns about the effectiveness of the criminal appeal system in England and Wales in confronting legal issues .'

18. The Respondent criticises what he perceives to be the approach of the Applicant:-

'In short, the BSB itself now wishes to rely upon a previous finding, despite having reached a diametrically opposite conclusion when investigating Leading and Junior counsel.'

19. The Respondent submits that:-

*'Accordingly, this is a matter in which the principal in **Hollington -v- F Hewthorn & Company Limited [1943] KB 587** should be applied, because the interests of justice require.'*

The Applicant's Position

20. The Applicant relies on procedural rule E169 and argues against the re-consideration advanced by the Respondent. The rule provides that:-

'In proceedings before a Disciplinary Tribunal which involve the decision of a court or tribunal in previous proceedings to which the respondent was a party… the following Regulations shall apply:

'the finding and sanction of any tribunal in or outside England and Wales exercising a professional disciplinary jurisdiction may be proved by producing an official copy of the finding and sanction and the findings of fact upon which that finding or sanction was based shall be proof of those facts, unless proved to be inaccurate.'

21. A similar rule applies to judgment of a civil court:

*'the judgment of any civil court … may be proved by producing an official copy of the judgment or order, and the findings of fact upon which that judgment or order was based shall be proof of those facts, unless proved to be **inaccurate.***

22. Mr Harries KC on behalf of the Applicant cites two highly relevant authorities:

23. First the judgment of Mrs Justice Collins Rice in ***Ukiwa -v Bar Standards Board [2021] EWHC 2830 (Admin)*** and in particular at Paragraph 28:

'Disciplinary proceedings should not be thought of as providing an opportunity for an informal collateral appeal against past court decisions, or requiring unnecessary re-proving of fact where all the relevant facts have already been found, either by a jury or by a court, in proceedings bound by principles of justice and rules of evidence at least as exacting as those binding a disciplinary tribunal if not more so. In the case of a criminal trial, it also acknowledges the impossibility of going behind a jury verdict and the impermissibly of trying to do so. In the case of a civil trial, where findings of fact will be set out in a reasoned judgment, it is a matter of avoiding wasteful reduplication of time and effort.'

24. The court went on to explain at Paragraph 33 that 'inaccurate' for the purpose of rebutting the default evidential position is that the findings are shown to be *'untrue or wrong, so that it would be unfair for the findings to be relied upon…… it is likely to be rare, at any rate where no significant new evidence is adduced and routes of appeal against the earlier findings have lapsed or been exhausted.'*
25. In **Sky Bibi -v- Bar Standards Board [2022] EWHC 921 (Admin)** Mrs Justice Hill reiterated that the Ukiwa dicta in relation to rE169 was not a jurisdictional provision but a rule of evidence and that a barrister would have to 'establish exceptional circumstances which could justify going behind' the fact of a conviction (as it was in that case) proving the facts of a charge.

Not too Broad a Brush

26. We appreciate that the hearing before us is not a de facto second appeal against the decision of the SDT. On the other hand, we need to avoid a too broad a brush approach. We have considered much of the detail in order to assess fairly whether there is merit in the Respondent's case that the SDT decision is 'inaccurate'.
27. We indicated in the course of the hearing, that in respect of each charge, we will be asking ourselves this question:
28. <u>Has the Respondent proved, that it is more likely than not, that the SDT decision(s) is 'inaccurate' in that it is untrue or wrong, such that it would be unfair for the findings to be relied upon?</u>

Burden and Standard of Proof

29. As indicated, although the burden of proof in rule E169 rests on the Applicant, it is only to the civil standard.
30. We re-iterate the important point that both the SDT and this Tribunal are (by reason of the dates) obliged to apply the criminal standard of proof in respect of each of the charges.

Separate Consideration

31. There is an obvious link between the different charges but they all require separate consideration. This does not mean that we should view the evidence in sealed compartments but it is not a case of all or nothing.

The Context of the Djibouti Litigation

32. We propose for the sake of convenience to adopt the summary set out by Linden J when hearing the Respondent's appeal against the findings of the SDT as set out in Paragraph 2 of his judgment of 18th March 2022. [An appeal which he dismissed for reasons set out in his judgment of 18th March 2022].
33. 'The disciplinary proceedings against the (Respondent) related to his actions in the context of a dispute between a Mr Abdourahman Boreh and the Republic of Djibouti and two Djibouti port authorities, in which the (Respondent) was acting for the Djibouti authorities.
34. One of the steps taken by Djibouti in this dispute was to bring an action against Mr Boreh in the Commercial Court in October 2012 claiming at least US $ 77 million which he had allegedly misappropriated whilst in public office.
35. In the course of this litigation, Flaux J (as he then was) held, on 13th November 2014, that he had been misled in granting an application for a freezing order against Mr Boreh at a hearing on 10th and 11th September 2013.
36. After a 5-day hearing in March 2015 at which the (Respondent) gave evidence and was cross examined, on 25th March 2015, Flaux J then handed down a judgment in which he held that the Appellant had deliberately and dishonestly misled the Court at the September Hearing. He therefore discharged the freezing injunction part of the order which he had made although he left the proprietary aspects. ….

37. The hearing before the SDT took place from 8 – 16 March 2021. By a decision dated 5th May 2021, the SDT upheld the four charges' [i.e. 1.1, 1.2, 1.3 and 1.5].'

Opening Note:

38. The facts were opened to us in accord with the helpful Note from Mr Harries KC dated 26th November 2025. At various times the claimant in the litigation, the Republic of Djibouti has been referred to as 'client A' and we have on occasions used that same description.

The Dating Error

39. It is common ground that there was an error in relation to the date of intercepted phone calls between the Defendant in the action (Mr Boreh) and his cousin. The conversations were originally thought to have taken place on the 5th March and there was a proper basis for suspecting that in those calls Mr Boreh was being briefed by his cousin and co-conspirator in relation to the terrorist action that had taken place the previous day at a super-market in Nougaprix.
40. These transcripts were relied upon in criminal proceedings against Mr Boreh and on 23rd June 2010 he was convicted in his absence and sentenced to 15 years imprisonment. The transcripts were also highly relevant in relation to matters of extradition in which the Respondent was assisting a different firm of lawyers.
41. However, it turned out that the phone conversations were not (as was thought) on the 5th March but in fact took place before the terrorist activity of the 4th and accordingly the allegation that Mr Boreh was involved in and directing the terrorist attack was fundamentally undermined.

The First Charge: SDT's 1.1 Misleading Affidavit (3rd) of 4th September 2013.

The Allegation:

42. It is alleged that *'on or about 4th September 2013, (the Respondent) swore an affidavit in support of client A's application to the High Court for a freezing injunction and other orders which was misleading as to matters of fact known to the Respondent and known by him to be material to the application and is doing so allowed the court to be misled.'*

43. In particular the affidavit did not make clear that the allegation against Mr Boreh (in respect of his being involved in terrorist activity) was substantially weakened by the realisation that there had been an error in relation to the dates.
44. The Respondent's case (in part) is that at the time of swearing this affidavit, he was unaware of the date error or alternatively he did not regard it as relevant given the application then being made was merely to freeze the Defendant's assets.
45. It follows that an important issue of fact for the SDT was whether the Respondent appreciated the error at the time of swearing the affidavit. If he were not aware of it – if he did not appreciate that his case on terrorism was substantially weakened then the accusation of intentional misleading and/or dishonesty is destroyed.
46. The difficulty faced by the Respondent is that there is an abundance of evidence to suggest that he was told of the error before swearing the affidavit.
47. We summarise some of the evidence (not all of it) that deals with the state of his knowledge in relation to the date error:

Respondent's State of Knowledge Prior to Swearing 3rd Affidavit

48. On the 23rd August 2013 (just three weeks before the Affidavit was sworn) an associate working in the Respondent's firm (**Ms Deborah Ngo Yogo 11**) realised that the dates on the phone logs were wrong.
49. She emailed her colleagues, Ms Kahn and Ms Merchant attaching the call logs and saying *'the call log shows that the conversations occurred on March 4 2009 at 2.33pm and 2.35pm i.e. before the grenade attacks took place' and she described this as a 'critical discrepancy that must be cleared.'*
50. Ms **Merchant** forwarded Ms Ngo Yogo's email to the Appellant saying:-
'It appears that the conversations…took place before the grenade attacks. Unless I am missing something, this would be a very large discrepancy' and 'unless I am missing something, this is very surprising no? If the phone conversations took place on 4th March before the grenade attacks which took place on the evening of the 4th then the conversations don't swing in our favour.'
51. The Respondent then emailed the three in-house colleagues making the point that obviously we need to iron out the difficulty. If right, we have no case, but then if that

were the case, the conversations would make no sense and one would think the issue would have been raised before. He tells her to stop panicking and have another look at them.

52. Two days later (25th August 2013) the Respondent congratulates Ngo Yogo on noticing the discrepancy and observes that if she had not checked *'disaster would most certainly have followed.'*
53. In the hearing before Flaux J in March 2015, the Respondent explained that the *'disaster'* would have been a misleading document that would have been submitted to the courts in England and Wales and in Dubai. It meant that everything would have been put on a wrong factual basis. The Respondent also accepted that the criminal conviction of Boreh which had relied on these transcripts was an *'obviously unsafe conviction.'*
54. The Respondent explored the question as to whether there might have been a similar terrorist event on 3rd March. If there had been then perhaps the conversations recorded might have been referable to that earlier event. But Ms Ngo Yogo could not find any such report.
55. On 26th August 2013 the Respondent emailed Leading Counsel saying that *''something has come up and asks to speak on the phone.'*
56. The Respondent and Leading Counsel do not have the same recollection in respect of that conversation.
57. Counsel recalls that the Respondent told him that there was *'a typographical /date error in one document referred to in the extradition request but it was not material.'*
58. Following the conversation with Leading Counsel on 26th August 2013, Tuesday, the Respondent sent an email to associates saying that spoken to Leading Counsel and *'we agree that having reviewed the evidence, we can get away with the error. It is only in the judgment, which is awful anyway, and not in the evidence.*
59. The Respondent amended the extradition request and emailed it to Leading Counsel saying:- *'…The extradition request did not labour point, so changing the date by one day was all I needed to do.*
60. The silk replies:

    On the assumption that all other documents are consistent then the change of date hopefully will not stir matters up too much… however this is highly likely

61. The following day (27th August 2013) there is a meeting between the Respondent and a risk management consultant in Dubai.
62. Mr Justice Flaux found that it was at this meeting that the Respondent developed the strategy of not disclosing the date error or disclosing that the conviction based on the transcripts was unsafe.
63. He found that *the imperative was getting the extradition request dealt with before the freezing order hearing and fudging the error about the date ensuring that Mr Boreh was not able to leave Dubai.*
64. One of the other attendees had said there would have to be a re-trial and the Respondent is recorded as saying:- '*What we can do is amend our extradition request to say that the judgment is good, but we are seeking his return for a retrial. That then will get rid of any issues with fairness over his trial.'*
65. It follows that at the time of saying this, (in the judgment of Flaux J) the Respondent knew full well that the judgment in the criminal proceedings against Boreh was not good.
66. The floated theory that there might have been an earlier terrorist attack on 3rd March was not tenable as the associate Ms Kahn had discovered that the other 'People Palace Attack was on 12th April (and not therefore on the 3rd March.)
67. It was the view of the SDT, Linden J in the appeal hearing and Flaux J that at the time of swearing the 3rd Affidavit, the Respondent must have known (and did know) that the evidence in relation to the terrorist aspect was very substantially reduced in cogency. And yet, not a word of this change in position was set out in that affidavit.
68. The affidavit of 21st May 2013 from the Defendant's solicitor (Nicola Boutlon of Byrne & Partners) set out their case that the terrorist allegation was politically motivated as the Defendant (Boreh) was seen as a rival to the President of Djibouti.
69. The Respondent's 3rd affidavit (the subject of this charge) attested to the accuracy of the first two affidavits but does not alert the court or the Defendants to the changed position in relation to the error of the dates. An earlier affidavit had addressed the criminal allegation but the 3rd Affidavit makes no reference to the substantially weakened position in relation to Boreh's conviction.
70. We will draw together our conclusions in a later paragraph, but we have heard no evidence or seen anything new which casts doubt or inaccuracy on the finding of the SDT

that the Respondent knew full well of the problems in relation to the conviction but that he chose not to disclose this vital information to the Defendants or to the court.

71. It seems to us that this inference could easily be drawn from the evidence.

The Second Charge: SDT's 1.2 Misleading Court on Freezing Application

10th September/11th September 2013

The Allegation:

72. *During the hearing of the freezing application, the Respondent allowed submissions to be made to the Court by Leading Counsel acting for Client A which were known by the Respondent to be misleading.*

Context:

73. The Defendant was seeking to resist the freezing order. Leading Counsel for applicant (Republic of Djibouti) did not rely on Mr. Boreh's conviction as a ground for concluding that there was a risk of dissipation but did include passages seeking to rebut the defence suggestion that Mr Boreh was the victim of political motivation by the Republic of Djibouti claimants and had been treated unjustly.
74. On behalf of Boreh, it was argued by his leading counsel, Mr Butcher QC that the criminal conviction was unreliable although at that point the defence camp were not aware of the dating error.
75. There were various exchanges between the court and Leading Counsel for both parties in which reference was made to the extradition documents including the transcripts of the phone calls and the judgment of the Djibouti Court of Appeal and detailed submissions were made as to the unreliability or otherwise of the conviction of Mr Boreh.
76. Leading Counsel for Djibouti took the court to the wrongly dated transcripts of the calls and made detailed submissions arguing that they represented reliable evidence to support the conviction for terrorism and he was scornful of any suggestion to the contrary.
77. This whole discussion proceeded on basis that the dates in the exhibited document was the correct date of 5th March in respect of the Nougaprix attack. But whilst this was all going on, the Respondent made no attempt to make the point that the conviction was tarnished by the serious mistake in relation to the date. He said nothing to that effect.

78. We understand the view taken by the SDT that the Respondent (despite his assertions to the contrary) must have realised that the issue of the conviction was being regarded as very relevant by the court.

79. In the course of the hearing the judge, Mr Justice Flaux said:-

'I don't have to decide today whether Mr Boreh has participated in terrorist acts. All you're saying is that you at least have an arguable case that part of your case against Mr Boreh is that he has participated in terrorist acts.'

80. The Respondent's Leading Counsel then replied:-

My Lord. I go further than that. I say its simply outrageous for the defendant to maintain a position which of course suits him and he articulates this through those he has instructed that somehow the Djiboutian government is pursuing a vendetta against him which is reflect in trumped up charges.

81. In the extempore judgment Flaux J relied upon four matters and one of them was the terrorist attack saying:-

'It seems to me that there is on the basis of the telephone transcript of conversation between Mr Boreh and the Abdillahi brothers, an arguable case that the defendant was involved in and directing terrorist acts in Djibouti. Whilst it is undoubtedly right that somebody who has acted as a terrorist would not necessarily be somebody who would dissipate his assets, in view of all the other evidence, it does seem to me the court is entitled to take a common sense view and to take the view that somebody who is at least arguably engaged in terrorism is well able and likely to divert his assets to make himself judgment proof. So it does seem to me that there is a real risk of dissipation here.'

82. The Respondent understandably made a written note of the extempore judgment and accordingly he must have realised that the judge had placed weight upon the criminal aspect arising from the transcripts of the phone conversations. The Respondent instructed his associate (Ms Kahn) to include in a draft letter to Interpol a reference to the comments made by the judge in support of there being a good arguable case that Mr Boreh was involved in terrorism. In addition the Respondent asked Ms Kahn to highlight a number of passages from the transcript of the hearing which included discussion in relation to the terrorist allegation. There was no mention to Ms Kahn or anyone else that the whole premise of this terrorism fear is based on a fallacy.

83. The Respondent has explained that he was not paying attention throughout the hearing as he was distracted by other work that he was doing on his laptop. He had not sought to correct Leading Counsel or the misapprehension under which the court was labouring as he was focussed on other matters.

84. In the March 2015 judgment Flaux J at [85] said:

'this issue of the terrorism conviction allegedly being trumped up was not being refuted by (Leading Counsel for the Republic) as part of some irrelevant side-show. He was relying upon it to demolish comprehensively Mr Boreh's case that the actions against him including the Commercial Court proceedings, were politically motivated. '

85. Flaux J in March 2015 judgment observed that:-

'It is difficult to see how this position of righteous indignation could have been maintained, at least as regards the terrorism conviction, if that conviction was unsafe and the evidence on which it had been based was unreliable, which (the Respondent) knew, even though Leading Counsel for the Republic did not.'

86. The judge found that anyone listening to the submissions must have appreciated that the phone conversations being referred to were on the basis of the 5th March 2009 Nougaprix supermarket attack. Flaux J concluded that the Respondent *'was well aware at the hearing of the implications of the discussions taking place'* and that Respondent '*did deliberately mislead the court at this hearing and there is cogent evidence to that effect.*

87. He set out his reasoning for arriving at this conclusion and it included the following points:

[a] The issue of the misdating of the transcripts had arisen less than 3 weeks before the hearing. The Respondent had recognised it to be a 'massive issue' and it was inconceivable that he would not be acutely aware that court was working on the wrong basis as to dates. In the judge's view the Respondent has adopted a strategy of not revealing to any court or outside agency such as interpol the error in dates but rather adopted an approach of (as he had said) of 'fudging' the error of the date.

[b] It was not tenable that the Respondent thought he had a case on the basis of a separate incident occurring on 3rd March because by the date of this court hearing, there was no evidence of any grenade attack on 3rd March.

[c] Even if the Respondent still believed that Mr Boreh had a case to answer, the proper course would be to have ensured that the Dubai court dealing with the extradition knew of the problem. But the Respondent did not want to do this because his clients were very keen that this should not be done.

[d] The complaint regarding the correspondence is a separate point but Flaux J found that the attitude taken by the Respondent in later correspondence with the Defendant's solicitors, was supportive of the conclusions that he reached as to the deliberate tactic of misleading the court. In the judge's words:
'He treated their (solicitors for Boreh) perfectly reasonable letter and subsequent correspondence with disdain and then engaged in a course of thoroughly evasive and positively misleading conduct, up to and including the hearing of the 13th November.'

The Third Charge: SDT's 1.3 Misleading Correspondence Charges 3 and 4.

The Complaint

On or about 7th November 2014, sent or caused to allow to be sent written correspondence to Byrne and Partners that he knew to be misleading.

Context:

88. We set out the primary dates leading up to 7th November and do so in a semi note form.

4th September 2014

89. Boreh's solicitors, Byrne & Partners question the misdated transcripts and invite clarification from the Respondent as to when the error had been discovered and in particular what was known by whom at the time of the application for the freezing order.
90. The Respondent asked his associate Ms Kahn to investigate the matter. She tells him that it is certain that the phone conversations were on the 4th March. He asks her how the client could have got the date wrong and Ms Kahn replies that she did not think 'we ever developed on the date discrepancy' 'it somehow would have been shooting ourselves in the foot'.
91. The Respondent says: 'we did all discuss it. It was a massive issue.'

14th September 2014

92. The Respondent submits his draft response to Leading Counsel before sending it to Byrne & Partners, (Boreh's solicitors).
93. Leading Counsel responds by saying 'what we can say about the dates apart from 'yes they are significant'

18th September 2014

94. The Respondent's firm write to Byrne accepting that the recorded conversation took place on 4th March (correct date) but asserted that the court was not misled.

30th September 2014

95. Byrne reply asking how can it be said that the court was not misled and ask the Respondent:
96. 'to confirm, as a matter of urgency and in clear terms, whether you, your client or your counsel were aware of the dating error (i) at the time when the extradition request was drafted or (ii) at the time of the (September) hearing before Mr Justice Flaux.
97. They also urged the Respondent to consider taking appropriate steps to set the record straight in the English proceedings and proposed a joint letter to Flaux J to retract the part of his judgment where he said there was an arguable case that Boreh had been involved in terrorism.

1st October 2014

98. Leading Counsel suggests a response saying not aware of the dating issue.
99. The Respondent replies saying that that they did not know about the date issue but that he took the view that it was an error but not one relied on

14th October 2014

100. The Respondent writes to Mr. Boreh's solicitors arguing that the judgment of the Djibouti court did not proceed on a 'false basis' as there had been 'significant disturbances in Harbi Square on 3 March' and asserting that with the correct date of 4th March the narrative makes 'more sense'.

3rd November 2014

101. Byrne to the Respondent making the point that this was not the basis put before the judge. You have not answered our question as in 30th September letter.

4th November 2014

102. Byrne application for an affidavit in relation to the dating error.

5th November 2014

103. The Respondent replies: Your queries 'have been fully and properly addressed'.

6th November 2014

104. The Respondent to Leading Counsel: nothing to correct in my affidavit; only question was how to address the fact that you did not correct judge's 'obvious misunderstandings'.
105. The Respondent went on to say:

'I can't remember it happening but obviously it did and I guess we say that you were unaware of the error and we did not notice it at the time…. We can't concede this one even if we wanted to.'

106. Leading Counsel replies:

I have no recollection of the date issue. ...the way forward was to send a letter which made clear that it was an error but that it was not material as the evidence implicated Boreh… there was no attempt to mislead.

6th November 2014

107. Separate email Leading Counsel to Junior Counsel saying that the terrorism issue was becoming much bigger because the firm were 'ducking it'.
108. That Responded had repeated that he mentioned the date issue before the hearing, that unfortunately he could not recall, so it was possible that Respondent did tell him but he would hope he would have appreciated its potential for problem immediately.

7th November 2014

109. Leading Counsel sends to Respondent a draft response saying that it was only from the Byrne's letter that they understood the dating issue.
110. The Respondent responds to the silk saying:

We would be 'on thin ice' if they said they didn't know about the dating issue until the letter of 4/9/14 'remember, they know we've been to see Interpol lots of times.

111. The Respondent suggested that it would be 'better to say we were not alive to the distinction at the hearing which is true.
112. Leading Counsel agrees with that approach.
113. It is with that background that we come to the final response the basis of this 1.3 charge.

The Final 7th November 2014 Response:

114. The Respondent amends the draft and says:
'*Neither Leading Counsel nor Mr Peter Gray were alive to the issue of 4/5 March dates at the September hearing.' D265-D268*
115. In evidence before Flaux J, the Respondent denied that the letter was *'straight dishonesty'* but accepted that it was *'acceptably evasive'.* The judge found the expression *'acceptably evasive' as 'breath-taking'.* He regarded the letter as *'clearly dishonest and it was designed to deceive Byrne and Partners into thinking that the Respondent had not been aware of the dating error at the September 2013 hearing.* Whereas the judge had found that he was very much aware of the error but chose not to mention it.
116. On the 9th November 2014 Byrne accepted the response saying:
'you have now told us that Mr Gray and Leading Counsel was not aware of the misdating and we accept this.'
117. They then go on to ask about other lawyers in the firm.

Charge Not Proved Concerning Internal Correspondence: Respondent to Hindley.

SDT Allegation 1.4

118. On 10th November 2014 Mark Hindley (Senior associate at the London Office of the firm) convened a conference call with silk and members of the Djibouti team which the R attended and there then followed an exchange of correspondence between the Respondent and Mr Hindley .
119. This was viewed by Flaux J as 'disgraceful' exchanges attempting to deceive Handley into believing that the Respondent did not know of the error.
120. That said, the SDT rejected this charge.

Final Matter:

SDT's 1.5 Misleading 4th Affidavit of 11th November 2014

The Complaint:

On or about 11th November 2014 swore an affidavit in litigation before the High Court which was known by the Respondent to be misleading. [In particular 38,39 and 40 misleading]

121. This affidavit prepared by the Respondent to deal with the queries raised by the Defendant's solicitors was regarded by the Respondent as 'unnecessary and diversionary'.
122. It was (the Respondent stated) 'to clarify certain matters raised by Byrne in an exchange of correspondence and that he was doing so in order that the court would be 'fully appraised of all facts and matters underpinning the serious allegations made in the application by Byrne.'
123. The charge is based primarily upon the following three paragraphs.

Paragraph 38

124. Although *they (Byrne) no longer suggest that leading counsel or I intended to mislead the court, the defendants contend, without any evidence, that our clients must have done. As I set out below, there was no intention to mislead the court by our clients or this firm. If the court was I apologise.*

Paragraph 39

125. Byrne have asked who *knew of the dating error within the firm and when. Without any way waiving privilege, it is correct we provided advice regarding the extradition request. This was one of a number of parallel work streams. The internal work of the firm is, of course privileged. Given the enormous volume of internal email traffic and the number of lawyers involved in the overall matter, it would be a significant task to work out who exactly knew what and when. If that exercise was undertaken, I do not believe the information would have any utility in this matter. I am confident in the event no lawyer in the team intended to mislead either this or of the Dubai courts.*

Paragraph 40

126. *In short, the error was in my affidavit and I take responsibility for its contents. I repeat that the error was inadvertent and I sincerely apologise to the Court if that error caused it to be misled.*
127. Flaux J found these paragraphs 'evasive and misleading and deliberately so. He concluded that this was not an inadvertent error but rather was part of the strategy to avoid disclosing the unreliability of Boreh's conviction and the evidence on which it was based. He referred to the Respondent being 'engaged in a strategy of evasion and equivocation … designed to prevent his earlier misconduct from coming out.
128. At the hearing before Flaux J on 13th November 2014, Leading Counsel appeared but the Respondent was not present.
129. The judge emphasised that the court had been misled on granting the freezing injunction in September 2013. That the terrorist conviction against Mr Boreh was unsafe and should not be relied upon to external agencies pending the final hearing. He also thought that there was an arguable case and a legitimate suspicion that someone in the firm may have known more than the (Respondent) and appreciated that an error had been committed; for that reason he ordered an internal investigation into who knew what and when with the firm and client.
130. To complete the picture, on 2nd March 2016, Flaux J *'dismissed Djibouti's claims against Mr Boreh and found that they were part of a campaign of politically motivated persecution against Mr Boreh and those associated with him'* [Republic of Djibouti & Ors -v- Boreh & Ors [2016] EWHC 405 (Comm).
131. Given that there had been a finding of dishonesty against the Respondent, he sought to appeal that part of the decision despite the fact that he was not technically a party to the litigation.
132. In any event Gloster LJ was prepared to consider the point in principle but reached the conclusion that:

    'The judge was perfectly entitled to reach the conclusion that Mr Gray had behaved dishonestly and that as a result the freezing order should be set aside, irrespective of any need to make any findings to similar or different, effect in relation to Leading Counsel whose knowledge and state in mind had not been investigated. The judge was entitled to

conclude that the latter's state of mind had not necessarily been the same as the former's.'

Hearing Before the Solicitors Disciplinary Tribunal

133. The hearing before the SDT was lengthy. It lasted 7 days and the Respondent was both represented by senior a senior silk and chose to give detailed evidence. We have considered carefully the very lengthy judgment of the SDT. In our view this was by no means a rubber-stamping exercise of Flaux J's judgment. Each point has been clearly delineated and conclusions explained.

Hearing Before Linden J on appeal from SDT

134. The Respondent has filed many criticisms of the SDT judgment. We have considered them individually and cumulatively and many are set out in the judgment of Mr Justice Linden of 18th March 2022 when he dismissed the Respondent's appeal.

Reviewing A Number of Points Raised by the Respondent

135. Especially given the Respondent's chosen absence from our hearing, we have sought to remind ourselves of the main grievances raised by him, even though they do not seem to us to be in any sense new points.
136. The Respondent is adamant that whatever mistakes he may have made, he at no time has acted dishonestly. He continues to assert with great emphasis that he never intended to mislead anyone. Many of the matters he raises are overlapping but we have found it helpful to break them down into some of these main categories.

Treated unfairly and inconsistently when compared to counsel in the litigation 'who have been entirely absolved from any form of wrongdoing to any degree whatsoever on the same set of material acts

137. This major theme raised by the Respondent does not in our view help his case. It is not as if he is saying, 'I did things that were misleading because it was approved by counsel.' His case is that he genuinely did not at the time of the freezing order appreciate that the dates were wrong or alternatively that even if they were wrong, he did not regard them

as relevant or significant given that this was a hearing to determine the merits of a freezing application.

138. We agree with the view expressed by Flaux J that whatever leading counsel may or may not have known, understood, said or approved this did not absolve (the Respondent) of his personal responsibility not to mislead the court or to allow it to be misled.'

139. We mention in passing that the BSB have investigated counsel and dismissed any complaint.

140. In short, we cannot see any unfairness arising from the way in which the BSB (or anyone else) have treated or regarded either Leading or Junior Counsel.

The Conviction by the SDT is based on my role as instructing solicitor but it is 'of no application here' where considering my position as a member of the Bar.

141. In our view, the context of the alleged dishonesty (whether as solicitor, counsel or in some completely different context) does not really matter. The issue is whether there has been dishonesty. The fact that the alleged dishonesty arose in the context of his acting as a solicitor (rather than a barrister) is of no particular significance.

Proceedings 'should be dismissed by reason of undue delay which has been 'unnecessary and prejudicial'

142. We are sympathetic to the fact that we are now dealing with very old matters. The delay has inevitably (and sadly) exacerbated the anxiety of the Respondent and this is regrettable. We do not under-estimate the stress that he must have suffered. A great deal of the delay (but not the entirely of it) has been occasioned by the understandable request of the Respondent that he should exhaust his rights of appeal before the BSB hearing. We bear in mind that delay has an effect on memory and can have an impact on general fairness. However, in this case much of the evidence has been reduced to writing. The end result is that we find it impossible to accept the Respondent's submission that the delay prevents a fair hearing. We do not accept that it has the prejudicial effect for which he contends.

The SDT were wrong to place 'significant weight' on Flaux J's judgment.

143. We have read the judgment of the SDT bearing in mind this assertion from the Respondent. But we do not find it sustainable. We agree with the view of Mr Justice Linden who put it in this way:-

144. 'it plainly was not the case that the mind of the SDT was "poisoned" by the judgment of Flaux J or that it simply adopted his views without thinking'.

Wrongly disregarded 'almost all of the 22 reasons' advanced to suggest that R's conduct not dishonest.

145. The Respondent has not given evidence before us but his case is very well set out in the careful ruling of the SDT. In our view the SDT were entitled perfectly to take into account the entirety of the evidence and to reach their own conclusion on the issue of dishonesty. They were not bound to adopt the approach of the Respondent. They were entitled to reject the '22 reasons' and gave sufficient explanations for their determination that he had acted dishonestly.

146. We are also concerned that the Respondent may have mis-understood the effect of the criminal authority of R -v Ghosh. First, the second limb of Ghosh does not impose an entirely subjective test. The authority required the finder of fact to determine if the 'defendant' realised that ordinary people would regard his actions as dishonest. It is not a question of merely asking whether the Defendant thought that he had acted dishonestly. Secondly, even in criminal proceedings, Ghosh is no longer the appropriate authority when considering dishonesty. Thirdly, Ghosh has never been the appropriate test in relation to disciplinary proceedings where the tribunal must apply the Ivey Supreme Court criteria and ask itself two questions:

147. What was the respondent's actual state of knowledge or belief as to the facts; and

148. Was his conduct dishonest by the standards of ordinary decent people.

<u>It was wrong 'incorrect and illogical' for the SDT to refuse to agree outcome proposals</u>

149. The background to this complaint, can be put shortly. The Solicitors Regulation Authority following representations from the Respondent would have been prepared to accept a finding on the basis of recklessness rather than 'dishonesty' But when the matter was placed before a Solicitors Disciplinary Tribunal they rejected this potential concession and directed that there was a public interest in determining whether the Respondent

was dishonest rather than merely reckless. We cannot see how this can be a proper cause for complaint and in our view it was an entirely right course for the earlier tribunal to follow.

That the proceedings are unnecessary given he has no wish to hold a practising certificate

150. In our view once a person has been called to the Bar there is a public interest in ensuring that the barrister adheres to the high standards demanded of the profession. We recognise that the Respondent does not wish to hold a practising certificate and indeed would give an undertaking not to apply for one. However, we cannot see that this makes the hearing of the disciplinary tribunal unfair or improper or unnecessary. If a person holds the title 'barrister' then the public need to know that he maintains the standards of the profession.

That notwithstanding the evidential rule rE169 the Tribunal should review the evidence 'afresh'

151. We have dealt with this aspect at an earlier stage in our reasons. We do not accept that this is the proper approach although we have been at pains to seek out any new or relevant matters which can make the decisions of others 'inaccurate'.

Summary of Our Conclusions in Relation to the Charges:

152. Applying the criminal standard of proof we reach the following conclusions:-

[1] The Respondent has failed to prove that the decisions of the SDT were 'inaccurate'. Their decisions were not untrue or wrong. It would not be unfair for the findings to be relied upon by the Bar Disciplinary Tribunal.

[2] There has been no unfairness in the approach of the SDT or any other form of procedural unfairness whether by the SDT or by the BSB in the prosecution of these charges.

[3] The evidence looked at in its entirety, forces us to draw the inference that the Respondent acted in a sustained and dishonest manner as found by the SDT and as alleged by the BSB. We reject any suggestion that this was mere recklessness. The charges are all proved against the Respondent and in respect of each of them we are sure that he acted dishonestly.

153. These are the unanimous findings of this Bar Disciplinary Tribunal.

Sanction

The Sanction:

154. We now come to the separate question in relation to sanction.
155. By way of introduction, we have found it helpful to remind ourselves of the 'Purpose of Sanctions' as set out in Section 2 of the Version 6 'Sanctions Guidance' at page 4.

    Purpose of sanctions:

    [i] Protect the public and consumers of legal service

    [ii] Maintain public confidence and trust in the profession and the enforcement system
    [iii] Maintain and promote high standards of behaviour and performance at the Bar
    [iv] Act as a deterrent to the individual barrister or regulated entity, as well as the wider profession, from engaging in the misconduct subject to sanction.

Determine the appropriate applicable Misconduct Group for the proved misconduct

156. This case falls into Category 'A' which involves dishonesty.
157. The seriousness as set out in Step 2 *'indicates that, for legal professionals, proved findings of dishonesty should result in disbarment except where there are exceptional circumstances...'*
158. *'In deciding whether there are exceptional circumstances that would not result in disbarment the most important factor to be given the most weight in determining sanction is the nature and extent of the dishonesty and the degree of culpability.*
159. We need to consider in this Step 2 process the culpability and harm.
160. In relation to culpability: this was not a *fleeting or momentary act/lapse of judgment*; it was (sadly) sustained over a period of time.
161. It was both 'calculated' and 'sophisticated' and did involve 'significant planning'
162. In terms of harm, the court was seriously misled and the Defendant in the action (Mr Boreh) was greatly affected.
163. The judgment in the criminal proceedings was unsafe and his assets became the subject of the freezing order.

Indicative Sanctions Rage: Step 3

164. Both culpability and harm are in the upper range and the indicative sanction is disbarment.

Apply Aggravating Factors: Step 4

165. We need to take care to avoid any double-counting. All the relevant factors have led us to the Step 3 decision and there are no extra matters to be brought into account.

Apply Mitigating Factors: Step 4

166. We are of course focussing (necessarily) on one piece of litigation that occurred a long time ago. There is no suggestion that the Respondent has ever been involved in any previous wrong-doing and he deserves credit for that history of good conduct.
167. We have also read and absorbed the very strong impressive character references that have been adduced. There are many highly respected lawyers and others who have spoken of the Respondent's integrity. He is known as a conscientious hard worker and has an excellent reputation in all respects.
168. He has suffered very greatly from the strain of these collective proceedings and the delay has only exacerbated the anxiety.
169. His clinical psychologist Dr M, has prepared a report which we have studied. The report states 'His 4-year battle of fighting to clear his name has led him into financial, emotional, professional and personal difficulties which trigger and threaten his well-being.'
170. Although the Respondent has indicated that he does not wish to practice at the Bar, we appreciate that our findings will come as a major disappointment to him. He has clearly worked very hard in developing his career and has been very successful in undertaking work of a high and demanding standard. He has raised questions as to whether the litigation was sufficiently supported and we accept that he was working hard and under strain.

Our Conclusion on Sanction

171. We take all these matters into account and the others that he has put forward in the various document. Our duty is to impose the minimum sanction appropriate for this degree of wrong-doing.
172. Sadly, we have reached the decision that there are no exceptional factors which would warrant anything other than a disbarment.
173. In our unanimous view for this degree of sustained and deliberate dishonesty, the only possible sanction is disbarment and it follows that we order that Peter Matthew James Gray be ordered to be disbarred.

Immediate order

174. The Tribunal, under rE227.3, requested that the BSB not issue Mr Gray with a practising certificate pending any appeal.
175. The Treasurer of the Honourable Society of Lincoln's Inn is requested to take action on this report in accordance with rE239 of the Disciplinary Tribunal Regulations 2017.

Costs

176. The Tribunal ordered costs of £24,654 to be paid by Mr Gray to the BSB

Dated:

HH Martyn Zeidman KC

Chairman of the Tribunal