SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11625-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

MAJID MAHMOOD Respondent

Before:

Mr E. Nally (in the chair)
Mr P. Booth
Mr G. Fisher

Date of Hearing: 1-2 August 2017

Appearances

David Bennett, Counsel, of Hailsham Chambers, 4 Paper Buildings, Temple, London EC4Y 7EX (instructed by Alastair Willcox, Legal Adviser, Solicitors Regulation Authority) for the Applicant.

Gregory Treverton-Jones QC, of 39 Essex Chambers, 81 Chancery Lane, London WC2A 1DD (instructed by Jonathan Greensmith, Consultant Solicitor, Keystone Law) for the Respondent.

JUDGMENT

Allegation

1. The allegation against the Respondent was that:

   On 13 October 2015 and 14 February 2016, he publicly communicated anti-Semitic and/or offensive and wholly inappropriate posts from his Facebook account contrary to Principles 2[1] and 6[2] of the SRA Principles 2011.

Documents

2. The Tribunal reviewed its Memoranda dated 11 April and 3 May 2017 and the following documents submitted by the Applicant and the Respondent:

Applicant

- Application dated 29 February 2017 and Amended Statement Pursuant To Rule 5(2) Solicitors (Disciplinary Proceedings) Rules 2007 and Exhibit "SM1" dated 4 May 2017;
- Witness Statement of Gideon Falter dated 23 May 2017;
- Skeleton Argument of the Applicant dated 28 July 2017;
- Applicant's Schedule of Costs 1 March 2017 to 26 July 2017 dated 26 July 2017;
- Authorities.

Respondent

- Answer of the Respondent dated 12 June 2017;
- Statement of the Respondent dated 10 July 2017 and Exhibit "MM1";
- Skeleton Argument on behalf of the Respondent dated 26 July 2017;
- Authorities.

Correspondence

- Bundle of agreed correspondence between the parties and the Tribunal regarding the definition of "anti-Semitic".

Preliminary Matters

Definition of Anti-Semitism for the Purpose of these Proceedings

3. It was common ground between the parties that: (1) the concept of anti-Semitism for the purpose of these proceedings was undefined in the Amended Rule 5 Statement; (2) there is no agreed legal and/or statutory definition of anti-Semitism.

4. On 6 July 2017, the Applicant's Senior Legal Adviser suggested to the Respondent's solicitor that they should attempt to agree the definition of anti-Semitism for the

[1] Principle 2 is mandatory and requires solicitors to act with integrity.
[2] Principle 6 is mandatory and requires solicitors to behave in a way that maintains the trust the public places in them and in the provision of legal services.

purpose of these proceedings. Correspondence ensued with neither party feeling able to agree the definition proposed by the other.

5. On 24 July 2017, the Respondent's solicitor produced a document headed "Expert Report" ("the Report") from Professor Gus John, (stated specialist field "Education Management & Consultancy, Equality & Human Rights Legislation") dated 21 July 2017. The Report proposed an alternative definition of the term "anti-Semitic", which the Applicant was invited to agree. Absent agreement the Respondent would invite the Tribunal to adopt the definition. On 31 July 2017, the Respondent's solicitor produced a publicly available legal opinion by Hugh Tomlinson QC dated 8 March 2017 prepared for purposes other than these proceedings. The opinion was critical of the Government's decision to adopt the International Holocaust Remembrance Alliance ("IHRA") definition of anti-Semitism ("IHRA definition")[3]. The Applicant supported use of the IHRA definition in these proceedings. The Respondent preferred the definition suggested by Professor John. He indicated through his solicitor his intention to rely on Mr Tomlinson's views against the adoption by this Tribunal of the IHRA definition and in favour of the Professor John definition.

6. The Applicant made alternative proposals in its Skeleton Argument dated 28 July 2017, namely the adoption of: (1) the IHRA definition or; (2) the Oxford English Dictionary definition ("the OED" definition)[4]. The Respondent sought leave from the Tribunal to rely upon the Report, including an abridged version of Professor John's definition ("the GJ definition")[5] and the opinion of Mr Tomlinson.

7. Mr Treverton-Jones QC made submissions in support of the Respondent's application for leave to rely on the Report and the opinion (in spite of late service) and the GJ definition, summarised as follows:

- Anti-Semitism is hostility towards people because they are Jewish, as opposed to hostility towards people who happen to be Jewish (*Mr Treverton-Jones's emphasis*);
- The IHRA definition came from the website of the Campaign against Antisemitism. The organisation's Chairman is a witness for the Applicant;
- The GJ definition is simple and there could be "no possible objection" to its adoption;
- It was an unattractive prospect in terms of the costs expended by both parties for the Applicant to suggest that if the Report was admitted the Applicant would seek an adjournment of the hearing to obtain expert evidence;

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[3] IHRA definition: "Anti-Semitism is a certain perception of Jews, which may be expressed as hatred towards Jews. Rhetorical and physical manifestations of anti-Semitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities".

[4] OED definition: "hostility towards or discrimination against Jews".

[5] GJ definition: "Hostility (verbal or physical) towards or discrimination against persons who are Jewish,..., on account of their Jewish identity;..."

- The discussions about definitions arose solely as a result of the Applicant's correspondence proposing agreement of a definition. Absent the proposed definitions the Tribunal would have heard the case and developed its own definition;

- The opinion dealt specifically with the IHRA definition and would assist the Tribunal in determining the issues in the case. There was no reason why the Tribunal could not consider the document because it was publicly available and Mr Treverton-Jones could choose to adopt the contents as his own submissions.

8. Mr Bennett opposed the Respondent's application for the following reasons:

- The IHRA definition, including additional explanatory pages and examples handed up to the Tribunal, was formally adopted by the British Government;

- The definition is a matter for the Tribunal and not expert evidence, the concept simply meaning hostility towards people who are Jewish;

- The Respondent did not have leave to adduce expert evidence. The Tribunal's Memorandum dated 2 May 2017 stated at [14] that an application for a Case Management Hearing must be made if either party intended to rely upon expert evidence. The Respondent chose not to make an application;

- It was unclear whether Professor John was an expert in anti-Semitism;

- The Report strayed into matters which were not before the Tribunal (accepted by the Respondent – a redacted report would be produced);

- The discussion had progressed because the GJ definition now suggested was narrower in scope than was indicated by the Report;

- It was difficult for the Applicant to agree a definition that was contrary to more widely accepted definitions;

- The suggested definitions were not far apart;

- On 31 July, the Applicant was served with detailed expert legal opinion where there was no leave to adduce the same;

- The basis upon which the Respondent sought to rely upon the opinion and the extent to which the Tribunal could consider the same was unclear;

- If, contrary to the Applicant's submissions, the Tribunal concluded that expert evidence was required, the Applicant would apply to adjourn this hearing in order to seek its own expert evidence.

9. Mr Treverton-Jones invited the Tribunal to conduct an analysis of the three definitions to identify the differences, which he submitted to be small. The difference between the OED definition and the GJ definition was the addition of six words at the end of

the OED definition reading "on account of their Jewish identity". Anti-Semitism is hatred or hostility towards Jews because they are Jewish (*emphasis added*), not because they happen to be Jewish (*emphasis added*). The GJ definition was better than the OED definition for that reason and the Report should be admitted by the Tribunal.

The Tribunal's Decision

10. The Tribunal retired to consider its decision. Its Members had not read Professor John's Report or Mr Tomlinson's opinion.

11. The Tribunal reviewed the three definitions, including the abridged GJ definition. It was effectively agreed by the parties that the differences between the definitions was narrow. The Tribunal concurred with that agreement.

12. Applying an objective consideration to a set of facts to decide whether or not the conduct was anti-Semitic was well within the Tribunal's competence. The Tribunal was not tasked with analysing academically challenging and complex wide philosophical concepts at high level. The facts of the case required the Tribunal to analyse two specific Facebook threads posted by the Respondent at a particular point in time. There would be comprehensive documentary and oral evidence and submissions from the parties on the context in which the posts were made, the language used, and an explanation for why that language was used at that time. The Tribunal was the ultimate judge of all facts: it would determine whether the Applicant had proved beyond reasonable doubt that the language used by the Respondent was anti-Semitic.

13. The Tribunal was mindful that both the IHRA and OED definitions were already in the public domain. The GJ definition is extracted from a report prepared on instructions given on behalf of the Respondent. The Tribunal intended to give the GJ definition equal weight with the IHRA and OED definitions. This approach was fair to the Respondent without the admission of the Report. The Tribunal could not know in advance of hearing evidence and submissions which, if any, of the three definitions would prove to be most helpful; the Tribunal would therefore test the evidence against all three definitions when making its decision.

14. Expert evidence was not required in order to perform the task. The Tribunal had the benefit of eloquent and elegant submissions from Counsel, in writing and to be developed orally. Those submissions would forensically explore in context the language used by the Respondent. The Tribunal would also hear live evidence from Mr Falter, Chairman of the Campaign Against Antisemitism, and the Respondent having carefully read their respective witness statements.

15. This Tribunal was more than competent to analyse the facts of the case against each of the IHRA, the OED, and the GJ definitions, the latter in its abridged format, and that would be its approach. The Tribunal also had the ability to develop its own definition, which was an unlikely outcome but an option nevertheless. This approach met the needs of both parties as expressed by their respective Counsel. It was the fairest and most proportionate way forward, placing neither party at a disadvantage.

16. Moving on to Mr Tomlinson's opinion upon which the Respondent also sought to rely. The Tribunal had been told that the opinion concerned the IHRA definition proposed by the Applicant. In the light of the Tribunal's conclusion that it would be informed in its decision-making by all three definitions and (if applicable) its own definition, it was unnecessary for the Tribunal to admit the opinion in evidence. The opinion was no more than a submission from unrelated Counsel on an unrelated matter. Mr Treverton-Jones rightly identified that he could adopt the submissions as his own and no doubt he would do so if he considered it to be appropriate. This submission confirmed that the opinion was nothing more than an expression of the law by a legally qualified individual which could be countered by an expression of the law by another similarly qualified individual. It added nothing extra to the submissions from Counsel on the facts of this case.

17. The Respondent's application for leave to adduce Professor John's Report and Mr Tomlinson's opinion was therefore rejected.

Factual Background

18. The Respondent was born in September 1976. He was admitted as a Solicitor in England and Wales on 15 April 2005. The Respondent's name remains on the Roll of Solicitors and he holds a Practising Certificate free from conditions.

19. At the relevant time the Respondent practised as a Partner at City Law Chambers ("the Firm"). The Respondent currently practises at Liberty Law Solicitors Ltd.

October 2015 Post

20. On 16 October 2015 the Applicant received an email report from a member of the public M regarding a Facebook post which the Respondent had made on 13 October 2015, stating:

> "Somebody needs to shoot all the Israeli Zionists dead then send their bodies to America as a present for Obama and his Zionist pals"

21. M replied on Facebook to the post stating:

> "Does the Solicitors Regulation Authority share your views I wonder. Is this kind of incitement to racial hatred compatible with a continued professional practice within the English legal system? Let's find out. Be seeing you Majid Mahmood.
>
> Like·Reply·2 hrs"

22. The Respondent replied to M:

> "Yeah feel free to report me. Don't see you saying much about the atrocities committed by the Zionist's [sic]. It's freedom of speech. But Funny (sic) how after having views [sic] the killing of innocent children and the systematic assassination of people by a nation that is fuelled by greed all you can do is

threaten me that you would report me to the SRA [sic]. Don't read my comments if you don't like them.

Like·Reply·1 hr"[6]

23. After the Respondent's post at [22] above, and after sending an email to the Respondent and his Firm, M reported the exchange to the Solicitors Regulation Authority ("SRA"), the Respondent's regulator and the Applicant in these proceedings.

February 2016 Post

24. On 6 March 2016, the SRA received a report from another member of the public Z via Mr Gideon Falter, Chairman of the Campaign Against Antisemitism. The report referred to a post by the Respondent on 14 February 2016, which stated:

"Majid Mahmood
The [sic] ain't gods [sic] chosen people they're Satans [sic] love child's and it's a sham e [sic] the plane carrying them didn't blow up mid air [sic]
53 minutes ago Edited·Like·[thumbs-up symbol]
Reply"

25. The Respondent's comment appeared with his name in hyperlink enabling the reader to navigate to a page showing his name, job title as "Senior Solicitor", and displaying the Firm's name. The heading of the Facebook page on which the post appeared was "Israel is a War Criminal's post"[7]

26. Another post by the Respondent stated:

"Majid Mahmood
Condoning....Read the words, but as a typical Zionist Israeli tear [sic] you can try and twist the words. Mad don't threaten me go and fuck yourself.
4 minutes ago·Like·Reply"

27. The Applicant requested the Respondent's explanation by letter dated 8 April 2016 in which he was warned of the prospect of disciplinary proceedings. It was not suggested in that letter that the posts were anti-Semitic. It was stated that the content of the messages posted was of a derogatory nature to certain faith groups, "specifically Judaism", and that the messages were "offensive and wholly inappropriate". The Respondent was at the same time served with a Section 44B Production Notice requiring him to provide copies of "all communications, posts and messages which appeared on your Facebook account from 1 January 2015 to 8 April 2016".

28. On 29 April 2016, the Respondent's then legal representative wrote to the Applicant accepting that the content of the posts was personally drafted and communicated by the Respondent. The letter continued:

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[6] The Respondent's posts are reproduced once in this Judgment as they appeared in the source evidence before the Tribunal. For clarity and ease of reading typing and grammatical errors are removed in subsequent reproductions.

[7] Referred to throughout this Judgment as the Israel is a War Criminal page.

> "Following advice from my firm and with mature reflection my client unequivocally accepts the posts referred to in your letter under reply were wholly inappropriate. He accepts he should not have posted in such terms and regrets doing so."

The letter included an explanation and an unreserved apology to the Applicant.

29. In his Answer dated 12 June 2017 the Respondent admitted that the comments were "offensive and wholly inappropriate". He denied that they were anti-Semitic, the allegation having been amended by the Applicant at the direction of a different Division of the Tribunal on 2 May 2017 (Memorandum dated 3 May 2017) to add those words as an alternative "and/or" to the allegation as originally pleaded. In the Skeleton Argument filed on his behalf on 26 July 2017 the Respondent also admitted that the comments breached Principle 6. He continued to deny that the comments were anti-Semitic and that they breached Principle 2.

30. The Respondent's legal representative also stated on 29 April 2016 that the Respondent was unable to comply with the Section 44B Notice as he had closed his Facebook account in or about February 2016. It was said that the Respondent was investigating how he could reopen the accounts so as to access the posts, and was making every effort to comply. It was stressed that "efforts will be made to retrieve the deleted posts" and that there was "not much more to the thread". The terms of the Notice were said to be "too wide", and its terms "onerous", "disproportionate", and "in breach of the Principles of Good Regulation". It was asserted that the Notice should seek only those posts within the thread forming the subject matter of the investigation. It was alleged that the Applicant had closed the case but had reopened the same without proper reference to the SRA Reconsideration Policy. An SRA Supervisor answered that assertion by letter dated 11 May 2016. He referred to having reviewed the matter and having noted that the Respondent had discussed the Facebook posts with a Regulatory Supervisor on 18 March 2016. The case remained open at this stage and no formal decision had been reached. In accordance with standard process the case was reviewed by a Manager. No decision had been made to close the file and therefore the Reconsideration Policy did not apply.

31. The Respondent replied by letter to which the SRA replied on 1 August 2016, expressing his dissatisfaction that the investigation was to continue and querying the fairness of the process. He expressed the view that the investigation was being driven by others and questioned the motives behind it. He queried the jurisdiction of the SRA to carry out the investigation as the Facebook posts were made outside practice and in his personal capacity. He expressed views concerning the transfer of the case from one employee to another within the SRA. The Respondent confirmed the deletion of his Facebook account and that he was therefore unable to provide the documents requested under the Section 44 B Notice.

32. Neither of the posts occurred in the course of the Respondent's practice as a solicitor. They were subject to Rule 5.1 of the SRA Principles.[8]

[8] Rule 5.1 of the SRA Principles 2011 provides that in relation to activities which fall outside practice, whether undertaken as a lawyer or in some other business or private capacity, Principles 2 and 6 apply to a solicitor.

33. The Respondent's conduct was referred to the Solicitors Disciplinary Tribunal ("the SDT") by an Authorised Officer of the Applicant on 29 September 2016. The proceedings were received by the SDT from the SRA on 10 March 2017.

Witnesses

34. Gideon Falter for the Applicant

34.1 Mr Falter gave evidence on oath. His statement dated 23 May 2017 with exhibits "GF1" and "GF2" was admitted in evidence and confirmed as being true to the best of his knowledge and belief.

34.2 Material aspects of Mr Falter's evidence considered by the Tribunal in reaching its decision are summarised as follows:

- The Campaign Against Antisemitism ("the Campaign") of which Mr Falter is the Chairman carries out two strands of work: (1) to counter anti-Semitism through education and outreach (2) to ensure that the laws against anti-Semitism in the UK are properly enforced against anti-Semites by a variety of bodies including regulators where the person concerned is a member of a regulated professional body.

- Mr Falter is a volunteer for the Campaign which is a registered charity funded by donations. His is a fairly intrusive post, taking up most evenings and weekends on top of his job.

- The Campaign provides a means by which the public can make contact to report perceived anti-Semitism, including comments made on social media. On 14 February 2016, a message of complaint from a member of the public ("Z") was received late in the evening via Facebook. Mr Falter happened to be on Facebook at the time and saw the message come in. Z sent the Campaign screenshots (images which Z had captured apparently on a mobile telephone) of posts by the Respondent. The screenshot containing the snippet of the Respondent's profile could have been created by Z combining two screenshots. The screenshots exhibited to Mr Falter's witness statement were in the format received by the Campaign from Z i.e. the Campaign had not produced the composite screenshot.

- On receipt of a message via Facebook, those in the Campaign with responsibility for reviewing that page receive an alert. The first screenshot came from the Israel is a War Criminal page (for the wording of the posts see [24] and [26] above). The page hosted an article about Jewish refugees being airlifted from a troubled country to Israel. The Respondent's comment appeared underneath the article.

- The first screenshot included a snippet of the Respondent's profile below the comment which stated that he was a Senior Solicitor at a law firm. Mr Falter believed that this snippet may have been obtained by Z "tapping and holding" on the Respondent's name above his comment on Z's mobile telephone. Clicking through the hyperlink attached to, in this instance, the Respondent's name enabled details of his Facebook profile to be accessed. When someone comments

on Facebook, their name and the time at which they made the comment is published. The profile enables the person to enter details about themselves, post photographs, and receive posts from Facebook Friends. On his profile the Respondent had written that he was a solicitor and the name of the firm at which he worked. Mr Falter also "Googled" the Respondent and found his details on LinkedIn which confirmed his profession.

- Z had remonstrated with the Respondent online and he had responded in what Mr Falter described as a "fairly abusive manner". The second screenshot provided by Z was of the Respondent's response.

- Mr Falter contacted Z via Facebook to ask where the information had come from. Z directed Mr Falter to the Israel is a War Criminal page on Facebook, where using his desktop computer Mr Falter found the article and the Respondent's comment beneath it.

- It was very clear from the headline and the content of the article that the refugees were Jewish and were being airlifted to Israel. On Facebook if one posted a link to an item there would be a pop-up with what would normally be the main featured image from the article immediately beneath the headline, the source of the article, and so forth. Invitation to react to the article appeared underneath by liking it, commenting on it, or by sharing it. The Respondent had commented on the article.

- Mr Falter saw the same comments as shown on the screenshots exhibited to his witness statement. He clicked on the Respondent's name adjacent to the comments and accessed his Facebook profile.

- Normally the Campaign's online monitoring unit would be requested by Mr Falter (in this case) to take copies of the posts. Someone would go through the inbox using an archiving tool which can access any public website or page, including Facebook pages. Where the post is publicly available to Facebook users, the archiving tool takes an exact reproduction, not just of the screenshot, but also of the code behind the web page. Anyone with a Facebook account could see the pages. The pages had been deleted by the time the online monitoring unit tried to access them. The deletions could have been made by Facebook, the Respondent, or the person who ran the web page.

- Mr Falter expanded on background to the article. Since the Holocaust, Jewish people had found themselves in various unfortunate circumstances. Israel will accept Jewish refugees from, for example Yemen and Ethiopia, without visa requirements. The refugees tended to live in a simple way in accordance with the lifestyle in the countries concerned. They were taken to Israel, by aeroplane (perhaps for the first time), where they would be granted citizenship. These refugees tended not to possess the skills and paperwork that would allow them access to other countries. Israel was often the only place to which they could go.

- Mr Falter reported the matter to the SRA. He did this because the comments were not just what he considered to be racially abusive. They seemed to him to condone terrorism and were "pretty extreme". The idea that Jews consider

themselves to be God's chosen people comes from a particular translation of the Hebrew Bible which tells that God chose the Jewish people in order to impose certain laws on them. It has become a very common phrase used to refer to Jewish people pejoratively. Mr Falter's interpretation of the Respondent's words was that he was clearly saying that he considers Jews in a very derogatory sense. Looked at generously the Respondent was referring to an aviation disaster or a type of terrorist attack targeting aircraft. Mr Falter considered this to be "incontrovertibly anti-Semitic" because it was clear from content of the article on which the Respondent was commenting and the reference to "God's chosen people" that he was talking about Jews. Sometimes people conflate Jews and Israelis; the people in the article were not Israelis but Jews from a troubled country. The Respondent calls these people "Satan's love child". Mr Falter was not sure what the Respondent meant by that comment but it was clear that it was meant to be a very derogatory comment about Jews in general or the specific Jews in the article. The comment about the plane blowing up in mid-air was clear articulation of his hope that, either because they are Jews or are these particular Jews, they should all die.

- Mr Falter agreed with Mr Treverton-Jones that in order to access the Respondent's profile the reader would have to click through to another page by some means. When looking at the post on the Israel is a War Criminal page the reader would not know instantaneously that the Respondent was a solicitor.

- Mr Falter did not recall watching a video contrasting Judaism with Zionism suggesting that they are separate and distinct as part of the article to which he had referred or at all, as suggested by Mr Treverton-Jones. Mr Falter did not agree with Mr Treverton-Jones that there was reference in the video to Israelis caught up in the conflict in Palestine returning to Israel. Mr Falter read an article about Jewish refugees on the page, and in any event Mr Treverton-Jones's suggestion did not make sense. Israelis caught up in the conflict in Palestine would probably already be on the Israeli side of the border.

- There was a long-standing and sad conflict between Israel and Palestinian Arabs located in the Gaza Strip and the West Bank, both under Palestinian authorities. When fighting takes place in those areas Israelis will be directly impacted, but geographically there was no sense in saying that Israelis would be airlifted. Israelis do not live in Gaza, having been evacuated in 2005. Israelis do live in the West Bank but there are no Israeli airports there. Mr Falter was not aware of any functioning Palestinian airports. It did not make any sense that Israelis caught up in the conflict would be in a Palestinian area in the first place. It did not make any sense that in order to evacuate them they were driven to an airport and flown to Israel. The area concerned is very narrow and the flight would take only 2 or 3 minutes.

- Mr Falter clearly recalled that the article (not a video) was not about Israelis being airlifted from Palestinian territory back into Israeli territory. It was clearly about Jewish refugees, not Israelis, being airlifted to Israel so that they could escape conflict which had nothing to do with the Israeli-Palestinian conflict.

- In answer to a question from the Tribunal, Mr Falter agreed that the Israel is a War Criminal page appeared to be unsupportive to Israel by reference to its headline. In clarifying why the article about Jewish refugees appeared on the page he explained that, in this context, people drew attention to the fact that Jews who have never lived in Israel can come from wherever in the world and become Israeli citizens straightaway. This was contrasted in a critical manner with the dispossession of Palestinian Arabs in that conflict.

- Biblically speaking, the phrase "God's chosen people" refers to descendants of Abraham for the imposition of laws to be kept by them (in effect "choosing" those people for a particular purpose). The phrase applies distinctly to Jews as in people who adhere to the religion and people who belong to the religious group. Zionism was developed in the later 1800s. Jews living in particularly difficult circumstances in Eastern Europe discussed the idea of resurrecting the biblical Jewish homeland. The words "chosen people" do not apply to Zionists.

- The Campaign is proud that it includes people of all faiths and none. The majority of the Campaign's volunteers are Jewish, but a number are non-Jewish. Anti-Semitism is considered to be a threat to all in society and not just a Jewish problem.

35. The Respondent

35.1 The Respondent gave evidence on oath. His statement dated 10 July 2017 with exhibit "MM1" was admitted in evidence and confirmed as being true to the best of his knowledge and belief.

35.2 Material aspects of the Respondent's evidence considered by the Tribunal in reaching its decision are summarised as follows:

- The Respondent is not anti-Semitic and has Jewish friends. He referred in particular to two named barristers who he had known for many years both professionally and as friends and with whom he socialises. One barrister had visited the Respondent's home with his mother. The Respondent has friends and family members from all religions. The Respondent has never declined to act for Jewish clients and has in fact acted for Jewish clients. He has instructed "hundreds and thousands" of barristers of all races and religions during his career.

- His October 2015 post was triggered in response to a video he had watched or an article he had read (he was not now sure which) which included gruesome footage of the indiscriminate killing of women and children by Israeli defence forces. Within the video/article were comments from people generalising in relation to Jews. His reference to "all the Israeli Zionists" was that it was not an issue about Judaism but about Zionism. There was a clear distinction between the two. To be a Zionist one did not have to be Jewish or Israeli but could be of any faith or religion or none. Zionism was about the betterment of a particular group of individuals and not about any particular race or religion.

- His February 2016 post was triggered by a video on Facebook on which other people had commented. He commented in relation to a comment by someone who was trying to conflate Jews with atrocities and Judaism and Zionism as the same thing. The Respondent replied in the negative, saying that Zionists were not God's chosen people and that there was a difference between Judaism and Zionism. "God's chosen people" is a term generically and predominantly used by people of the Jewish faith but by other faiths as well. Lately people of Zionist political thinking have used the term to describe themselves to conflate the issues of Zionism and Judaism. The reference to "they" in the February 2016 post is to "Zionists"; Zionists are not God's chosen people. His comment about the plane carrying them blowing up in mid-air was triggered by his viewing of the video of the indiscriminate bombing of women and children. "Them" were the soldiers being flown into occupied Gaza and the West Bank. His second February 2016 post (which he did not exactly remember) was prompted by the abuse, some of it racist, that he had received following his first February 2016 post. He did not seek to go behind his admissions. His post was "a stupid thing to do at that time". It was a "heat of the moment thing". The post "flowed on" from the abuse that he had received.

- At the time it did not cross the Respondent's mind that as a solicitor he should not be writing these comments. He had never really been "tech. savvy". This was the only time that he had had a Facebook account, which he set up solely to take part in a school reunion. He described how the system of Facebook friends works and how Friends' posts appeared on his page. He only read sufficiently far into Facebook to set it up. The Respondent deleted his Facebook account soon after his second February 2016 post, because he felt that "the whole thing was being childish and was not something that [he] was really into. [He] did not really want to be drawn into arguments with people".

- The Respondent agreed with Mr Bennett that he did not need to be "tech. savvy" to set up a Facebook account; it was relatively easy to set up a profile after inputting details and answering a few questions in response to prompts. The Respondent included his name and chose to upload several photographs a couple of days later. He chose to include his employment details, describing himself as a Senior Solicitor and including the name of his firm. He was prompted for the postcode of the Firm which brought up the names of the businesses at that postcode and he clicked on his business.

- The Respondent looked at Facebook once or twice a day when he first set up the account, prompted by notifications which he could choose to look at or ignore. If someone who was a Facebook friend posted on Facebook he received a notification. By October 2015 he had a few Facebook friends and information from them and friends of friends was coming into his Facebook News Feed. The information might be articles, videos, photographs, "all sorts of random stuff, could be anything". To the best of the Respondent's recollection, which he said was limited, the notification appeared as a message, with a title and a couple of lines into which to click to read the rest of the message. When scrolling down the page on Facebook, the reader did not necessarily have to click into something to see it. When scrolling, if the reader stopped at something the video on the screen

would continue playing until the reader scrolled away. It was not necessary to click on the video to see it on screen.

- By the time the allegations were put to the Respondent by the SRA his memory of triggers for the comments had faded. He had deleted his Facebook account in February 2016 and was unable to go back to check what had been on each page. The February 2016 posts were on the Israel is a War Criminal page. He believed that it was more than likely that his October 2015 comments were made on the same page. In October 2015, there was an offensive in Gaza and "there was a lot of this stuff [Israel is a War Criminal] coming up on Facebook". He did not necessarily have an interest in the topic. "When something keeps appearing again and again curiosity gets the better of you and I started to read some of this stuff … some videos, some articles, some comments. It was a mixture". However, this was not the only information he read on Facebook. He agreed that he could stop a video playing at any time and that comment was optional and did not have to be immediate. In October 2015, he had not thought about whether any comments he made would be available publicly or the implications of that.

- When the Respondent made a comment on Facebook he did not necessarily know that his photograph would appear alongside, because when making his comments his picture did not appear. The Respondent did not know that other people would be able to see his photograph because he was not looking at his comment from their perspective. He accepted that he could see other people's photographs. The Respondent knew that people visiting his profile pages could see his profession and the name of the Firm but he did not think about that at the time.

- With hindsight he had concluded that he had been "really stupid" and should not have done what he had done. Even before the SRA contacted the Respondent he had already deleted "everything". He had reflected and decided that "this is not me". He described people as getting "dragged into things" and the situation as "ridiculous" and "childish".

- The Respondent accepted that his October 2015 posts showed hostility towards Zionists. He did not agree that "Israeli Zionists" is a movement of Jews: there were Arabs in Israel who were part of the Zionist movement. His comment about shooting all the Israeli Zionists dead was prompted by the video of the indiscriminate killing of women and children by Israeli soldiers. At that time the Respondent was conducting a case relating to a child killing within a family that had a "profound effect" on him. He was going through "a conflicting time in [his] life". Having seen a horrific video he "essentially vented [his] anger in that direction". The Respondent did not justify his posts; what he said was wrong and stupid which was why he deleted the Facebook account long before the SRA became involved. To say that he was racist or anti-Semitic was "wholly wrong". The words "Israeli soldiers" were used in the thread and his comment was directed at Israeli soldiers and confined to Zionists. The Respondent did not have any issue with the state of Israel. His barrister friends would not be his friends if he was anti-Israel or anti-Semitic. His October 2015 comment was about aggressive tactics and hostility towards Israeli Zionists. It did not occur to the Respondent at the time that the words he was using might be considered an incitement to racial hatred.

- Without having given the point any consideration until now, the Respondent assumed that the reference to "2 hrs" under the response from M related to the time taken to reply to the Respondent's post. The Respondent denied that by that point it was clear that M thought that he was inciting racial hatred. The Respondent explained his answer by reference to M's agenda. It was possible that he replied to M's post one hour later as seemed to be indicated by the post. He did not necessarily read every word or think that deeply about M's post sufficiently to identify that M thought he was inciting racial hatred. He did not think that he "sat there and pondered about it". With hindsight when he looked at the post he did think about it and decided that it "wasn't him". He observed that "Facebook has a tendency to try to take you down a particular path" which was why he deleted his account. The Respondent explained the use of algorithms on Facebook but accepted that receiving information prompted by algorithms did not force him to make his comment which remained optional. Making comments about Zionists was not inciting racial hatred in the Respondent's view. When asked why he did not reply to M with an apology and an explanation as to what his comment was intended to say, the Respondent repeated that it was a trying time for him and that he was involved in a complex case and made some stupid comments. He agreed that reference to the Solicitors Regulation Authority was included in the comment, and that he responded with "feel free to report me". He responded to the post at a time when he was not in a mindset to apologise because of what was going on at work.

- The Respondent was cross-examined about his phrase "by a nation that is fuelled by greed". This was not an expression of hostility towards Jewish people as suggested. The first line of the post referred to Zionists. The phrase was therefore about Zionists and not the Jewish people. This was not a manifestation of anti-Semitism; Zionism is not a race. The Respondent's comments were directly in relation to Israeli foreign policy in Palestine and Israeli military operations.

- After October 2015, the Respondent continued to use Facebook sporadically. He did not recall receiving other notifications about this post. Other people may have commented on the page but he ignored notifications. M contacted the Respondent and his Firm directly and posted on Twitter. The Respondent did not feel that he should delete his posts. This was not his thread to delete. He was not on Facebook every day and often not for weeks. By that stage one individual had commented. With hindsight he possibly could have deleted his October 2015 comments.

- The Respondent stood by the evidence in his witness statement that he closed his Facebook account in or around February 2016 before he was made aware that the comments might be construed so as to negatively affect his professional standing. He had not heard from the SRA by the time he closed his account. He had had "absolutely no contact from anyone else". The comment from M asked whether the SRA shared his views, not that M was reporting the Respondent. He did not construe M's comment as negatively affecting his professional standing.

- Mr Bennett asked the Respondent what had taken him back on to Facebook in February 2016 following his sporadic visits in November to January. The Respondent referred to one reason as "sheer boredom" when he was sitting around with nothing to do. The Respondent believed that in February 2016 he

was commenting on a video. He disagreed with Mr Bennett that he was responding to an article about Jewish refugees being airlifted to safety from a troubled country to Israel. He explained that the post was headed Israel is a War Criminal and it would not have made any sense to put information about Jewish refugees on that thread. Mr Falter's evidence on this point was "nonsense". The Respondent had only looked at the one post on which he had commented. If this was an article on refugees the SRA should have produced the thread. The thread did not belong to the Respondent so he could not delete it.

- The content of his first post in February 2016 was "a specific reference to Zionism and how the faith of Judaism has been twisted and turned for the benefit of individuals who are not following the strict rules of Judaism". The words "they ain't God's chosen people" sought to draw a distinction between Judaism and Zionism; Zionism is not a religion. The Respondent denied that he had said Jewish people were Satan's love child. His comment said that Zionists were not God's chosen people; they were not people of the Jewish faith. His comment was not a manifestation of anti-Semitism. The people referred to as "them" arose from the video which was about Israeli soldiers being flown in to indiscriminately kill women and children as described in his witness statement.

- Mr Bennett read the contents of [16] and [18] of the Respondent's witness statement to him and suggested that the paragraphs referred to two separate videos. He put it to the Respondent that [18] related to the Jewish refugees and not Israelis who were caught in the conflict in Palestine returning to Israel. The Respondent denied this and criticised the Applicant for not having checked the thread.

- The Respondent said that he had not thought about the impact that words like this might have on the reputation of the profession. He referred to the deletion of his Facebook account. He said that "things can be twisted and looked at in any way because everyone has their own hidden agenda". On reflection he decided that he "did not need this in [his] life" and deleted his Facebook account. He accepted that his words were offensive to people, as he had done from the outset by admission in March 2016 during a conference call with the SRA Regulatory Manager which lasted about 45 minutes. He was told that the Manager was satisfied with what he had said and that that was the end of the matter. The Manager contacted the Respondent to obtain an email address to send him an email concerning the closure of the case. The email was not sent because the SRA decided to reopen the matter and reinvestigate.

- The Respondent understood the seriousness and implication of the posts that he had made. He had been living with the seriousness for the last year and a half. When asked to describe in what way the posts were offensive, the Respondent replied that they were wholly inappropriate. The language that he used was offensive to anybody reading the posts and people of a particular individual political affiliation. Long before the SRA "came knocking on [his] door" he had already concluded that it was wholly inappropriate, and that he should not be going down that route. Nobody wanted to get dragged into inappropriate unwarranted conversations with other people. He "had better things to spend [his] time on". He deleted Facebook. He described the site as being "like a devil's

advocate". He assumed that was the end until the SRA decided to reopen the matter after receiving correspondence from other parties. The Respondent referred to his decision to delete his Facebook account as "self-censorship". He denied that his posts showed a lack of integrity.

- The Chairman invited the Respondent to clarify certain aspects of his evidence. The people on the plane in the Respondent's February 2016 post were Israeli soldiers being flown in from Israel to Gaza and the West Bank to kill everyone in those particular areas. The reference to a plane was to a military plane. This was not a threat directed at refugees. The "nation fuelled by greed" in the October 2015 post was a reference to the Zionist nation. The thread on which the post appeared talked about Zion as a nation. The Respondent entered Israel is a War Criminal for no specific reason, save "probably sheer boredom". The Respondent was not particularly looking at this but at things like sports cars, sports, generally at whatever came up. The Gaza and West Bank offensives were going on at the time, the Respondent was dealing with the case about the child and he made these comments. When he reflected on it he decided that this had gone past the point of boredom and decided to get rid of everything. He referred again to Facebook being "devil's advocate".

Findings of Fact and Law

36. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

37. The Respondent admitted that both the October 2015 and the February 2016 posts were offensive and wholly inappropriate in breach of Principle 6. He denied that either post was anti-Semitic or in breach of Principle 2.

38. Applicant's Submissions

- The content of both posts was unambiguously anti-Semitic;
- Both posts indicated a preference for lethal violence and death to Jews;
- Neither post was made in the course of the Respondent's practice as a solicitor but his professional title appeared in close proximity to the Facebook page and any reader could associate the content of the post with the Respondent's professional status. At least two members of the public made that connection;
- It was clear from the words "Israeli Zionists" and a "nation fuelled by greed" that the Respondent was referring to Jews;
- The Respondent did not confine his comments to "Israeli foreign policy specific to Palestine" or "Israeli military operations" as he did in his later witness statement;

- The Respondent's direct call for violence was a clear manifestation of anti-Semitism;

- When Mr Falter witnessed on his desktop computer the Facebook content of the second report, the Respondent's comments were beneath an article about Jewish refugees being airlifted from a troubled country to Israel;

- Mr Falter's evidence was that the Respondent's comments related to Jewish refugees as the Facebook post referred to "chosen people" and that the Respondent's posts underlying the second report were anti-Semitic. The phrase "God's chosen people" was a reference to Jews;

- The words "they're Satan's love child" and "shame the plane carrying them didn't blow up mid-air" were anti-Semitic;

- By making anti-Semitic and/or offensive and wholly inappropriate Facebook posts the Respondent acted with a lack of integrity by demonstrating a lack of moral soundness, rectitude and steady adherence to an ethical code;

- Lack of integrity and dishonesty are not synonymous, contrary to the decision of Mostyn J in Malins v Solicitors Regulation Authority [2017] EWHC 835 (Admin.).

39. Respondent's Submissions

- Freedom of speech meant that an individual could say whatever they liked even if some people may disagree with it and even if some people may be offended by it provided that the individual acts within the law. This matter was reported by the SRA to the police. There had been no criminal investigation in consequence, let alone a prosecution;

- There were some expressions of opinion and means of expressing opinions which were not open to solicitors because of their position as solicitors. Solicitors must behave at all times in a way that does not compromise the trust that the public places in the profession. The Respondent accepted that he crossed that line in the way that he wrote on Facebook in October 2015 and February 2016. He accepted a breach of Principle 6;

- The Respondent was not at the time acting as a solicitor but in his private capacity;

- The posts were deleted very quickly after the second post in February 2016;

- Was the Tribunal satisfied so that it was sure that both, or either, of the two posts were anti-Semitic? What was meant by anti-Semitic? The Respondent urged the Tribunal to apply the GJ definition which was very close to the OED definition save for the common-sense addition by Professor John of six words clarifying that the hostility towards Jews had to be because they are Jews and not because

they happen to be Jews. This was the best working definition of the concept available to the Tribunal;

- The Respondent invited the Tribunal not to adopt the alternative IHRA definition, save that one aspect of the definition was useful in its reference to the taking into account of the overall context when identifying anti-Semitism. Where anti-Semitism is alleged, the overall context must be taken into account by the person reaching the decision regarding the existence of anti-Semitism;

- There were a number of problems with the IHRA definition: (1) use of the word "may" was confusing – that word in its usual sense of "being possible" was of little value; (2) the definition consisted of two sentences plus examples by way of illustration which had to be read in the light of the definition itself without either expanding or restricting its scope. At the core of the definition of anti-Semitism had to be hatred or hostility towards Jews because they are Jews; (3) the definition was adopted in May 2016 and therefore post-dated the events under consideration; (4) the definition was put forward by the Applicant essentially on behalf of the complainant as it was taken from the Campaign's website;

- There were two references to Zionism in the October 2015 posts. Anti-Zionism is not anti-Semitism, but a political belief, in so far as the Respondent was concerned, relating to the Israeli state's treatment of Palestinians in Gaza and the West Bank. There was no expression of criticism of and no overt or wider hostility towards Jews or the Jewish race generally. The reply from the Respondent to M referred to Zionists and it was clear that the Respondent's ire was aimed at them. On each occasion the word was used there was no criticism or evidence of wider hostility towards the Jewish race. The October 2015 posts were not anti-Semitic;

- The February 2016 posts were more difficult to untangle because context was all. The Respondent was replying to another comment having seen the video about Zionism and Judaism, and the reference either within the video or in the comments below to the Israelis flying in soldiers to kill innocent women and children in Gaza or the West Bank. If the Respondent's ire was aimed at Zionists and not at the Jewish people there was no anti-Semitism. Who was the Respondent talking about when he said "[they] ain't God's chosen people"? If the Respondent was referring to those who he thought were going to commit atrocities against the Palestinian people that was an anti-Zionist tirade and not an anti-Semitic tirade. The Tribunal did not have the full picture because the Applicant had not investigated the matter sufficiently thoroughly. As the Respondent said in his evidence, the relevant posts were not on his Facebook page but on the Israel is a War Criminal page. There was no reason to believe that they had been deleted or that they would not have been available had the Applicant investigated more thoroughly. The lack of evidence was not the fault of the Respondent because he rightly and properly deleted his Facebook page and got out of Facebook altogether because he knew that what he had been doing was inappropriate, childish, and stupid;

- The Applicant must prove that in making this post the Respondent was behaving in an anti-Semitic rather than anti-Zionist manner. The Applicant could not prove that to be the case. Mr Falter's evidence was that the statement and a photograph on the website were about Jewish refugees being transported back to Israel. It would be "most peculiar" if that material was being posted on the Israel is a War Criminal page which was devoted to criticism of the state of Israel and was not supportive of it. The Tribunal was invited to reject Mr Falter's evidence on this point and to accept the evidence of the Respondent that he was commenting on an aircraft going into Gaza or the West Bank to commit atrocities, which was precisely what one would expect on a Facebook page of this sort;

- It was difficult to make sense of the second post in February 2016. The word "Zionist" was used. Plainly the Respondent was commenting on and responding to an earlier comment made on the page. The reference to "Zionist" assisted the Tribunal in determining whether or not it could be satisfied so that it was sure that the earlier post was anti-Semitic;

- For those reasons the allegation of anti-Semitism must fail on the evidence;

- For a regulated individual the concept of integrity was extremely close to the concept of dishonesty. A lay person would regard honesty and integrity to be interchangeable. This was how Mr Justice Mostyn viewed the concepts in the case of Malins v Solicitors Regulation Authority [2017] EWHC 385 (Admin.) [25]. This was a controversial decision because up to that point the Courts had drawn a distinction between the two concepts. The most recent case was that of Williams v Solicitors Regulation Authority [2017] EWHC 1478 (Admin.) [50]-[54] [130] which restored the status quo. "A man of integrity" meant a man who could be trusted. When the Respondent made those extremely unwise entries on Facebook, he was not acting as a solicitor, was not acting dishonestly, and was not acting in an untrustworthy manner, but was acting foolishly and in a way that would lead to sanction by the Tribunal. He was not evincing a lack of integrity;

- The Applicant's initial reaction, until it was "leaned on" by the Campaign, was to deal with the matter informally by way of sensible words of advice. The matter had been "unnecessarily elevated" from a case of stupidity and short-sightedness to a case of hostility towards Jews combined with a lack of integrity;

- The Respondent is not hostile towards Jews. He associates with Jewish people, instructs Jewish barristers, and some of his closest friends are Jewish barristers. The Respondent is a man who can be taken as telling the truth when he says that he is not anti-Semitic. Each of the posts was unpleasant and wholly inappropriate but they did not cross the line into anti-Semitism. The allegation of anti-Semitism and the allegation that the Respondent acted with a lack of integrity should fail.

40. The Tribunal's Decision

40.1 The Tribunal retired to consider its decision.

40.2 The Respondent had admitted that on 13 October 2015 and 14 February 2016 he publicly communicated offensive and wholly inappropriate posts from his Facebook

account contrary to Principle 6 of the SRA Principles 2011. Those admissions were unequivocal and entirely proper. They were accepted by the Tribunal which found the allegation proved beyond reasonable doubt to the extent admitted.

40.3 The Respondent denied that either post was anti-Semitic and that either post put him in breach of Principle 2. The Applicant bore the burden of proving the allegations. The Tribunal analysed each post in turn, starting with the alleged breach of Principle 2 in respect of the admission and finding that the posts were offensive and wholly inappropriate.

41. October 2015 Posts – Integrity

41.1 The Tribunal had listened carefully to the submissions on the concept of acting without integrity made by Mr Bennett at paragraph 17(a) of his Skeleton Argument and in oral submissions by Mr Treverton-Jones. The Tribunal was very familiar with the case law relating to the concept. It preferred the more recent analysis of the state of the law following a long line of authority as set out in the Divisional Court by Mrs Justice Carr DBE in the leading Judgment (supplemented by the brief Judgment of Sir Brian Leveson PQBD) in Williams (above) to the Judgment of Mr Justice Mostyn in Malins (above). Indeed, Mr Treverton-Jones accepted that the decision in Williams restored the status quo. "In the field of solicitors' regulation, the concepts of dishonesty and want of integrity are indeed separate and distinct. Want of integrity arises when, objectively judged, a solicitor fails to meet the high professional standards to be expected of a solicitor. It does not require the subjective element of conscious wrongdoing" per Carr J at [54]. Further, "Honesty, i.e. a lack of dishonesty, is a base standard which society requires everyone to meet. Professional standards, however, rightly impose on those who aspire to them a higher obligation to demonstrate integrity in all of their work. There is a real difference between them" per Leveson PQBD at [130].

41.2 Rule 5.1 of the SRA Principles 2011 applied to the Respondent in relation to Principle 2, as well as Principle 6 which was admitted, when acting outside practice. This was not disputed by the Respondent; at [3] of Mr Treverton-Jones's Skeleton Argument it was stated that it did not need to be said that no solicitor should put his name to such offensive material, and the Respondent accepted that in doing so, he committed professional misconduct. The Tribunal agreed with that approach.

41.3 The Respondent commented that "Somebody needs to shoot all the Israeli Zionists dead then send their bodies to America as a present for Obama and his Zionist pals." Mr Treverton-Jones referred to freedom of speech at the start of his submissions. Freedom of speech is not an unqualified right, synonymous with "anything goes" and "I can say whatever I like about anyone in a public forum". Promoting conduct such as murder by means of shooting dead which might well cause anguish to the wider public was just one example of when the right to freedom of speech should be curtailed. By these observations this Tribunal did not seek to restrict any citizen's right to free speech. However, the Respondent stepped over the line by advocating violence.

41.4 The undisputed evidence was that M had within 2 hours responded directly to the post by stating "Is this kind of incitement to racial hatred compatible with a continued professional practice within the English legal system?" M gifted the Respondent the opportunity by this post to retract or explain his views, to apologise, or to make some other redress. The Respondent did not do so, preferring instead to enter into debate by way of an aggressive response to M. It was clear from M's post and the emails he sent to the Respondent and his Firm (which the Tribunal had not seen but to which the Respondent referred in his oral evidence) that the Respondent knew that M at least had made the link that he was a solicitor because M asked rhetorically what the SRA might think about the Respondent's views. Instead of a measured response, the Respondent inflamed the situation by replying "yeah feel free to report me." The Tribunal interpreted the Respondent's attempt at a riposte as saying "Go on, do your worst". The Tribunal expressed its dissatisfaction that the Respondent compounded and inflamed his original misconduct by his post to M. The Tribunal found that he exhibited defiance and was entirely dismissive of the regulatory machinery and the attention that the post might attract. The Respondent could have apologised to M and he could have shut down his Facebook account immediately (the Tribunal accepted that he could not delete a thread that did not belong to him). Those simple steps would have gone a long way towards demonstrating that he recognised that he had made a mistake, had taken advantage of an early opportunity to put it right, and was a professional man who recognised his higher obligation to demonstrate integrity. The Respondent's evidence was that M had posted the comment on Twitter. He knew that what he had said was in the wider public domain than a forum on Facebook and should have responded appropriately to that call to action. The Respondent chose to engage in a war of words with M. No person of integrity would behave in that way.

41.5 The Tribunal's conclusion on the evidence beyond reasonable doubt was that <u>any individual</u> (*Tribunal* emphasis) making the October 2015 posts with their expression of violence towards others crossed the line and acted without integrity. The Respondent had additional responsibilities as a solicitor even if not acting in the course of practice at the time. He was and is a criminal defence advocate and was and is therefore well aware of the gravity of serious criminal conduct such as shooting and murder. His discussion in evidence of cases in which he was involved suggested that he worked at the heavier end of criminal practice. For the Respondent, a solicitor, to communicate deeply unattractive views publicly (whatever his private thoughts) demonstrated a clear lack of integrity. It was incumbent on the Respondent to keep his extreme views to himself rather than express them in a public forum.

42. <u>February 2016 Posts - Integrity</u>

42.1 There was a conflict of evidence between Mr Falter and the Respondent. Mr Falter said that he went on to the Israel is a War Criminal page on his desktop computer and saw that the Respondent's post related to an article on the airlifting of Jewish refugees from a troubled country to Israel. The Respondent said in his witness statement that the post related to a video in News documentary style dealing with the difference between Judaism and Zionism and including reference to Israelis who were caught in the conflict in Palestine returning to Israel. He expanded on this written evidence in the witness box, although his evidence appeared to shift to suggest that the video related to Israeli troops being flown into Gaza and the West Bank. It was, in short, confused and inconsistent.

42.2 Use of the phrase "Satan's love child" was derogatory and pejorative to whomsoever it was aimed. It was an assault on the lineage and position in society, indeed the very existence, of those people.

42.3 The Tribunal found the Respondent's post in which he suggested that it was a shame that a plane carrying people did not blow up in mid-air whatever the context of that comment to be wholly indefensible. The Tribunal could not comprehend how a solicitor posting in even a private capacity could espouse that view openly to a wider public. His comments went far beyond exercising his right to freedom of speech.

42.4 Mr Falter was scrupulously fair in casting the phrase "it's a shame the plane carrying them didn't blow up mid-air" in the light most favourable to the Respondent. He suggested that the words might refer to the desire for an event such as a catastrophic aviation accident. Taken at their worst the Respondent was advocating a terrorist attack. The Respondent is not only a solicitor, but a citizen like the rest of us, living through troubled times where terrorist activity is a not-uncommon occurrence and a cause of anxiety to large numbers of people going about their daily lives, including getting onto aircraft. There have been well-publicised and horrific instances of airplanes being brought down by aviation disasters, missiles, and terrorist bombs. The Respondent practises as a solicitor in Luton, which is famous, amongst other things, for its international airport and very diverse, generally harmonious, community. It was a matter of the utmost gravity to make public comments expressing a desire for a plane to explode. The Tribunal found that the Respondent knew when he made that post just how sensitive and seriously his comments would be viewed in this unstable world where there is an understandably increased focus on security. His comment was unforgiveable.

42.5 Again the Respondent had failed to take the opportunity to moderate his behaviour, having received sustained criticism from M for the earlier posts. He was already on notice that M had interpreted his October 2015 post as incitement to racial hatred. The same behaviour was instead repeated, the content extreme, with no persuasive explanation for his February 2016 actions save that Facebook acted as "devil's advocate". Rather than take personal responsibility, the Respondent chose to blame Facebook and pray in aid freedom of speech. The Respondent was not under any compulsion to visit the Israel is a War Criminal page. He could have stopped at reading the comments and articles and watching the videos, alert to the earlier warning to be careful. He could even have joined the debate in polite, measured terms. However, he chose to contribute in offensive and wholly inappropriate language. This behaviour smacked of arrogance, a "you can't touch me" approach to life. For a solicitor to pray in aid freedom of speech and then abuse that qualified right which was not afforded to people in other parts of the world was unconscionable.

42.6 The Respondent's evidence was that he took down the posts because he was subject to abuse, including racist abuse and retaliation from other posters. The Tribunal accepted that evidence as being entirely plausible. On his own evidence therefore the Respondent had inflamed and aggravated a group of citizens, whether domestic or international or a combination of both, to the extent that they felt able to heap abuse on him in return. There was an irony in the Respondent's response to the situation that he had created; at least one reason why he took down the posts was because he did not like the reaction that he had set in train.

42.7 In brief summary, the Applicant had proved beyond reasonable doubt that both the October 2015 and February 2016 looked at separately and in their totality showed the Respondent acting in breach of Principle 2, without integrity, and the Tribunal so found.

43. October 2015 Posts – Anti-Semitic?

43.1 It was for the Applicant to prove its case beyond reasonable doubt. The Tribunal was concerned only to examine the content and context of the posts in detail to decide whether they were anti-Semitic, having decided that context was relevant to the definition of anti-Semitism. The task was straightforward. There was no dispute concerning the facts in relation to these posts. The October 2015 thread was exhibited to the Rule 5 Statement as part of M's email report to the SRA on 16 October 2015 at 18:29. The report confirmed that M had previously sent an email to the Respondent's firm inviting views on the first post, with the answer having been posted on Facebook by the Respondent. This evidence was not disputed by the Respondent who said that he and his Firm had received emails from M.

43.2 The first post by the Respondent was on 13 October 2015 at 07:44. M's reply was posted 2 hours later at 09:44 or thereabouts according to the screenshot (inevitably there will have been an element of rounding-up or rounding-down hours to reach a whole number). The reply from the Respondent was timed one hour later, at 10:44 or thereabouts. In his evidence the Respondent described this as "the early hours of the morning". The Respondent's recollection appeared to be mistaken in that regard, possibly further evidence of the Respondent's confusion about the posts in October and February.

43.3 The Applicant's submission was that the posts were anti-Semitic as indicated by the words "Israeli" and "a nation that is fuelled by greed". The Respondent was said not to have qualified these words by reference to Israeli foreign policy and/or military operations. The Respondent's evidence was that the first October 2015 post was his reaction to having viewed the video on the web page of the indiscriminate killing of women and children by Israeli defence forces, compounded by the facts of a distressing case with which he was involved. He said that his comments were anti-Zionist, not anti-Semitic.

43.4 The Tribunal gave the Respondent the benefit of the doubt by accepting that the post was prompted by his reaction to watching the video that he described immediately before making the post. That post which referred to "Israeli Zionists" did not when read on its own without reference to the definitions, and bearing in mind the context in which it was written, strike the Tribunal as being anti-Semitic in tone. It was however still necessary for the Tribunal to consider the thread as a whole. The post timed about 3 hours later referred to atrocities committed by the Zionists in line with the first post. The Respondent specifically referred to having viewed the killing of innocent children and the systematic assassination of people consistent with the Tribunal's conclusion that he had viewed a video involving the killing of children before making his posts. The words which troubled the Tribunal were "a nation that is fuelled by greed". The Tribunal accepted the evidence that Zionists can be of all faiths and nations and none. The reference to "Israeli" was triggered by the content of the video. Was "a nation that is fuelled by greed" a stereotype of Jewish people as

suggested by the Applicant? To which "nation" could the Respondent be interpreted as referring, always giving the Respondent the benefit of the doubt? The only nations referred to in the thread produced in evidence by the Applicant were Israel and America. It was possible that the Respondent was saying that America, having provided arms to the Israelis, presumably for cash, was "a nation fuelled by greed" but this was stretching the point too far. This left the Tribunal with the nation of Israel. If the word "Jewish" replaced the word "Israeli" or the word "Jews" replaced "Zionists" the context in terms of the trigger for the posts would in the view of the Tribunal be anti-Semitic. However, the words "Jewish" and "Jews" had not been used by the Respondent. The Tribunal also took notice that M referred to "racial hatred" and not anti-Semitism in both the post on the thread and the email to the Applicant. From what the Tribunal had heard and read M would have been ready to call out the Respondent on anti-Semitism if they thought it was present. The Tribunal had therefore concluded that the words "nation fuelled by greed" referred to Zion, and were an example of the Respondent's careless use and formulation of language because Zion is not, currently, a nation. That interpretation was consistent with the rest of the language used in the thread as produced to the Tribunal and in the absence of any additional or rebuttal evidence from the Applicant.

Anti-Semitic Analysis Against The Definitions
Introduction

43.5 In approaching the ultimate question as to whether either or both of the posts were anti-Semitic, the Tribunal paid regard to each of the definitions proffered for consideration by the parties, namely the IHRA and OED definitions advocated by the Applicant and the GJ definition (what might be termed "the enhanced OED definition") proposed by the Respondent. The Tribunal reviewed the definitions carefully and found each to be helpful.

43.6 The Tribunal was mindful that there is no statutory or accepted legal definition of anti-Semitism. There was no agreed definition between the parties. The Tribunal observed here, as it did when hearing submissions, that the parties' respective definitions were extremely close to each other. The spirit of all three definitions was consistent. The shared element of hatred, hostility, or discrimination towards Jewish people by dint of the fact that they are Jewish appears in one form or another in each definition, which was unsurprising. The Tribunal did not consider that discrimination played any material part in the allegations against the Respondent. The emphasis was therefore on hatred/hostility. The Tribunal's overall approach was to apply objective common sense and analysis to the definitions by testing the facts found against each definition in turn. By proceeding in this way the Tribunal was confident that it was, above all, being fair to the Respondent, not least by giving him the benefit of the doubt where any doubt arose. As was submitted to the Tribunal, and as the Tribunal accepted, the judgement as to whether particular postings were or were not anti-Semitic was for the Tribunal to decide. The Applicant was charged with proving the case so the Tribunal considered the Applicant's preferred definitions first (there being overlap with the GJ definition in respect of the OED definition). It should also be noted that both the IHRA and the GJ definitions post-dated the events under discussion. Any criticism of the IHRA definition on that basis applied equally to the definition formulated by Professor John. There was therefore a level playing field in respect of the Applicant and Respondent in that regard.

43.7 IHRA Definition: the posts made no mention of Jews, Jewishness, or the Jewish race, either directly or indirectly; the focus of the posts was on Israeli Zionists as found by the Tribunal; challenges to the Respondent by M were made on the basis of racial hatred, not anti-Semitism or expression of hatred towards Jews; the Respondent's reply to M's post referred to Israeli Zionists, not Jews; the words "nation fuelled by greed" referred to Zionists, as the Tribunal had found. If the Tribunal was wrong about that and the nation referred to was Israel, that nation is not comprised solely of those of the Jewish faith (albeit that Jews are in the majority); the first post was retaliatory after the Respondent had viewed the video showing atrocities. There was no rebuttal evidence to show that the first post was prompted by any other trigger; included within the definition was the sentence "Manifestations might include the targeting of the state of Israel, conceived as a Jewish collective. However, criticism of Israel similar to that levelled against any other country cannot be regarded as anti-Semitic." The post fell within the exception in that second sentence; the posts did not fall within the non-exhaustive, wide-ranging examples set out below the definition.

43.8 OED definition: no doubt a number of the Israeli Zionists referenced in the posts might be Jewish. However, the hostility in the posts was not directed at the Israeli Zionists because they were Jews but because they were Israeli Zionists. The focus of the post was Israeli Zionists not Jews; the same point applied to the phrase "nation fuelled by greed". The Respondent's bile was directed against a nation rather than a religious group.

43.9 GJ definition: the material difference between this definition and the OED definition was the addition of the words "on account of their Jewish identity". The Tribunal inferred into the definition the words "and for no other reason" after "identity"; the Tribunal as a matter of common sense had implied the addition of the Professor John words into the OED definition above; for the reasons already explained, the hostility expressed in the October 2015 posts was not directed against persons who are Jewish on account of their Jewish identity; the hostility was directed against Israeli Zionists.

44. February 2016 Posts – Anti-Semitic?

44.1 The Tribunal was satisfied that the screenshot of the first February 2016 posts on the Israel is a War Criminal page was a composite of two web pages. The first web page contained the Respondent's post, no doubt as part of a thread of comments. The second web page, or pop up as suggested by Mr Treverton-Jones, included the Respondent's name, status as a Senior Solicitor (Partner) at the Firm with its address and the description of the sector in which it operated, namely "Law Practice". This web page was accessed differently depending on whether a mobile telephone or a desktop computer was used for that purpose. Either way it was a simple matter to click through to the Respondent's name above the post to view his profile. The Tribunal therefore readily accepted that the profile information would not have appeared directly beneath the post but on a separate page. The two posts have been combined, probably by Z as that is how they arrived with Mr Falter, for ease of reference. This was not a material point; it was a technicality which did not undermine the content of the post or the fact that it was relatively easy for any member of the public to make themselves aware that the Respondent was a solicitor. If the Respondent had not wanted the public to find out that information about him he

could have chosen not to answer the prompts that popped up when he set up his Facebook account. It was understandable and rational for a member of the public who had read the post to click on the link or to tap and hold the link on their mobile telephone in order to find out more about the Respondent. Facebook is intentionally set up to be easy to use even for those who are not "tech. savvy".

44.2 There were significant factual differences between the evidence of Mr Falter and the Respondent which the Tribunal had to resolve. The Tribunal found Mr Falter to be a credible witness. He was straightforward and thoughtful, gave his answers without emotion or "edge" and was fair and frank in his responses to questions. The Tribunal understood and accepted Mr Falter's account of how he received the complaint from Z and the steps he took in consequence. He described in detail the Campaign's "business model", the strands of work with which it is involved, and the sophisticated processes adopted to carry out online monitoring and reporting. He said that within 24 hours the posts had been removed and his view was that this would have been instigated by Facebook. Mr Falter was helpful and informative in explaining how the Facebook postings were generated and how and why they appeared before the Tribunal in the way that they did. It was clear from his evidence that he received the screenshot of the web page Israel is a War Criminal in the format in which it was presented to the Tribunal. At all times Mr Falter gave the impression of doing his best to assist the Tribunal in reaching its decision. He satisfied the Tribunal as to how the description of the Respondent as a "Senior Solicitor" could be accessed. The Tribunal wholly rejected any suggestion, explicitly made or otherwise, that Mr Falter's evidence was assembled in order to cause maximum difficulty for the Respondent. His evidence was a lesson in objectivity. Mr Falter and his organisation were engaged solely in discharging the proper function of the charity in the public interest. Without hesitation the Tribunal found Mr Falter to be a witness of truth.

44.3 The Respondent said that he made his first post "they ain't God's chosen people" in response to a video of approximately 6 to 8 minutes presented in a US documentary style News channel featuring two presenters discussing the issues seated behind a desk. During the course of the video, the Respondent believed that reference was made to Israelis who were caught in the conflict in Palestine returning to Israel. The video suggested that there had been a rise in the number of Zionists who were motivated by personal, political, and financial gain but did not believe in God and were not truly representative of Judaism. His evidence was that he interpreted the video as inviting people to consider that the atrocities were driven by Zionists (criticised in the film) rather than by faithful Jews. He complained of the lack of primary evidence filed by the Applicant. He said that he disagreed with Israeli foreign policy specific to Palestine. His opposition to Israeli military operations in the region was political only and not (and had never had been) faith-based. He described himself as anti-Zionist only insofar as he was opposed to the aggressive tactics and atrocities caused to the Palestinian people by the state of Israel. This evidence was taken from the Respondent's witness statement dated 10 July 2017 at [18] to [23]. He expanded on that evidence in the witness box in ways that seemed to move from this position, conflated the two episodes under discussion, and his evidence was, ultimately, confusing and unimpressive. For example, the Respondent gave oral evidence that it was the Israeli/Zionist forces flying into occupied areas of the Gaza Strip and West Bank to whom he was referring when he described the plane carrying "them" blowing up in mid-air.

44.4 Mr Falter's evidence was different. He said he had viewed the item on the Facebook page Israel is a War Criminal and it was an article, not a video. The article concerned the airlifting of Jewish refugees from a troubled country to Israel where they would be granted citizenship without having to fulfil all the formalities that might be required of those entering from other countries. Mr Falter was specific that the headline to the article referred to the refugees as "Jewish". He explained how and why an apparently friendly and supportive article towards Jews could and did appear on a website headed "Israel is a War Criminal". The article was intended to prompt reaction from those who objected to entry formalities being relaxed for Jewish refugees coming from other countries to Israel in contrast to the requirements imposed upon other stateless refugees. The article was placed on a website where the audience would disapprove and react to the content. It was credible from that explanation that such an article could appear and did appear on that web page. The Tribunal found the evidence from Mr Falter to be additionally compelling in terms of the context and the contemporary nature of the complaint made by him to the Applicant on 6 March 2016, a matter of days after the complaint from Z had been received.

44.5 The Respondent's evidence on this issue made no sense to Mr Falter or the Tribunal. It was muddled and conflicting. On the Respondent's version of events, why were Jewish people being airlifted from Gaza to Israel particularly as it was apparently not his evidence that they were the same people on the plane which he desired might blow up in mid-air? It was an implausible explanation of the context to suggest, as he did in the witness box, that he was referring to the blowing-up of aeroplanes carrying Israeli defence forces flying to Gaza or the West Bank, but in any event his evidence on this issue was illogical.

44.6 In those areas where there was conflict between the evidence of Mr Falter and the Respondent, the Tribunal preferred the evidence of Mr Falter and rejected the Respondent's evidence. The Tribunal found as a fact in accepting Mr Falter's evidence that the Respondent's first February 2016 post appeared below an article, not a video, concerning the airlifting of Jewish refugees to Israel from a troubled country and that the word "Jewish" appeared in the headline. The Tribunal rejected the Respondent's evidence that the prompt for his post was a video with the content as described in his witness statement and as summarised above. The Tribunal rejected his oral evidence that the video was about Israeli Zionist soldiers being transported into Gaza/the West Bank. The Tribunal considered this evidence from the Respondent to be fanciful and incoherent. The inevitable inference to be drawn was that the Respondent had adapted his oral evidence to make it more consistent with the evidence of Mr Falter.

44.7 The Tribunal concluded that the language in the February 2016 posts was significantly different from the more ambiguous language used in October 2015. The words "God's chosen people" was, in the view of the Tribunal, a trigger phrase for the Jewish race. Mr Falter described the history of the phrase as dating back to the Hebrew Bible. The Tribunal remained cognisant that other faiths also recognised the concept of "chosenness". Having preferred the evidence of Mr Falter in relation to the article which prompted the post, the Tribunal had no doubt that, in the context of the post, "God's chosen people" was a reference to the Jewish refugees. The phrase as used by the Respondent anchored the phrases that followed firmly to the Jewish people. The reference to Jewish people, as the Tribunal so found, as Satan's love

child, was pejorative, derogatory, and religiously offensive. The Tribunal had already resoundingly condemned as indefensible (when dealing with integrity above) the Respondent's reference to it being a shame that the plane carrying the Jews, as the Tribunal had found, did not blow up in mid-air. The comment was despicable.

Anti-Semitic Analysis Against The Definitions

44.8 The introduction at paragraphs 43.5 and 43.6 apply to the following analysis.

44.9 IHRA Definition: The Tribunal had found that the phrase "God's chosen people" as posted by the Respondent referred to Jews and not to Zionists as asserted by the Respondent; the Tribunal had also found as a fact that the Respondent was commenting on a plane airlifting stateless Jewish refugees; the expression of hatred towards Jews was drawn from the post read in its entirety and in particular the reference to Jews, as the Tribunal had found, as "Satan's love child". This comment was disparaging, offensive, drawn from religious classification and applied a religious insult. The reference was read by the Tribunal as identifying Jewish people as the spawn or bastards of the devil. This was gross language. The Respondent had himself chosen to introduce a faith-based element to his post; these Jews, as the Tribunal had found, were strangers to the Respondent, about whom he had read online in an article about Jewish refugees. The focus of the article on the website on which it was posted was a perceived unfairness in respect of the treatment of Palestinians when compared to the treatment by Israel of Jewish refugees; it was being said that the Jewish people were receiving preferential treatment because of their Jewish identity (as opposed to being Palestinian or other stateless persons of a different faith); the comments were being made by reason of the identity of the individuals on the plane as Jews (as opposed to Palestinians, say); the blowing up of the plane in mid-air referred directly to the group of Jewish refugees on the plane because of their identity as Jews. The comment was not directed at refugees or those who travel on planes in general but specifically at this group of Jewish refugees on the plane referred to in the article; the final post in the thread was the conclusion of an exchange which was unavailable 24 hours after posting because the comments had been removed, almost certainly, by Facebook (for the avoidance of doubt the Respondent admitted that he could not remove the thread itself because it was not his thread).

44.10 OED Definition: The Tribunal had no difficulty in finding that the Respondent was demonstrating hostility towards Jews under this definition for the reasons set out above. He was clearly expressing hostility using religious words which have specific meaning for the Jewish faith.

44.11 GJ Definition: The Tribunal found that the hostility by the Respondent was directed towards persons who were Jewish on account of their Jewish identity for the reasons set out above. The Respondent did not make the comments about stateless refugees of other faiths, but solely about Jewish refugees being airlifted from troubled countries to Israel.

45. For all the detailed reasons set out above, and after having carried out a careful and rigorous analysis of the found facts against the three definitions, the Tribunal found that the Applicant had not proved beyond reasonable doubt that the October 2015 posts were anti-Semitic; it had proved that the posts were in breach of Principle 2. The

Applicant had however proved beyond reasonable doubt that the February 2016 posts were anti-Semitic and in breach of Principle 2.

Previous Disciplinary Matters

46. None.

Mitigation

47. Mitigation from Mr Treverton-Jones was as follows:

- The Respondent apologised for his actions and did not need to be told how stupid and ill-advised his conduct had been because he had accepted that throughout. One of the features of his evidence was how often he had said how stupid he had been;

- The Respondent's actions took place in his private capacity and while he was doing what he did it would have been far from his mind that he was a solicitor behaving wholly inappropriately for a solicitor;

- This was a trap that social media inadvertently sets for people. In the past there was no permanent record of texts, tweets, and posts even though people may have behaved in the same way as the Respondent. Stupid, futile, and ill-advised things that are done are permanently recorded nowadays;

- The Respondent made sure within a couple of days of the second post that it was removed, thus limiting the number of people who could see it. He did not simply deactivate his Facebook account; he stopped the account in such a way that these materials have been and will be forever deleted from the Internet;

- Throughout the proceedings the Respondent had accepted that what he had done had been offensive and wholly inappropriate. This admission was made as early as April 2016;

- The Respondent had not previously been in any trouble and had lived a decent and uncontroversial life to date. He was aged 40, married (his wife, also a solicitor, was in court with him), with 3 young children. He has been a Solicitor for 12 ½ years and a solicitor-advocate who appears in the Crown Court and the Court of Appeal. He has run two criminal law practices, the first since 2008 with his wife, and the second since 2012 with a partner;

- The Respondent has a clean regulatory and disciplinary record. He has learned his lesson. He has suffered the stress and strain and expense of these proceedings;

- In the light of all of the evidence, particularly from the Respondent, the public is not at risk. One of the features of his evidence, which the Tribunal may have accepted even though finding the February 2016 post to be anti-Semitic, was that in his everyday life he is not anti-Semitic. He rubbed shoulders with and has friends from various faiths;

- It was a very sad case that someone with such an unblemished record should come before the Tribunal. The misconduct was right at the very bottom of the scale of anti-Semitism. The comments were not made on his headed notepaper. This was an entry on a website which was generally unsympathetic to the Israeli forces so would normally be read by people of that persuasion rather than people who would be upset by what he wrote;

- The matter of sanction could be dealt with as leniently as the Tribunal felt able. A financial penalty would be appropriate. There was no evidence of means; the Respondent could pay the fine imposed and did not request a reduction because of his means.

Sanction

48. The Tribunal referred to its Guidance Note on Sanctions (5th edition) when considering sanction. For the avoidance of any doubt the Tribunal reached its decision on sanction without fear or favour and took no account of the views of the Campaign Against Antisemitism or any other individual or body as to what was the appropriate sanction.

49. As stated in Bolton v The Law Society [1994] 1 WLR 512 "...a penalty may be visited on a solicitor ... in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way ...". The most fundamental purpose of sanction of all is "to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing may be trusted to the ends of the earth ... A profession's most valuable asset is its collective reputation and the confidence which that inspires."

50. "Trust" is not limited to honesty in the management of money, or telling the truth, but extends to being trusted to behave in a private and professional capacity in accordance with the high professional standards most recently identified in the Divisional Court decision of Williams. The word "inspires" is also important; solicitors are role models both in and out of professional life. The public must have confidence in their solicitors and that confidence is inspired by the latter's conduct looked at in the round. It is essential that solicitors remain alert at all times to their position and influence in wider society.

51. The sanction to be imposed on the Respondent reflects the findings of: the posting of offensive and wholly inappropriate comments, one post also being anti-Semitic; breaches of Principle 2; and breaches of Principle 6.

52. Culpability October 2015 posts: the motivation for the misconduct was defined by the misconduct itself, namely to offend and, in respect of the February 2016 post only, to show hatred towards Jewish people, by communication of offensive and inappropriate views to an audience. The October 2015 misconduct was spontaneous in the sense that it was a reaction to the Respondent's social media activity and in particular what he had seen and read online. The Tribunal did not consider that the post timed at 07:44 was planned misconduct. However, the later post on the same day had to be viewed in the context of the challenge and the threat to report the Respondent to the SRA by M. The knowledge of that threat did not result in the Respondent moderating

his behaviour and he proceeded to post the second offensive and wholly inappropriate comment an hour later. The conduct was within the Respondent's total control and responsibility. The Tribunal rejected the suggestion that the fault was that of Facebook for drawing individuals into controversial debate or that the Respondent was provoked either by the comments he read online or by M's challenge. Qualified freedom of speech works in both directions, and the Respondent had to accept that if he was offensive to others he was likely to find that they were offensive to him in return. It was a great shame that the Respondent had not learnt that lesson by February 2016. The Respondent had choices every step of the way in terms of how much information he provided about himself on Facebook, whether he viewed videos or read articles, whether he continued to view videos which started automatically on scrolling up or down a page, whether he posted comments, whether he responded to comments, and whether he continued with his Facebook activity. The opportunities for the Respondent to step out of the arena were legion. The Respondent is a 12+ years qualified, criminal defence solicitor and a solicitor-advocate with higher rights of audience. He holds management roles in two law firms, one of which he runs with his wife and the other with a professional partner. The Respondent is therefore a man of considerable experience. This negated any suggestion that the Respondent's conduct should be viewed more leniently because it did not take place during the course of his legal practice. Merely because the Respondent was making posts on social media in a private capacity did not protect him from being held to the higher standards that apply to all those who benefit from the privilege of membership of an esteemed profession. Being a solicitor was not a feature of one's being that one could switch on and off as one chose. The Respondent could easily have removed all references to the fact that he was a solicitor from his Facebook profile. He would then have been conducting himself in a truly private capacity.

53. Culpability February 2016 posts: the motivation for this episode of misconduct was as above save that on this occasion the comments had been found by the Tribunal to be anti-Semitic and should have been informed by the Respondent's October 2015 experience. For whatever reason, the Respondent clearly felt strongly motivated to post on 14 February 2016 when all the indications were that he should not give into the temptation to do so. It was clear from the posts that the Tribunal had seen that by the time of the second February post the Respondent was engaged in a combative exchange with an individual. The Respondent could gain no benefit in terms of mitigation from the fact that people who were offended by what he had written gave back to him as good as they got. It remained the Respondent's responsibility to moderate his replies even within a hostile exchange or, another option, not to reply at all. The February 2016 posts had to be viewed in the context of the public reaction to the October 2015 posts. The Respondent was on warning that M had expressly threatened to report him to the regulator, and in the process had reminded him that he was a solicitor should he have forgotten that fact. The Respondent had been gifted a clear opportunity to moderate his behaviour. Mr Treverton-Jones made a fair point that communication by social media, rather like email, is complete as soon as the post is uploaded. It constitutes a permanent record, although in spite of what Mr Treverton-Jones said about the Respondent having removed the posts for all time from the Internet, in the Tribunal's experience it was considerably more difficult than merely closing an account to expunge one's social media history. There was no time for reflection on what one was about to put into the public domain. The Respondent was solely and totally responsible for his misconduct which was entirely under his

own control. His failure to heed the warnings demonstrated a worrying lack of self-discipline and common sense. As the Respondent well knew he had inflamed and promoted a backlash of comment, not least directed at him and including, he said, offensive racial abuse. The phrase "reap as you sow" was highly applicable here.

54. Harm October 2015 posts: The public were clearly affected by the Respondent's posts. M spotted the post and was sufficiently offended to respond to the Respondent, not only by means of Twitter but also by email and, once the Respondent's reply had been posted, to contact the SRA. The Respondent rebuffed M's challenge. In his evidence and rather unattractively the Respondent criticised M for holding certain political views. That was no justification for behaving in the way that the Respondent chose to behave. Harm to the reputation of the legal profession was caused. A solicitor even acting in a private capacity remains a representative of the legal profession and a role model who should inspire confidence in the profession's reputation. The Respondent was not only a solicitor but a solicitor-advocate with rights of audience in the higher courts of the land. He was responsible for running two law firms. He had had experience of being on the receiving end of cruel racial abuse in response to his ethnicity. In spite of all this, the Respondent chose to publish offensive and wholly inappropriate material on a public-facing website which could, theoretically, have been read by millions of people all over the world. That post remained on his Facebook account until February 2016. The Respondent displayed defiance and arrogant contempt for the regulatory framework in his response to M in October 2015. By the end of his evidence the Respondent had attempted to turn the situation round, with himself characterised as the victim suffering racial abuse. The remorse expressed on his behalf by his legal representatives was not wholly reflected in the manner in which he explained his conduct to the Tribunal. This conclusion was reinforced by the Respondent's answer to a question put to him by Mr Bennett in cross-examination, as to whether he believed that he had harmed the legal profession to which the Respondent answered "no". From a plainly intelligent man, that answer was hard to credit and demonstrated a lack of appreciation of the impact of his behaviour on the reputation of the legal profession in general and solicitors in particular. The Respondent did not necessarily intend to cause harm; his motivation was to promulgate his offensive views to a Facebook audience. He participated in an open forum with the potential to be read by unknown numbers of the public, particularly if the comments went viral. It was commonplace, indeed trite, that placing personal information on Facebook potentially put that information in the public domain forever. One did not need to be technically aware to have picked up that risk from reports in the media. It should be noted at this point that the Tribunal rejected the Respondent's evidence that he was not technically knowledgeable. He described an awareness of how to accomplish certain tasks on Facebook and how Facebook works (see for example his knowledge concerning algorithms) which contradicted his words. It was reasonably foreseeable that his views would be read by a wide audience and not just limited to those people whom he wished to see his comments. One purpose of social media is to make connections and promulgate opinions. The difficulty in shutting the stable door after the horse had bolted was evidenced by the fact gleaned from the Respondents oral evidence that reference to the October 2015 comments ended up on Twitter.

55. Harm February 2016 posts. The Respondent's February 2016 posts, which the Tribunal had found to be anti-Semitic, prompted a direct and hostile exchange on the web page with someone to whom the Respondent replied in extremely offensive terms. On the Respondent's evidence, the first limb of the post provoked hostile responses against him from random people which caused him to get into exchanges with unknown persons. He said that those exchanges were so offensive towards him that they caused him to close down his Facebook account. His own actions had precipitated this unpleasant Internet activity. Z was sufficiently concerned to report the posts to the Campaign against Antisemitism who in turn felt the post to be sufficiently grave to make a report to the SRA as the Respondent's regulator, and the SRA in turn reported the matter to the police. The impact of the Respondent's misconduct had been ratcheted up, which escalated the damage to the reputation of the solicitors' profession. Mr Falter described in his witness statement the Respondent's role in the justice system as a person with anti-Semitic views which he considered to be violent in nature as "deeply frightening". Whether one agreed with Mr Falter or not, those were his views and they were evidence of damage to the reputation of the profession. Mr Falter's evidence was direct in the sense that he had witnessed the posts online. The Tribunal was troubled by the defiance exhibited by the Respondent in his final post when challenged regarding his views. He demonstrated contempt for the system by using coarse language. This was not the behaviour of an individual who had insight that he had posted a comment online that he should not have posted. In effect, the Respondent responded by saying "do your worst" without in any way trying to clarify, explain, or retract his earlier post. The inference that could be drawn from the Respondent's behaviour was that he believed himself to be in a one-to-one conversation online rather than engaging in a conversation that could be viewed by many people.

56. Aggravating Factors October 2015 posts: The Respondent's conduct was deliberate - he had the option of not posting online and of not responding in the terms of his response when challenged by M. The misconduct was repeated, in the sense that there were separate postings in October 2015, and having been alerted to M's disquiet he effectively said "bring it on". Whilst the exchanges took place over a relatively short period of time, the misconduct recurred four months later. The Respondent with his experience and profile ought reasonably to have known that his conduct was damaging to the reputation of the legal profession. In his evidence, he said that he understood the pain of discrimination; in the Tribunal's view, he lacked sufficient empathy to put himself in the shoes of others. His practice profile in the higher courts dealing with high-end crime must in all likelihood have brought him into contact with those who suffer discrimination on a regular basis. The Tribunal accepted that the Respondent had close friends of the Jewish faith who were, the Tribunal was told, aware of the existence and substance of the allegations. It was however noted that there were no references in support of the Respondent from these individuals and that they had not attended court to give any character evidence on his behalf. The value of what the Respondent said himself about his friends and acquaintances in terms of mitigation was therefore inevitably limited.

57. Aggravating Factors February 2016 posts: This instance of misconduct was made worse due to the anti-Semitic nature of the first post, the profoundly offensive nature of the second post, and the repetition of conduct that had been drawn to his attention together with the potential consequences only 4 months earlier. Damage to the

reputation of the profession was caused for the reasons explained above, with the added feature of the anti-Semitism involved. The Respondent demonstrated lack of insight in his responses to the public and in respect of the impact that his behaviour was evidenced to have had on the reputation of the profession. He made no attempt to repair damage done with the people concerned. The Respondent denied that he lacked integrity, but those allegations were found proved beyond reasonable doubt by the Tribunal. When giving his evidence the Tribunal was left with the impression of a Respondent who lacked any appreciation of the gravity of what he had done wrong coupled with the feeling that he was the victim of events and that he was being picked on by both those who did not share his views and his professional regulator. His attempts to blame Facebook for "drawing him in" showed a lack of accountability and responsibility for his actions.

58. Mitigating factors – both posts: The Respondent had a previously unblemished career of over 12 years in practice. The October 2015 post constituted a single episode. A degree of insight was shown by the Respondent once he had instructed solicitors and they had given him advice on his position, as evidenced by the letter from his legal representatives to the SRA in April 2016. He quite rightly accepted that the posts were offensive and wholly inappropriate and that he was in breach of Principle 6. He denied that his posts were anti-Semitic and that he acted without integrity as was his inalienable right. The Respondent could not be criticised for putting the Applicant to proof of the allegations, particularly in the terms of the original Rule 5 Statement where the only allegation was of anti-Semitism. It was also fair to say that the Respondent repeatedly stated that he had behaved stupidly and that he should not have done what he did. The phrase "the devil makes work for idle hands" came to mind when the Respondent suggested that he went on Facebook in February 2016 because he felt bored. Giving the Respondent the benefit of the doubt, perhaps he might better have expressed this feeling by saying that he was looking for distraction from his casework. Insight only appeared to strike the Respondent once the abuse was turned on him, when there was a strong feeling that he had got himself in too deep and needed to get out of the situation by closing his Facebook account. It was accepted by the Tribunal that the threads themselves (as opposed to the comments of the Respondent) could only be closed down by Facebook but not by the Respondent. Further it was accepted that his Facebook account had been closed before the SRA made contact with him. The Respondent should have some credit for taking that step. The comments relating to the February 2016 post had been deleted by 15 February 2016 according to the evidence of Mr Falter although it was not known whether those comments had been removed by the Respondent or by Facebook following complaints. Mr Falter thought the latter. There was more evidence of insight once the SRA became involved in March 2016. The Tribunal gave the Respondent some credit for his apologies coupled with his early admissions in March 2016 continuing to date. The Tribunal accepted that the Respondent had cooperated with his regulatory body albeit that his sense of injustice at the decision by the SRA to continue with the investigation of the complaints (the SRA denied that the investigation had ever been closed) was expressed in less than moderate terms on occasion. The Tribunal attributed that to the Respondent's anxiety about the position in which he found himself as a result of his misconduct. For the avoidance of doubt, the Tribunal did not consider the Respondent's self-espoused lack of technical know-how to be a mitigating factor. The evidence suggested that he knew more about the workings of Facebook than he was prepared to admit readily. The moral was that

if the Respondent did not know how to or had not set up limiting features on the account, he should have been additionally careful in respect of what he posted for the public to read. The Respondent had a greater responsibility to be careful in those circumstances than a user who had put all the necessary controls in place. The Respondent relied on the fact that he was involved in a complex and distressing case involving a child to explain why he made his October 2015 post in the way that he did. The Tribunal noted these observations; the link between the two events was tenuous and the Tribunal was not persuaded that this was a truly mitigating factor. The Tribunal rejected Mr Treverton-Jones's submission regarding the private capacity in which the posts were made and that being a solicitor was far from the Respondent's mind at the time. This was not a mitigating factor. As stated by Sir Brian Leveson PQBD in Williams above, "professional standards, however, rightly impose on those who aspire to them the higher obligation to demonstrate integrity in all their work". Professional standards should always be in the mind of a professional person regardless of the capacity in which they are conducting themselves. The Tribunal was prepared to accept Mr Treverton-Jones's submissions that the Respondent was not anti-Semitic in his everyday life as part of his daily routine. However, the Tribunal recognised that people who are not by character inherently anti-Semitic were nevertheless still capable of committing anti-Semitic acts. The Tribunal was required to focus on the Respondent's conduct in making these posts not his general persona or whether he has a predisposition towards being anti-Semitic. Mr Treverton-Jones's submission on the level of seriousness of the misconduct and the appropriate sanction were taken into account by the Tribunal when reaching its decision. No Testimonials were submitted on behalf of the Respondent.

59. When assessing seriousness, the Tribunal looked at the allegations in the round. The allegation of anti-Semitism found proved in respect of the post in February 2016 was in the view of the Tribunal the most serious of the allegations and was likely to have the greatest impact on sanction. Anti-Semitism has a negative frisson which is societal let alone professional. It is disappointing that anti-Semitism continues to exist. In recent years there has been significant work done by organisations such as Mr Falter's to educate and inform the public so as to reduce the incidences of anti-Semitism It was very disappointing that a solicitor in February 2016 was espousing views in social media that the Tribunal had determined on the facts to be anti-Semitic. Further, even if the Tribunal had not found the later posts to be anti-Semitic but merely offensive and wholly inappropriate, that would have itself been very serious misconduct. Causing offence to the public to the detriment of the collective reputation of the profession was unacceptable. The intemperate language used, the hatred manifested, including against anti-Zionists as well as Jewish people, and wishing them dead by graphic means were terrible ideas for a solicitor to be promoting.

60. The Tribunal therefore rejected the submission by Mr Treverton-Jones that the anti-Semitism found proved was at the lowest end. It was not open to a solicitor to behave in a more or less anti-Semitic way; he either behaved in an anti-Semitic way or he did not. The message sent and no doubt received by the public and the profession if the Tribunal accepted this submission would indicate that the Tribunal did not care sufficiently about such behaviour and that would of itself be damaging to the reputation of this disciplinary tribunal's decision-making process. The Respondent advocated violence against Zionists and Jews. He had no way of knowing how a particularly impressionable individual with a propensity for reading the public

Facebook pages on which his posts were published would respond. His behaviour was reprehensible and was not to be minimised. The Tribunal asked itself what message the public (including Zionists and Jews) and the profession (also including Zionists and Jews) would receive if the Tribunal decided that the misconduct found proved justified the imposition of sanctions at the lowest level of no order, reprimand, or a lowest level fine? To proceed in that way would potentially undermine the hard work done by the SRA and The Law Society and solicitors generally on improving attitudes towards equality and diversity. The SDT was not prepared to condone and trivialise this kind of behaviour. The Tribunal had a public interest duty to impose a sanction that appropriately and proportionally fits the misconduct and the view that Society has of the same. The Tribunal represented the collective conscience of the solicitors' profession in maintaining and protecting standards in fulfilling its duties to protect the public from harm and to maintain public confidence in the reputation of solicitors. The Tribunal therefore had no hesitation in rejecting Mr Treverton-Jones's submission that the appropriate proportionate sanction was a fine at the lowest level. In the view of the Tribunal the misconduct fell towards the top of the scale rather than towards the middle or bottom.

61. If a fine was an appropriate and proportionate sanction on the Tribunal's assessment it had to be towards the upper end of the range, at level 5 in recognition of the serious nature of the misconduct. This is in effect conduct assessed as significantly serious but not so serious as to result in an order for suspension or strike off, with a starting point at £50,000. The Respondent had not provided evidence of his means making it difficult for the Tribunal to apply the principles set out in Fuglers and Others v Solicitors Regulation Authority [2014] EWHC 179. There was limited evidence available on the level of fines imposed by other disciplinary tribunals or the High Court in analogous cases due to the fact-specific nature of the misconduct and the allegations found proved.

62. The Tribunal was concerned that the seriousness of the misconduct was sufficient to justify the imposition of an order for suspension from practice for a period. The Tribunal felt that public confidence in the legal profession demanded no lesser sanction and that the lack of insight by the Respondent as judged by the Tribunal on the basis of facts found proved and his own evidence was such as to call into question his ability to moderate the expression of his strongly held views in public. It was, of course, the case that these views were not expressed during the course of the Respondent's practice as a solicitor. However his lack of regard for open statements from members of the public that they proposed to report him to his regulator and the dismissive nature of his offensive responses to such statements were troubling. The Tribunal's concern was for the temptation for the Respondent to engage in similar conduct in future. There was an anxiety that the Respondent's lack of insight and apparent inability to recognise the gravity of his misconduct, which was to an extent exhibited by his Counsel's suggestion that a low-level financial penalty was justified, was evidence of an inability to identify and act upon the risks of engaging in similar conduct if the opportunity arose. The fact that the Respondent held his views strongly was evident. It was not the Tribunal's role to act as moderator or to attempt to change his mind about his opinions, or to tell him that his opinions were wrong. However the Tribunal had to be satisfied that the risks of those opinions being expressed in public in a way damaging to the reputation of the profession and offensive to others were

mitigated. The Tribunal considered that that was best achieved by allowing for a period of reflection arising from a term of suspended suspension.

63. After careful and methodical consideration, the Tribunal had concluded that the proportionate sanction, weighing the interests of the profession in terms of the maintenance of confidence in its reputation with those of the Respondent, and having due regard to the need not to interfere with the Respondent's right to practise any more than is necessary to achieve the purpose in imposing sanction, this misconduct should be dealt with by means of a fine at the upper end of the scale and the imposition of a suspended period of suspension from practice. The purpose of this sanction is to impose an appropriate penalty on the Respondent for his serious misconduct, to bring home to him the gravity of the misconduct, and to put in place protection for the reputation of the profession to minimise the risk of repetition by means of a period of reflection for the Respondent in the knowledge that similar misconduct during the period of suspended suspension will result in a reference to the Tribunal. On that basis, the fine moves to level 4 in recognition of the fact that a period of suspended suspension is to be imposed. The suspended period of suspension can be expressed in terms of giving the Respondent a chance to reflect and learn from his mistakes with an opportunity to identify ways of expressing his strongly held views in a more acceptable way. If the Respondent is genuinely contrite he now has the opportunity to get on with his life having learnt from his mistakes and to contribute positively in the continuation of his career, rather than to waste his time inflaming the socially damaging views held by those contributing to various web pages.

64. The Tribunal had decided that the Respondent should pay a fine of £25,000 and should in addition be suspended from practice as a solicitor for the period of 12 months from 2 August 2017, that period of suspension to be suspended for 12 months from the same date. The Respondent should be aware that if he admitted or was found to have committed a regulatory breach during the period of suspension it was open to the Applicant to refer his conduct to the Tribunal for the period of suspension to be activated in addition to any sanction imposed for the conduct giving rise to the breach. The Tribunal did not in any way seek to fetter the discretion of the SRA or any future Tribunal dealing with the Respondent save to say that the Tribunal would not expect the Respondent to be brought back to the Tribunal in respect of the suspended suspension for dissimilar conduct to that for which he had received sanction on this occasion.

Costs

65. The Applicant made an application for costs in the terms of a schedule dated 26 July 2017 seeking the sum of £9,595. Mr Bennett submitted that the costs were proportionate and reasonable in the circumstances of the case. No claim had been made for the attendance and travel time of his instructing solicitor. In answer to points raised by Mr Treverton-Jones, Mr Bennett confirmed that no duplication of work had been included in the schedule when the case had moved from a Senior Legal Adviser to a Legal Adviser. The hourly rate is the same for both Senior Legal Advisers and Legal Advisers. Mr Treverton-Jones nevertheless invited a reduction in the costs to take into account those points.

66. The Tribunal could identify no justification for reducing the amount of costs claimed by the Applicant in spite of the arguments made by Mr Treverton-Jones on behalf of the Respondent. There was no evidence of duplication of work when the file was handed over from one legal adviser to another according to the schedule of costs. The hourly rate claimed appeared to the Tribunal to be reasonable and it was noted that no time had been claimed for Mr Willcox's attendance at the hearing for one and a half days or for his travel. The work had to be done and the costs claimed were proportionate. The Tribunal therefore summarily assessed the claim for costs in the amount claimed of £9,595 and ordered the Respondent to pay the same to the Applicant.

67. The Tribunal had considered the submissions of both Counsel which had been articulated as well and as comprehensively as possible for which the Tribunal was grateful.

Statement of Full Order

68. The Tribunal Ordered that:

- The Respondent, MAJID MAHMOOD, solicitor, do pay a fine of £25,000, such penalty to be forfeit to Her Majesty the Queen;
- The Respondent, MAJID MAHMOOD, be suspended from practice as a solicitor for the period of 12 months from 2 August 2017, that period of suspension to be suspended for 12 months from the same date;
- The Respondent do pay the costs of and incidental to this application and enquiry in the sum of £9,595.

Dated this 15th day of August 2017
On behalf of the Tribunal

E. Nally
Chairman