Determination by Consent Decision

Name of regulated person and call date
Andrew Marc Rosemarine
21 November 1989

Case Reference
2022/0516/DC

Charges

Charge 1

Statement of Offence

Professional misconduct, contrary to Core Duty 1 of the Conduct Rules (Part 2 of the Bar Standards Board's Handbook Version 4.6).

Particulars of Offence

Andrew Marc Rosemarine, a barrister and BSB regulated individual failed to observe his duty to the court in the administration of justice in that, when acting for the applicants in the matter of a Judicial Review, he conducted himself in some or all of the ways listed at sub-paragraphs (c), (d), (g), (h), (k) and (l) of Schedule 1 and, as a result, on 14 October 2021 was made subject to a wasted costs order.

Charge 2

Statement of Offence

Professional misconduct, contrary to paragraph Core Duty 5 of the Conduct Rules (Part 2 of the Bar Standards Board's Handbook Version 4.6).

Particulars of Offence

Andrew Marc Rosemarine, a barrister and BSB regulated individual behaved in a way which is likely to diminish the trust and confidence which the public places in him or in the profession in that, when acting for the applicants in the matter of a Judicial Review, he conducted himself in some or all of the ways listed at sub-paragraphs (a), (b), (c), (d), (f), (i), (j), (k) and (l) of Schedule 1 and, as a result, on 14 October 2021 was made subject to a wasted costs order.

Charge 3

Statement of Offence

Professional misconduct, contrary to paragraph Core Duty 7 of the Conduct Rules (Part 2 of the Bar Standards Board's Handbook Version 4.6).

Particulars of Offence

Andrew Marc Rosemarine, a barrister and BSB regulated individual failed to provide a competent standard of work and service to his client in that, when acting for the applicants in the matter of a Judicial Review, he conducted himself in some or all of the ways listed at sub-paragraphs (a), (d), (g), (h) and (l) of Schedule 1 and, as a result, on 14 October 2021 was made subject to a wasted costs order.

Charge 4

Statement of Offence

Professional misconduct, contrary to paragraph rC3 of the Conduct Rules (Part 2 of the Bar Standards Board's Handbook Version 4.6).

Particulars of Offence

Andrew Marc Rosemarine, a barrister and BSB regulated individual failed to observe his duty to the court to act with independence in the interests of justice in that, when acting for the applicants in the matter of a Judicial Review, he conducted himself in some or all of the ways listed at sub-paragraphs (b), (c), (d), (i) and (j) of Schedule 1 and, as a result, on 14 October 2021 was made subject to a wasted costs order.

Charge 5

Statement of Offence

Professional misconduct, contrary to paragraph rC7.3 of the Conduct Rules (Part 2 of the Bar Standards Board's Handbook Version 4.6).

Particulars of Offence

Andrew Marc Rosemarine, a barrister and BSB regulated individual abused his role as an advocate by making a serious allegation against any person in that, when acting for the applicants in the matter of a Judicial Review, he conducted himself in the way listed at sub-paragraph (f) of Schedule 1 and, as a result, on 14 October 2021 was made subject to a wasted costs order.

Charge 6

Statement of Offence

Professional misconduct, contrary to paragraph rC20 of the Conduct Rules (Part 2 of the Bar Standards Board's Handbook Version 4.6).

Particulars of Offence

Andrew Marc Rosemarine, a barrister and BSB regulated individual failed to use his own professional judgement in conducting a matter for his clients such that he was unable to justify his decisions and actions in that, when acting for the applicants in the matter of a Judicial Review, he conducted himself in some or all of the ways listed at sub-paragraphs (b), (c), (d), (f), (h), (i), (j) and (k) of Schedule 1 and, as a result, on 14 October 2021 was made subject to a wasted costs order.

SCHEDULE 1

1. The concerns about Mr Rosemarine's conduct which resulted in the wasted costs order included claims of Mr Rosemarine:

    a. Submitting and maintaining an application for Judicial Review that was poorly pleaded, with the majority of grounds being unclear, unparticularised, vague and unsupported, accompanied by a bundle which included a significant number of irrelevant documents;

    b. Failing to constructively engage with the process of settlement which included pursuing an unnecessary hearing;

    c. Unnecessarily and unreasonably making repeated applications to the Upper Tribunal which had no arguable foundation or merit;

    d. Making applications which were unclear, unparticularised, unsubstantiated and repetitive; contrary to the overriding objective and failing to comply with basic standards expected of a reasonably competent barrister for the presentation of court documents;

    e. Claiming for costs of £33 000, such claim being disproportionate and/or far in excess of what was reasonable in the context of the case;

    f. Making serious allegations against the Respondent and/or her legal representatives which were wholly without foundation, and demonstrated a fundamental misunderstanding about the nature of Judicial Review proceedings, professional conduct and costs;

    g. Relying on the incorrect authority in respect of costs, by relying on the case of ***Boxhill*** as opposed to ***M v London Borough of Croydon*** [2012] EWCA Civ 595;

h. Being unable, in oral submission, to identify any basis for arguing that the Upper Tribunal could grant a mandatory order for the Applicants to be granted entry clearance;

i. Proposing draft consent orders that were inappropriate and unreasonable;

j. Failing to correspond with the Respondents in a rational or reasonable manner;

k. Failing to have regard to the previous decisions and warnings of the Upper Tribunal;

l. Failing to be properly prepared for the costs hearing including failing to prepare a proper schedule of costs.

Statement of Facts

1. Over a number of years HJ and SJ ('*the Applicants'*) had been repeatedly refused a visa by the Secretary of State for the Home Department ('*the HO'*) to visit family in the UK from Syria. One such refusal occurred on 23 September 2019 ('*the Refusal*').

2. In October 2019, Andrew Marc Rosemarine ('*Mr Rosemarine*') was instructed by the Applicants on a direct access basis to conduct Judicial Review proceedings in respect of the Refusal. Mr Rosemarine drafted various pre-action correspondence on behalf of the Applicants challenging the Refusal and, when that correspondence failed, he drafted Judicial Review proceedings on their behalf.

3. The Judicial Review proceedings were commenced in December 2019. Mr Rosemarine prepared the bundle of documents relied on in support of the Judicial Review proceedings.

4. The relief sought was:

    a. The quashing of the Refusal;

    b. The granting of the visa forthwith;

    c. Indemnity costs against the HO.

5. On 10 March 2020 Upper Tribunal Judge McWilliam initially refused to grant permission for the Judicial Review application to proceed, on the basis that the proceedings had been commenced out of time and there was no arguable error of law in the HO's Refusal. That decision was challenged on behalf of the Applicants. On 23 June 2020, Upper Tribunal Judge Rintoul heard submissions from Mr Rosemarine on behalf of the Applicants, varied the decision of Upper Tribunal Judge McWilliam and granted permission to the Applicants to proceed with the Judicial Review proceedings.

6. On 1 July 2020, the HO offered to compromise the Judicial Review proceedings on terms that (1) it would reconsider the Refusal within a 4 month period (save for any special circumstances), and (2) it would pay the Applicant's reasonable costs of the Judicial Review proceedings, to be assessed if not agreed. The HO provided a draft consent order to that effect.

7. On 3 July 2020 the HO proposed that the Judicial Review proceedings be withdrawn on the basis that the HO's offer rendered them 'academic'. In the alternative the Respondents suggested a stay in proceedings in order for them to reconsider the Refusal and for a decision to be made on the Applicants' visa application.

8. The Applicants rejected the HO's offer of settlement of the Judicial Review proceedings. With the assistance of Mr Rosemarine the Applicants made a number

of counter-offers. Those counter-offers included provision (a) that the HO should grant the Applicants' visa applications forthwith, alternatively within 4 weeks of the granting of permission by Upper Tribunal Judge Rintoul (b) that the HO should pay their costs of the Judicial Review proceedings on an indemnity basis (c) that the HO should agree Mr Rosemarine's hourly rates.

9. The Applicants also (with assistance from Mr Rosemarine) continued to pursue the Judicial Review proceedings. The Applicants made a number of Applications to the Upper Tribunal for costs on an indemnity basis and other matters, despite being warned by the Upper Tribunal of the potential cost implications of them doing so.

10. On 6 August 2020 Upper Tribunal Judge Rintoul made various Orders in the Judicial Review proceedings. Those Orders included (1) the dismissal of various procedural applications (2) the dismissal of an application for the HO to pay certain costs on an indemnity basis and (3) the listing of the Judicial Review proceedings for final determination unless a signed consent order was agreed within 10 working days of the issuing of the Order.

11. Upper Tribunal Judge Rintoul's reasons for making the Orders that he did on 6 August 2020 (as recorded in the Decision Notice) included the following:

    a. Since the HO had offered to reconsider the Refusal and to reconsider the Applicants' visa applications, the Judicial Review proceedings had become academic – there was no prospect of the Upper Tribunal making any Order in the Judicial Proceedings as (1) the Applicants had achieved all they could realistically achieve in the Judicial Review proceedings, since an order quashing the Refusal is the only remedy that the Upper Tribunal could realistically order (2) it could not realistically be argued that a mandatory order (compelling the HO to grant the Applicants' visa applications) should be made (3) the sole remaining issue was costs

    b. The parties were reminded of their duty to assist the Upper Tribunal with its overriding duty to deal with cases fairly and justly

    c. No purpose would be served by the serving of additional evidence or staying proceedings as the only remaining issue was costs

    d. In cases like this where a reasonable offer has been made, the application for Judicial Review should be withdrawn and the Respondent's should pay the Applicant's reasonable costs

    e. The Applicants had behaved unreasonably '*in requesting that an order as to costs be made on an indemnity basis even before the action has been brought to an end'* and in seeking to delay the settlement of the Judicial Review proceedings '*to get an agreement as to the hourly rate applicable for [Mr Rosemarine]*'

    f. The Applicants appeared to be unaware (1) that in continuing to pursue the Judicial Review proceedings they were at risk of the HO's costs incurred from the date of the offer of settlement, to be set against any award of costs to them

by the HO, and (2) that if the matter were to proceed to a substantive hearing any costs awarded to the Applicants would almost certainly be outweighed by the costs awarded to the HO '*given that their conduct in pursuing [the Judicial Review proceedings] could be seen as unreasonable*'

g. Any net costs awarded against the Applicants would be considered as a litigation debt for the purposes of paragraph V.14A of the Immigration Rules, which would be relevant to the consideration of the Applicants' visa application

h. The parties were again reminded of their duty to assist the Upper Tribunal, which duty included ensuring that documents were presented in a coherent and legible form.

12. No signed consent order was agreed and the Judicial Review proceedings were listed for final determination on 2 October 2020.

13. On 18 August 2020 Upper Tribunal Judge Kopieczek refused a further application made by the Applicants (with assistance from Mr Rosemarine) and reminded the Applicants of the potential consequences of pursuing the Judicial Review proceedings in circumstances where the claim was (in the view of Upper Tribunal Judge Kopieczek) now academic, and costs were likely to be substantial. The Judge also warned against having a hearing solely to determine the issue of costs, noting that the Applicants were not immune from an adverse cost order.

14. On 23 September 2020, the HO informed the Applicants that their visa application for entry clearance had been granted with the practical arrangements in process. The granting of the Applicants' visa applications followed the submission of further evidence by the Applicants (requested by the HO on 13 September 2020) on 18 September 2020. Mr Rosemarine assisted the Applicants to prepare that evidence.

15. The Applicants (assisted by Mr Rosemarine) continued to pursue a claim for indemnity costs in the Judicial Review Proceedings, as well as making various other applications, including:

a. On 25 September 2020, submitting a draft consent order (1) declaring that the Refusal was quashed, the Judicial Proceedings were withdrawn and the 2 October 2020 hearing was vacated, and (2) requiring the HO to pay the Applicants' costs, to be assessed at a 1 day face to face hearing by the Court in Manchester if not agreed, on an indemnity basis

b. On 28 September 2020, submitting a draft consent order which was largely in the same terms as that proposed 3 days earlier save for an additional proposal for HO to make a payment on account of £10 000 and for the HO to never again hire a judge who sits at Field House

c. On 30 September 2020 making an application for the Judicial Review proceedings to be transferred to Manchester for a face-to-face hearing despite the fact that previous application for transfer had already been made and rejected and there had not been any change in circumstances.

16. Upper Tribunal Judge Jackson refused to make an Order in the terms sought by the Applications and on 30 September 2020 gave further Directions in the Judicial Review proceedings. Upper Tribunal Judge Jackson

    a. reminded the parties of their duty to assist the Upper Tribunal with the overriding objective to deal with cases fairly and justly and in presenting documents in a coherent and legible form

    b. expressed the view that the substantive hearing on 2 October 2020 was '*wholly inappropriate*' to resolve the only outstanding issue of costs between the parties and indicated that, if the parties could not reach agreement on issues of costs, costs could be determined by the Upper Tribunal on the basis of written submissions from the parties

    c. directed that, if agreement could not be reached between the parties before 2 October 2020, the parties should file costs submissions in preparation for dealing with the issue of costs, together with a schedule of costs claimed, to allow for summary assessment on 2 October 2020 if appropriate.

17. On 30 September 2020, the HO sought to agree an Order with the Applicants recording that the Judicial Review proceedings were withdrawn and had been disposed of by consent, and that costs would be determined on the basis of written submissions made by the parties to the Upper Tribunal. The Applicants did not agree the HO's proposal.

18. On 1 October 2020 Upper Tribunal Judge Jackson refused an application by the Applicants (made with the assistance of Mr Rosemarine) for an adjournment of the hearing listed for 2 October. That refusal was for the reasons previously given on 30 September 2020.

19. On the morning of the hearing on 2 October 2020, the Applicants lodged an application notice seeking the payment of all their costs in the Judicial Review proceedings '*on the ground our council (sic) will shortly email you*'. In her judgment handed down following the hearing that took place on 2 October 2020 Upper Tribunal Judge Jackson noted that this was wholly unnecessary as the Applicants had already sought costs as part of the remedy in the Judicial Review proceedings and had already made multiple applications regarding costs.

20. On 2 October 2020 the substantive hearing of the Judicial Review proceedings took place before Upper Tribunal Judge Jackson ('***the Judge***'). Early in that hearing the Judge identified the issues before her at the hearing as being (1) the disposal of the Judicial Proceedings against the background of the Refusal having been withdrawn, and (2) costs.

21. The hearing on 2 October 2020 took place remotely. Mr Rosemarine was unable to access the hearing by Skype and so attended the hearing (on behalf of the Applications) by telephone.

22. Following the hearing on 2 October 2020 the Judge circulated a draft judgment in January 2021 and formally handed down judgment on 14 October 2021 ('***the 14 October 2021 Judgment***').

23. The 14 October 2021 Judgment

    a. addressed the disposal of the Judicial Review proceedings. The Judge concluded that the Judicial Review proceedings had become academic following the HO's withdrawal of the Refusal

    b. addressed the issue of costs in the Judicial Review proceedings. The Judge ordered

        i. that the HO should pay the Applicants' reasonable costs of the Judicial Review proceedings up to 30 June 2020, to be assessed if not agreed

        ii. that the Applicants should pay the HO's costs of the Judicial Review proceedings from 1 July 2020, assessed in the sum of £5,998

    c. addressed the issue of wasted costs in the Judicial Review proceedings. The Judge directed that Mr Rosemarine should pay the HO's costs from 1 July 2020 by way of wasted costs

    d. addressed aspects of Mr Rosemarine's conduct in the Judicial Review proceedings

24. In 14 October 2021 Judgment the Judge recorded (amongst other things)

    a. that the application for Judicial Review *"was poorly pleaded, with the majority of the grounds being unclear, unparticularised, vague and unsupported; and it was accompanied by a bundle which included a not insignificant number of wholly irrelevant documents..."*

    b. that whilst it had been reasonable for the Applicants to pursue the Judicial proceedings prior to the HO's offer on 1 July 2020 (and that therefore the Applicants were entitled to reasonable costs until that date), the Applicants' conduct since that date had been "*so poor and unreasonable in refusing to engage meaningfully in the process of settlement and in pursuing these proceedings, with multiple applications, up to and including a wholly disproportionate and unnecessary hearing to be such that not only are they not entitled to their reasonable costs after 1 July 2020; but that the Respondent is entitled to her costs after that point. These are matters upon which the Applicants were repeatedly warned by the Upper Tribunal, albeit these were consistently ignored."*

    c. that the Applicants had continued to maintain after 30 June 2022 that the Judicial Review proceedings were not academic, despite the HO having withdrawn the Refusal, because the HO had refused to confirm that the Applicants visas would in fact be granted

d. that the Applicants' conduct in so doing (and their continued pursuit of the Judicial Review proceedings) had been unreasonable. Once the HO had withdrawn the Refusal the Judicial Proceedings had become academic

e. that the HO's offer to pay the Applicant's costs of the Judicial Review proceedings to the date on which it had withdrawn its Refusal had been reasonable

f. that the Applicants had acted unreasonably in failing to agree to the form of consent order offered by the HO

g. that the Applicants had unreasonably sought costs of the Judicial Review proceedings from 27 November 2019 up to and including 2 October 2020 on an indemnity basis, as well as payment of £10,000 on account towards those costs

h. that although Mr Rosemarine had confirmed during the hearing that the Applicants were no longer pursuing indemnity costs or wasted costs against the HO (despite having done so persistently prior to the hearing), the Applicants had not set out any relevant authority or test in having maintained the application for indemnity costs and/or wasted costs, and there was, *"no appropriate basis for indemnity or wasted costs against [the HO]."*

i. *"I wholly reject Mr. Rosemarine's assertion that the Applicants have done all that they could to settle these proceedings and avoid the need for an oral hearing. To the contrary, they have done all they could to continue them leading to the Respondent incurring costs and the significant resources of the Upper Tribunal being wasted."* Furthermore, the Applicants failed to have regard to the previous decisions and warnings of the Upper Tribunal regarding potential cost implications and *"continued pursuing this application for judicial review with an unreasonable focus on indemnity costs and wasted costs...without having rationally or objectively considered the merits of the claim, the reasonableness of pursuing it, or their conduct"*

j. As a result, the HO was awarded its reasonable costs of the Judicial Review proceedings from 1 July 2020

k. that Mr. Rosemarine had relied on an incorrect authority in respect of costs (*Boxhill*).

l. The Applicants' skeleton argument (drafted Mr Rosemarine) had alleged bad faith, flagrant and prolonged incompetence, breach of duty of candour and conspicuous unfairness amounting to a breach of power by HO and/or her legal representatives. The Judge rejected such allegations as follows: *"...I pause here to make it clear that there is no evidence of any unprofessional conduct by either as claimed. The very serious allegations that have been made repeatedly about [the HO] and/or her legal representatives are wholly without foundation and serve only to demonstrate fundamental misunderstandings about the nature of Judicial Review proceedings, professional conduct (particularly in relation to litigants in person) and costs."*

m. that numerous unmeritorious applications had been made by the Applicants (with assistance from Mr Rosemarine) before and during the hearing,

n. that during the hearing Mr Rosemarine had made submissions that the Judge would be influenced by the previous decision of her colleagues with the suggestion being that either she was biased or that she was not approaching the hearing in an impartial way. According to the Judge, Mr Rosemarine's submissions in this regard were, *"entirely unclear, unsupported and inappropriate."*

o. that despite the Judge having summarised at the outset of the hearing her understanding of the remaining issues in the proceedings being costs only given that the substantive claim in the Judicial Review proceedings had become entirely academic (as previously identified by Upper Tribunal Judges Rintoul and Kopieczek) Mr Rosemarine:

    i. had nonetheless sought to persuade the Judge that the substantive claim in the Judicial Review proceedings was not academic on the ground that the Applicants had not physically received their visas, and in the course of doing so

    ii. had stated, *"Ma'am, there's a deadly virus in your Tribunal. It's highly contagious. Your tribunal has caught it from the Home Office*." That, in the Judge's view, *"was a wholly unprofessional and unnecessary way to begin what should have been impartial, objective legal submissions and a statement made in thoroughly poor taste given the Covid-19 pandemic."*

25. The 14 October 2021 Judgment contained the following passages:

a. *"The application for Judicial Review is, and always should have been a straightforward one*[1]*, as should have been the ancillary matter of costs. As set out repeatedly by three judges of the Upper Tribunal prior to the hearing (including myself), an oral hearing to deal solely with the issue of costs was wholly unnecessary and inappropriate. The issue of costs should always be dealt with proportionately by reference to the substantive case and should not as a matter of practice occupy more time and resources of both the parties and the Tribunal than the matter of substance in issue in the claim. This is not what happened in this application, which should never had resulted in the disproportionate use of almost a full day's hearing in the Upper Tribunal solely on the issue of costs, and would not have done, but for the wholly unreasonable conduct of the Applicants who have failed to undertake any objective or rational*

[1] Mr Rosemarine does not agree with the Judge's characterization of the Judicial Review proceedings as '*straightforward*': (1) at least at the outset, the issues in the Judicial Review proceedings involved a degree of legal and factual complexity (2) the Judicial Review proceedings created considerable practical challenges given the locations of the Applicants (and consequent difficulties in communication), the impecuniosity of the Applicants, the stance of the Home Office and the additional challenges caused by the Covid pandemic. However, the complexity or otherwise of the Judicial Review proceedings is of no consequence for the purpose of the Charges.

assessment of the merits of their claim, and more particularly, the resolution of any application for costs which could and should have proportionately been done by a judge on the papers pursuant to written submissions if the parties were unable to agree on costs in principle"

b. *"Whilst I accept that this application has been pursued by litigants acting in person, with an Interested Party conducting the litigation pursuant to a Power of Attorney, they have at all times been assisted and advised by Mr. Rosemarine of counsel on a direct access basis. Unfortunately, Mr Rosemarine has demonstrated repeatedly in the content and tone of his submissions, the same failure to undertake an objective or rational assessment of the claim, or the means by which it would appropriately and proportionately be resolved."*

26. The basis for the Judge's findings in the 14 October 2021 Judgment included:

a. There was never any realistic prospect of the Upper Tribunal granting a mandatory order for the Applicants to be granted entry clearance, and Mr Rosemarine, *"was unable in oral submissions to identify any basis on which this would realistically have happened, referring either to wholly irrelevant matters, or simply repeating (submissions)…"* This was made expressly clear in the decision of Judge Rintoul of 6 August 2020

b. *"There was no rational or objective basis"* for the concern that there would be a further (unlawful) refusal of the Applicant's visa application

c. *"There was no rational or objective basis"* for the concern that the Respondent would not comply with the terms of the consent order she proposed

d. Mr. Rosemarine's submission that the Applicants would have immediately had grounds to issue an identical Judicial Review application following agreement of the proposed consent order was wholly without foundation and there was no identifiable or rational basis for this submission.

e. In relation to Mr Rosemarine's fees and in particular, requesting the Respondent agree his hourly fee of £500 in advance, the judge found that, *"The precise claim for costs or part thereof, as opposed to an award of reasonable costs, is not a reason to refuse a reasonable proposal of consent...even less so in circumstances where this correspondence was isolated from any indication of total cost or hours worked, and came directly from counsel."* (As had been made clear previously by Judge Rintoul)

f. *"The Applicant's repeated applications to the Upper Tribunal and failure to comply with directions was unnecessary and unreasonable"* for the reasons identified by Judge Rintoul and Judge Kopeiczek. *"The applications were unclear, unparticularised, unsubstantiated and repetitive; contrary to the overriding objective and failed to comply with basic professional standards expected of a reasonably competent barrister for the presentation of court documents (despite repeated reminders from the Upper Tribunal on this point) in the context of a Judicial Review application which was, by early July 2020, academic"* and the assertion otherwise was *"misconceived"*

g. *"The draft consent orders proposed by the Applicants were all inappropriate and unreasonable at least in some respects...The Upper Tribunal would not have approved any of the proposed consent orders even if the Respondents had agreed to them given the poor and inappropriate drafting contained in each of them. There was not a single rational or reasonable offer of settlement by the Applicants; nor was there any rational or reasonable correspondence with the Respondent on any matters..."*

h. Mr. Rosemarine's submissions, *"showed a fundamental misunderstanding not only of the principle of legitimate expectation, but also of the basic position that an offer which is rejected is not, some significant time later, still available to the Applicants, nor does an offer which was rejected in any way bind the Respondent..."*

i. *"...no reason at all had been put forward by or on behalf of the Applicants as to why they refused to agree to the Upper Tribunal determining the issue of costs on the papers on the basis of written submissions such as to avoid an oral hearing, which they expressly accept was unnecessary and wholly inappropriate and which wasted the time and resources of the Upper Tribunal and only served to increase the costs incurred by both parties."*

27. At the end of the hearing on 2 October 2020 the Judge raised with Mr. Rosemarine, the possibility of a wasted costs order being made against him *"on the basis of his conduct as counsel throughout the course of proceedings, including the oral hearing"*. Thereafter

    a. the draft 14 October 2021 Judgment (circulated in January 2021) included Notice that Mr Rosemarine (1) should make representations as to why a wasted costs order should not be made against him in respect of costs incurred in the Judicial Review proceedings, and (2) should make representations relating to the conduct of the Judicial Review proceedings to enable consideration to be given as to whether such conduct should be referred to the Bar Standards Board

    b. The Judge made an Order to such effect dated 25 January 2021.

28. Representations were in fact made on behalf of Mr Rosemarine. In the course of preparing such representations Mr Rosemarine's legal representatives made a number of requests for access to the audio recording of the hearing on 2 October 2020, pursuant to an allegation that the transcript of that earlier hearing was unclear and inaccurate. Jude Jackson found that *"the extended correspondence"* requesting to hear the audio, which in the end did not happen, *"unnecessarily and significantly further delayed"* the handing down of the judgment by a further four months.

29. As part of his representations in response to the Notice to Show Cause Mr Rosemarine submitted that he was unable, without breaching legal professional privilege, to address the conduct issues set out in the draft 14 October 2021 Judgment. In that regard the Judge found that, *"there had been deliberate*

disclosure of information from [the Interested Party] which I find is a waiver of privilege...further to which privilege cannot be asserted in relation to other material of the same subject matter...Mr Rosemarine cannot in these circumstances rely on privilege to claim the benefit of the doubt in relation to matters of conduct arising in these proceedings." The Judge considered there to be information before the court that could be taken into account and furthermore, there were a number of issues raised regarding Mr. Rosemarine's conduct, *"to which the nature of advice and instructions can have no bearing given the standards to be reasonably expected of a barrister and in light of their professional duty to the Tribunal."*

30. Dealing with the arguments advanced on Mr Rosemarine's behalf the Judge found

    a. that there had been no reasonable basis on which a mandatory order would have been made against the HO compelling the HO grant the Applicants' applications for visas. The Judge stated that during the substantive hearing, *"Mr. Rosemarine was asked three times the basis on which the Upper Tribunal could or would have granted a mandatory order...to which no coherent answer was given"*

    b. that there had been *"no rational basis upon which it could be said that the claims were anything other than academic following the proposed consent order on 1 July 2020..."*

    c. that other grounds advanced on Mr. Rosemarine's behalf in response to the Notice to Show Cause were without merit

    d. that *"Mr. Rosemarine's conduct more generally, including the nature of the correspondence with [the HO] which failed entirely to constructively engage with the possibility of a reasonable settlement of this application for Judicial Review and the pursuit of multiple applications to the Upper Tribunal which had no arguable foundation or merit"*. The judge did not consider the issue of privilege to have any bearing on her consideration of this conduct (whether expressly waived or otherwise) as the conduct related to, *"matters of competence and what can properly and appropriately be pursued before the Upper Tribunal"*.

31. The Judge determined that she should make a wasted costs order against Mr Rosemarine. In making the wasted costs order the Judge found:

    a. *"There was no reasonable or appropriate form of consent proposed by or on behalf of the Applicants, or even rational correspondence engaging with the substance of the issues"*

    b. *"The tone and content of what was proposed on each occasion was inappropriate and would not have been approved by the Upper Tribunal"*

c. *"The draft consent orders proposed on behalf of the Applicants were not drafted to a competent standard to be reasonably expected of a member of the profession and did not indicate any proper engagement with [the HO] with a view to resolving any matters of substance but focused instead on ancillary matters of costs which could and should have been proportionately dealt with by way of written submissions in the absence of agreement"*

d. There was no rational basis for the Applicants refusing the consent order proposed by the HO and for forcing the hearing to go ahead

e. The hearing proceeded for the sole purpose of determining costs but without the Applicants being properly prepared, including the absence of a costs schedule and Mr Rosemarine relying on authority which was many years out of date

f. The applications to the Upper Tribunal for costs on an indemnity basis and wasted costs order made no distinction between the two, no reliance on proper authority and, *"no proper basis for either claim beyond unsubstantiated allegations against [the HO] and/or her legal representatives which...were wholly unfounded and without merit. There is no rational basis upon which the Upper Tribunal could have even arguably awarded the Applicants their costs on an indemnity basis, nor awarded wasted costs against [the HO]"*

32. The Judge did not find that Mr. Rosemarine's conduct reached the threshold of "improper", as referred to in the relevant authority, *Ridehalgh*. The Judge found that *"(although at least some of the examples of submissions made were arguably improper) I do conclude that it was, considered as a whole, unreasonable and negligent. The pursuit of the application for Judicial Review, but more significantly the nature of correspondence to and allegations against [the HO] together with repeated applications for costs without proper foundation were wholly unreasonable and permit of no reasonable explanation. The applications made and proposed consent orders cannot be described in any way as advancing a resolution of the case, but on the face appear antagonistic and designed to harass*."

33. The Judge further noted that Mr. Rosemarine's suggestion that he had been acting in the best interests of his clients, *"did not detract from an objective assessment of the conduct itself"*.

34. The Judge further found, *"The same issues fall equally under the heading of negligence, with Mr. Rosemarine's pursuit of this application for Judicial Review after 1 July 2020, including the lack of any proper engagement to resolve the outstanding issues, and the pursuit of unfounded applications for costs, fall far below the competence reasonably to be expected of ordinary members of the bar"*. The Judge found that the client's instructions to try and cover as much of their costs in the proceedings as possible, *"does not excuse the pursuit of applications without legal or evidential foundation for indemnity costs and/or wasted costs"* and that the

greatest recovery of costs would have been achieved through the agreement to the consent order of 1 July 2020, *"a matter which the Applicants were repeatedly warned about by the Upper Tribunal."*

35. The Judge found that, *"Mr Rosemarine acted unreasonably or negligently, and... there is no benefit of the doubt to be given for reasons of privilege as this has been waived."* The Judge went on to state that the HO incurred unnecessary costs from 1 July 2020, and it was just for the HO to be compensated for the costs incurred after that date when an entirely appropriate and reasonable form of consent was offered, *"I therefore make a wasted costs order against Mr. Rosemarine to pay [the HO's] reasonable costs from 1 July 2020."*

36. Addressing the fact that Mr. Rosemarine had, since the hearing on 2 October, paid the HO's in the sum assessed but without admitting liability, the Judge stated, *"the only basis for the submission that once costs have been paid no order should be made is that the wasted costs jurisdiction is compensatory rather than punitive and therefore not appropriate where [the HO's] costs have already been paid."* However, the fact of payment did not affect the principle of liability for a wasted costs order. The Judge went on to say, *"...the appropriateness of such payment in circumstances where there is no admission of any improper, unreasonable or negligence (sic) conduct would at least be questionable as a matter of principle as it could be inappropriately used as a means of seeking to avoid the making of a wasted costs order or the consequences thereof."*

37. The Judge found that a wasted costs order was appropriate in the circumstances, and the practical result of Mr Rosemarine having already made payment was that the wasted costs order had already been satisfied.

38. As regards Mr Rosemarine's conduct during the Judicial Review proceedings, the Judge concluded that a copy of the 14 October 2021 Judgment should be referred to the Bar Standards Board. She recorded

    a. *"a number of examples have been given throughout this decision of poor and inappropriate conduct, to which can be added unprofessional conduct towards Ms Thelen [the Respondent's representative] (for example, calling her by her first name and accusing her of submitting a factually incorrect skeleton argument) and unprofessional documentation (which included hand-written commentary on documents as well as typed commentary altering original documents in the bundle; documents which are not as described and which include excessive use of bold, underlining and large fonts)"*

    b. *"my conclusions as to Mr. Rosemarine's professional conduct go hand in hand with the matters already set out throughout this judgment, in particular the reasons already given for the making of a wasted costs order...There is little that needs to be specifically added to this. For the reasons already given, Mr. Rosemarine failed to engage with the Upper Tribunal or the Respondent in a*

professional or competent manner. This included the pursuit of applications since 1 July 2020 without merit or proper foundation; he proposed consent orders which were unreasonable and irrational; he made submissions which were wholly unprofessional and inappropriate (both in writing and orally, in substance and in the manner of their presentation) and even if the Applicants specifically instructed him to proceed in this way, that conduct fell far short of the standards reasonably to be expected, taking into account Counsel's professional duties to the Upper Tribunal."

39. A copy of the 14 October 2021 Judgment was referred to the Bar Standards Board on 20 January 2022 by the Honourable Mr Justice Lane, the President of the Upper Tribunal.

Mr Rosemarine's response

40. In his response to the allegations dated 28 October 2022, Mr Rosemarine stated that:

    a. He did '*not intend to challenge a great deal of the factual material'* as set out by the allegation. As a result, it has been possible for the Bar Standards Board and Mr Rosemarine to agree the wording of the Statement of Facts above;

    b. He now appreciates that he '*failed to show the degree of detachment that [he] ought to have shown as a barrister representing clients*' and that he was '*at all times simply trying to do [his] best*';

    c. He is '*ashamed and embarrassed at aspects of [his] conduct in this case', accepting that it was 'poor in its overzealousness'*;

    d. He has reflected on his conduct during the Judicial Review proceedings and has identified (in detail) how he would have acted differently '*if I had my time again*';

41. In relation to the specific provisions of the allegations, Mr Rosemarine stated that:

    a. That none of his conduct was motivated by a desire or intention on his part (1) to obstruct the administration of justice, or (2) to make a personal gain. Rather, everything he did was in a (he now accepts, misguided) attempted to achieve the best outcome he could for the Applicants;

    b. Although he (a) provided advice to the Applicants in connection with the Judicial Review applications that he considered appropriate, and (b) acted at all times on the instructions of the Applicants, he now sees (1) that the manner in which he acted was inappropriate and unprofessional, (2) that his conduct resulted in Judicial and Court time and resources being taken up when that ought not to

have been needed, and (3) and resulted in costs being incurred which should have been avoided;

c. When preparing and issuing the Judicial Review proceedings on behalf of the Applicants, he '*did the best that [he] could do with the very limited time available*';

d. He accepts that the manner in which Applications and supporting materials were prepared and presented did not accord with what had been directed by Upper Tribunal Judge Rintoul. He now endeavours to ensure that the style that he adopts in documents 'fits' the requirements of the Tribunal;

e. The way he acted during settlement negotiations with the HO was 'deficient' and that the process was 'unnecessarily involved, fiery and prolonged'. His conduct was however the result of over-zealousness on his part (rather than anything more sinister) and a consequent loss of the required degree of perspective and detachment:

    i. In rejecting the HO's offer to withdraw the Refusal his judgment was clouded by genuine (but misguided) concerns on behalf of the Applicants that (1) the HO's offer to withdraw the Refusal and reconsider the Applicants' visa applications within 4 months was excessive given the HO's own advertised 'target time' of 3 weeks for determining applications, (2) that time was of the essence given the advanced ages of the Applicants and (3) that the HO would simply apply the same mechanism as had been used previously to refuse the visa applications yet again, putting the Applicants back to square one;

    ii. The rejection of the HO's offer to pay reasonable costs on a standard basis was motivated a concern that that would leave shortfall in the recovery of the Applicants' legal costs, which was money they could ill-afford. He accepts that he was wrong to pursue applications for costs against the HO on an indemnity basis;

f. He takes issue with any suggestion that he did not understand the public law concepts in issue in the Judicial Review proceedings. He explains that he has been practising in the relevant field of law for many years and is entirely familiar with those concepts;

g. He takes issue with the description of the costs incurred by the Applicants as 'disproportionate' owing to the considerable work on his part in the Judicial Review proceedings, noting that the costs are yet to be assessed by a costs judge;

h. He apologises 'unreservedly' if he did make any allegation regarding the HO/HO's legal representative that could be said to be wholly without

foundation. Nothing that he said was intended as a personal attack on the HO's legal representatives;

i. As regards the 2 October 2020 hearing itself:

   i. The (remote) hearing was extremely difficult due to a very poor connection; at times Mr Rosemarine was simply unable to hear what was being said by others, including the Judge, and there appeared to be difficulties with others being unable to hear (or at least hear clearly) what Mr Rosemarine was saying. That made it far harder to present the Applicants' case as professional and effectively as he would have wished, which is likely to have increased the Judge's frustration at him;

   ii. His failure to make reference to the case of *M v London Borough of Croydon* was unintentional; he had intended to make reference to the same, but his 'train of thought was disrupted' by interjection by the Judge;

   iii. He accepts that he struggled to make submissions clearly or in a manner that the Judge found convincing in relation to the granting of a mandatory order;

   iv. He apologises for using language that the Judge considered (he can now see, with good reason) inappropriate. It was not his intention to offend in any way.

i. Certain letters and emails sent to the HO 'could have been worded far better' and that he is 'embarrassed' by some of the correspondence;

j. He did not have the time, nor the funds to pay a costs draftsman, to draft the costs schedule prepared (at the direction of the Judge) for the 2 October 2020 hearing, which is why he prepared it himself.

42. In summarising his response, Mr Rosemarine states that:

a. He accepts that criticisms are justifiably to be made of aspects of his behaviour and that aspects of his conduct 'fell short of the standards that, as a barrister, [he] should have achieved'.

b. Certain allegations fall short of amounting to professional misconduct.

c. It is difficult for him *'to express the degree of embarrassment and remorse that [he feels] in relation to the matters that gave rise to the Wasted Costs Order and to the matters that have given rise to [his] referral to the BSB'*.

Plea and Mitigation

43. Mr Rosemarine admits/denies the charges as follows:

Charge	Plea	Basis of Plea
1	Admitted	Mr Rosemarine accepts that in acting as set out in sub-paragraphs (c), (d), (g), (h), (k) and (l) of Schedule 1, he failed to observe his duty to the Court in the administration of justice and so breached Core Duty 1. ❖ As regards sub-paragraphs (c), (d) and (k), while Mr Rosemarine at all times acted on the instructions of the Applicants, he ought not to have associated himself with those aspects of their instructions that resulted in him breaching Core Duty 1 of the Conduct Rules ❖ As regards sub-paragraphs (g) and (h), while Mr Rosemarine had intended at the hearing to refer to the additional matters whose omission is now criticised, he accepts that (for the reasons set out above concerning the difficulties at the hearing) he did not do so when he ought to have done so ❖ As regards sub-paragraph (l), Mr Rosemarine did prepare a costs schedule which he believed at the time to be adequate, although he now appreciates that it was not adequate
2	Admitted	Mr Rosemarine accepts that in acting as set out in sub-paragraphs (c), (d), (f), (h), (k) and (l) of Schedule 1, he behaved in a way likely to diminish the trust and confidence the public places in him and in the profession and so breached Core Duty 5. ❖ As regards sub-paragraph (a), Mr Rosemarine accepts that, considered objectively, the Judicial Review proceedings ought to have been better pleaded and the supporting Bundle better prepared

		❖ As regards sub-paragraphs (b), (i) and (j), Mr Rosemarine accepts that, considered objectively, the manner in which he dealt with issues relating to settlement resulted in him breaching Core Duty 5 ❖ As regards sub-paragraphs (c), (d) and (k), while Mr Rosemarine at all times acted on the instructions of the Applicants, he ought not to have associated himself with those aspects of their instructions that resulted in him breaching Core Duty 5 of the Conduct Rules. He also accepts that any applications made during the Judicial Review proceedings ought to have been better particularised and evidenced ❖ As regards sub-paragraph (f), Mr Rosemarine accepts that, considered objectively, criticisms that he made of the HO and its representatives were unprofessional and expressed in inappropriate terms, and thus a breach of Core Duty 5 of the Conduct Rules ❖ As regards sub-paragraph (l), Mr Rosemarine accepts that, considered objectively, his lack of preparedness for the costs hearing resulted in him breaching Core Duty 5
3	Admitted	Mr Rosemarine accepts that in acting as set out in sub-paragraphs (a), (d), (g), (h) and (l) of Schedule 1, he failed to provide a competent standard of work to his client and so breached Core Duty 7. ❖ As regards sub-paragraphs (a) and (d), Mr Rosemarine accepts that the Judicial Review proceedings ought to have been better pleaded, that the supporting Bundle ought to have been better prepared and that any applications made during the Judicial Review proceedings ought to have been better particularised and evidenced (if any were to be made at all) ❖ As regards sub-paragraphs (g) and (h), while Mr Rosemarine had intended at the hearing to refer to the

		additional matters whose omission is now criticised, he accepts that (for the reasons set out above concerning the difficulties at the hearing) he did not do so when he ought to have done so ❖ As regards sub-paragraph (l), Mr Rosemarine accepts that his lack of preparedness for the costs hearing resulted in him breaching Core Duty 7
4	Admitted	Mr Rosemarine accepts that in acting as set out in sub-paragraphs (b), (c), (d), (i) and (j) of Schedule 1, he failed to observe his duty to the Court to act with independence in the interests of justice and so breached Rule rC3 of the Conduct Rules. ❖ As regards sub-paragraphs (b), (i) and (j), Mr Rosemarine accepts that by allowing himself to be influenced to deal with issues relating to settlement as he did, he breached Rule rC3 of the Conduct Rules ❖ As regards sub-paragraphs (c) and (d), Mr Rosemarine accepts that by allowing himself to be influenced so as to assist with the making of applications during the Judicial Review proceedings as he did, he breached Rule rC3 of the Conduct Rules
5	Admitted	Mr Rosemarine accepts that in acting as set out in sub-paragraph (f) of Schedule 1, he abused his role as an advocate and so breached Rule rC7 of the Conduct Rules. More particularly, Mr Rosemarine accepts that criticisms that he made of the HO and its representatives were unprofessional and expressed in inappropriate terms.
6	Admitted	Mr Rosemarine accepts that in acting as set out in sub-paragraphs (b), (c), (d), (f), (h), (i), (j) and (k) of Schedule 1, he failed to use his own professional judgment when conducting the Judicial Review proceedings for the Applicants (and was on occasion unable to justify decisions and actions) and so breached Rule rC20 of the Conduct

		Rules. In particular, while Mr Rosemarine at all times acted on the instructions of the Applicants, he ought not to have associated himself with those aspects of their instructions or allowed himself to act in accordance with their instructions when doing so resulted in him breaching Rule rC20 of the Conduct Rules
Overall		Mr Rosemarine accepts the factual bases for each aspect of his conduct which resulted in the Wasted Costs Order being made against him by the Judge (and thus for each Charge) except that set out in paragraph (e) of Schedule 1. While it is correct that costs of £33,000 were claimed on behalf of the Applicants in the Judicial Review proceedings, making such a claim (when such costs had been incurred and even now are yet to be assessed) did not breach any provision of the Conduct Rules.

Plea and Mitigation

Plea

44. Mr Rosemarine makes admissions to each Charge as set out in the Table at paragraph 43 above. As set out in the final sub-paragraph of that Table, the only factual criticism with which he takes issue is that set out in paragraph (e) of Schedule 1 to the Charges, since the costs claimed on behalf of the Applicants in the Judicial Review proceedings (1) were in fact incurred, (2) are yet to be assessed (meaning that reasonableness is yet to be determined by the Court).

45. Mr Rosemarine asks that, when addressing each Charge (and each sub-paragraph of Schedule 1 to which each Charge relates) and his Response to the same, the IDB Panel considers whether each aspect of his admitted conduct does in fact amount to 'professional misconduct' within the meaning given to that term in
    a. *Walker v The BSB* (19 September 2013) @ paras 11, 16 & 37
    b. *BSB v Howd* [2017] EWHC 210 (Admin) @ paras 50-55
    (copies attached).

46. While he accepts that some aspects of the conduct which underlies the Charges are more serious than others, Mr Rosemarine questions whether much of the conduct identified in the Statement of Facts, Charges and Schedule 1 to the

Charges can properly be said to be so '*reprehensible, morally culpable or disgraceful'* as to amount to professional misconduct. If the IDB Panel agrees, he asks that the IDB Panel reflect that fact by concluding that, where aspects of his conduct do not reach the threshold for a finding of professional misconduct, Charges should be dismissed in whole or in part. Of course, if the IDB Panel concludes that aspects of his conduct do exceed that threshold, he accepts that Charges will be found proven, in whole or in part.

Mitigation

47. Mr Rosemarine makes the following submissions in mitigation. In doing so he has had regard to Annex 2 of the BTAS Sanctions Guidance (Version 6).

    a. Early admissions: Mr Rosemarine states that he has made appropriate admissions as regards his conduct at the very earliest opportunity;

    b. Co-operation: Mr Rosemarine states that he has co-operated fully with the BSB's investigation of his conduct and has at all times been entirely open about his conduct and the reasons for that conduct. He has worked hard with the BSB to agree a detailed Statement of Facts and to that end has provided the BSB with documents and information not previously available to the BSB;

    c. Reasons for conduct: As set out in the Statement of Facts, his Response and his correspondence with the BSB, Mr Rosemarine states that the conduct which underlies the Charges was wholly out of character for Mr Rosemarine, who has enjoyed a lengthy career at the Bar. The reasons for that are in summary as follows:

        i. Mr Rosemarine states that he was at all times trying to do his best for his clients during the Judicial Review proceedings. His actions were motivated by a desire to achieve an optimum outcome in the Judicial Review proceedings for his clients. That is what he endeavours to do in every case;

        ii. However, in acting for the Applicants Mr Rosemarine states that he lost the objectivity that he ought to have retained and failed to show the degree of detachment that he ought to have shown as a barrister representing his clients;

        iii. Mr Rosemarine states that his personal circumstances at the relevant times are thus a strong mitigating factor in this case. Mr Rosemarine relies on medical evidence.

    d. No personal motive or gain: Mr Rosemarine states that, as will be obvious from the Statement of Facts and his Response and correspondence, he did not act

as he did in the Judicial Review proceedings for personal gain or with the intention of obstructing the administration of justice. His sole motivation was a desire to help the Applicants in the face of what he perceived to be unjust treatment of them by the HO;

e. Harm: Mr Rosemarine accepts that a degree of harm was caused by his conduct, in that (1) Court time was occupied which ought to have been avoided, and (2) costs were incurred which ought to have been avoided. Compensation (in the form of wasted costs) has however already been ordered (and in fact paid before it was so ordered) to reflect the same, and the IDB Panel is therefore asked to take that into account when considering sanction in order to ensure that Mr Rosemarine is not punished twice for the same conduct. The IDB Panel's attention is also drawn to the fact that no harm was caused to the Applicants (Mr Rosemarine's own clients), who did in fact succeed in the Judicial Review proceedings and were subsequently granted their visas (after repeated earlier refusals) as a result of Mr Rosemarine's efforts

f. Likelihood of repetition: Mr Rosemarine states that there will not be a repetition of the conduct which has led to these Charges; the conduct in question was a 'one off'. As above, he says that it was the result of a 'perfect storm' of extraordinary circumstances which led him, for the first time in a 30 year career, to conduct himself in the unacceptable way that he did at times during the Judicial Review proceedings. The behaviour was wholly uncharacteristic. Mr Rosemarine appreciates his errors, and reassures the IDB Panel that they will not be repeated

g. Remorse and Insight: Mr Rosemarine is extremely sorry for the manner in which he conducted himself during the Judicial Review Proceedings; his remorse is hopefully self-evident from the Statement of Facts, the Response and from the correspondence that he has had with the BSB. Since the conclusion of the Judicial Review proceedings he has been able to 'step back' from what happened during 2020 and reflect on his conduct. Having done so, he has been able to appreciate where and how he went wrong and thereby ensure that similar mistakes are not made by him again. As stated in the Response, he is embarrassed and ashamed at aspects of his conduct during the Judicial Review proceedings, which he acknowledges unreservedly were unprofessional and inappropriate. Mr Rosemarine attaches his CPD record which shows the amount of courses he has attended in his determination to improve his knowledge and avoid any possible repetition of these events.

h. References: Mr Rosemarine encloses a hyperlinked bundle of references from a variety of sources. Mr Rosemaine states that those references demonstrate that he is a credit to the profession who has throughout his career fought for the underdog and done his utmost to give a voice to those who are often

unheard, often without payment or significant payment. Mr Rosemarine also attached his CV which demonstrates the breadth of the work he has carried out over many years in and outside practice.

The primary submission made on Mr Rosemarine's behalf is that the exceptional circumstances of this case can be most appropriately sanctioned by (at most) the IDB Panel giving advice to Mr Rosemarine and/or reprimanding Mr Rosemarine, although the IDB Panel should not rule out taking no further action given (1) the unique circumstances of this case, and (2) the fact that Mr Rosemarine has already been 'sanctioned' as a result of the findings made about his conduct by Upper Tribunal Judge Jackson in the Wasted Costs Judgment and the imposition of the Wasted Costs Order. Such sanctions will achieve the Purpose and Principles of Sanctioning described in in Section 2 of the BTAS Sanctions Guidance. However, insofar as the IDB Panel might consider a fine to be necessary in this case, Mr Rosemarine has provided financial information for the Panel to consider.

Decision of the IDP
Charges found proved: charges 1-6

Reasons for the decision on why charges are proved

The Panel noted that Mr Rosemarine has admitted the facts in this case but denied that his conduct amounted to professional misconduct. It was therefore necessary for the Panel to make a determination on this point.

The Panel had regard to the previous decision sheet arising from the IDB Panel on 11th January 2023 ("the January Panel"). Whilst accepting it was not bound by the decision of the January Panel, the Panel agreed with that decision and with the reasons given supporting various breaches of the Handbook.

The Panel also decided that the facts agreed by Mr Rosemarine supported the charges set out and evidenced breaches of the Handbook amounting to professional misconduct.

In reaching a decision as to whether the breaches of the Handbook amounted to professional misconduct, the Panel noted within the judgment of the Upper Tribunal (Immigration and Asylum Chamber), Upper Tribunal Judge Jackson, in deciding whether to make a wasted costs order against Mr Rosemarine, concluded at paragraph 181 of the judgment, that Mr Rosemarine's conduct as a whole was both unreasonable and negligent, albeit it did not reach the threshold of 'improper'. The Panel was mindful however that the decision of whether Mr Rosemarine's conduct amounted to professional misconduct was a matter for it exercising its own judgement. In this regard the Panel took into account that, to be characterised as professional misconduct, Mr Rosemarine's conduct must be sufficiently serious or, to use a phrase derived from case law, 'particularly grave' (Walker v BSB (2013)).

The Panel agreed that the individual matters charged may not all have been so serious as to amount to professional misconduct, but that cumulatively they demonstrated a

course of conduct over a period of three months that disclosed submissions, applications and proposed consent orders that appeared irrational, antagonistic and designed to harass. Overall, the Panel concluded that Mr Rosemarine's conduct met the threshold for professional misconduct.

The Panel agreed that the matter could be disposed of by consent and noted that Mr Rosemarine had consented to such a disposal. It had regard to the Bar Tribunal and Adjudication Service's Sanctions Guidance, version 6.

It considered that the conduct fell within Category G 'Duties to the Court'. The Panel considered the culpability and harm factors listed in the Guidance, noting in particular that the conduct appeared to have been caused, in part, by poor judgement and an over-zealousness in pursuit of the client's case, combined with health issues at the time. It did not appear to be malicious or cynical. The Panel considered that the harm done was relatively limited, causing some unnecessary resources to be consumed in the court system and some expense to a government department. The Panel also noted that Mr Rosemarine had paid the additional costs incurred by the Respondent which had resulted from his conduct. After assessing the degree of culpability and harm, the Panel decided that Mr Rosemarine's conduct fell within the lower end of culpability and the lower end of harm. The starting point for such matters is a fine and, therefore, fell within the categories suitable for disposal by consent.

Sanction

The Panel further considered the Sanctions Guidance referred to above and agreed that a fine and reprimand was the appropriate and sufficient sanction.

In deciding on the appropriate level of fine, the Panel carefully evaluated the relevant aggravating and mitigating factors.

Relevant aggravating factors:

- Course of conduct over an extended period of circa 3 months (albeit a limited period in the context of a long career).
- Despite Judicial warnings, Mr Rosemarine persisted in his conduct.
- Mr Rosemarine is a senior practitioner and ought to have known better.

Relevant mitigating factors:

- Mr Rosemarine has admitted the facts in this case.
- Mr Rosemarine has demonstrated remorse.
- Mr Rosemarine has shown insight.
- Mr Rosemarine has co-operated with his regulator and the BSB investigation.
- Mr Rosemarine has provided information and medical evidence about his health at the time which the Panel accepted would have been likely to impair his judgement.
- Mr Rosemarine has sought medical assistance after the conduct occurred.
- Mr Rosemarine has no previous disciplinary findings.

- Mr Rosemarine has produced good references demonstrating that his actions were out of character for him.
- Mr Rosemarine has undertaken CPD relevant to issues identified after his conduct reducing the risk of repetition by him.

The Panel agreed that, having regard to these factors, a fine and reprimand were the appropriate sanction. In particular, the Panel was conscious that the behaviour was serious and that a sanction was needed to mark the fact that it was inappropriate and to maintain public confidence in the profession. In considering the level of the sanction, the Panel considered the information that Mr Rosemarine had provided.

The Panel considered that, given its assessment of the level of misconduct, a low-level fine (up to £5,000) was indicated. It considered that, without having regard to his means, a fine in the region of £2,500 would have been appropriate. However, taking into account the financial information provided, and the fact that it had noted Mr Rosemarine's remorse, insight and a low likelihood of repetition, the Panel agreed that a fine of £300 would be appropriate in the circumstances.

In addition, the Panel agreed that Mr Rosemarine should be Reprimanded in relation to all the charges.