SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11368-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

HUBERT JAMES Respondent

Before:

Mr J. C. Chesterton (in the chair)
Mr D. Green
Lady Bonham Carter

Date of Hearing: 6th, 7th and 22nd January 2016

Appearances

Mr Sean O'Malley, Solicitor employed by the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant

The Respondent appeared on 6 and 7 January but was not present on 22 January 2016.

JUDGMENT

Allegations

1. The allegations against the Respondent made by the Applicant were that:

ME Litigation

1.1 The Respondent conducted litigation and exercised a right of audience (being reserved legal activities) in the matter of ME-v-AJ in Lambeth County Court under Claim Number 9PA71*** whilst not authorised to do so and thereby:

1.1.1 undertook reserved legal activities in breach of Section 14 of the Legal Services Act 2007;

1.1.2 failed to uphold the rule of law and the proper administration of justice contrary to Rule 1.01 of the Solicitors Code of Conduct 2007 ("the 2007 Code");

1.1.3 failed to act with integrity contrary to Rule 1.02 of the 2007 Code;

1.1.4 behaved in a way that is likely to diminish the trust the public places in him or the legal profession contrary to Rule 1.06 of the 2007 Code;

1.2 The Respondent failed to notify the SRA of the ILEX Tribunal findings/order dated 8 September 2011 as necessary and, in particular, when he applied for practising certificates for the 2012/13 and 2013/14 practice years and thereby:

1.2.1 failed to comply with Rule 1.2 of the SRA Practising Regulations 2011;

1.2.2 failed to act with integrity contrary to Principle 2 of the SRA Principles 2011 ("the SRA Principles");

1.2.3 failed to behave in a way that maintains the trust placed in him and in the provision of legal services contrary to Principle 6 of the SRA Principles;

1.2.4 failed to comply with his legal and regulatory obligations and deal with his regulators and ombudsmen in an open, timely and cooperative manner contrary to Principle 7 of the SRA Principles.

LE Limited

1.3 The Respondent practised as a solicitor otherwise than as permitted by Rule 1.1 of the SRA Practice Framework Rules 2011 ("SRA PFR 2011") and thereby:

1.3.1 failed to uphold the rule of law and the proper administration of justice contrary to Principle 1 of the SRA Principles;

1.3.2 failed to act with integrity contrary to Principle 2 of the SRA Principles;

1.3.3 failed to act in the best interests of each client contrary to Principle 4 of the SRA Principles;

1.3.4 failed to behave in a way that maintains the trust placed in him and in the provision of legal services contrary to Principle 6 of the SRA Principles.

1.4 The Respondent provided a false explanation that LE Limited provided a free legal service in response to a Notice issued pursuant to s 44B of the Solicitors Act 1974 (as amended) and dated 5 August 2014 and thereby:

1.4.1 failed to act with integrity contrary to Principle 2 of the SRA Principles;

1.4.2 failed to comply with his legal and regulatory obligations and deal with his regulators and ombudsmen in an open, timely and cooperative manner contrary to Principle 7 of the SRA Principles.

1.5 Allegations 1.2 and 1.4 were made on the basis that the Respondent acted dishonestly, but it would be open to the Tribunal to find allegations 1.2 and 1.4 inclusive proved without finding dishonesty.

Documents

2. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 17 March 2015 with exhibit SOM1
- Applicant's service bundle
- Witness statement of District Judge Martin Zimmels dated 18 March 2015 with exhibit MZ1
- Witness statement of Mr Christopher Thomas Kilroy dated 3 July 2015 with exhibit CTK1
- Witness statement of Ms Saadia Siddiqui dated 8 October 2015 with exhibit SS1
- Second witness statement of Ms Saadia Siddiqui dated 5 January 2016 with exhibits SSS1 to SSS7
- Letter from the Applicant to the Respondent dated 18 December 2015
- Letter from the Applicant to the Respondent dated 22 December 2015
- Letter from the Applicant to the Tribunal office dated 23 December 2015
- Applicant's updated statement of costs at date of service by email following Case Management Hearing held on 16 April 2015
- Applicant's statement of costs as at final hearing dated 7 January 2016 (updated in handwriting)
- Applicant's authorities bundle
- Judgment in case of Mark Anthony Financial Management and Mark Anthony Hurst Ainley v The Financial Services Authority number FS/2011/0020 & 0021
- Judgment in case of Tait v RCVS 2003 UKPC 34

Respondent

- Application by the Respondent dated 4 January 2016 for an adjournment
- Witness statement of the Respondent dated 4 January 2016 with attachments Doc1- Doc8

Preliminary and Other Issues

Application by the Respondent to adjourn the Substantive Hearing

3. At a Case Management Hearing ("CMH") on 31 July 2015 based on the Respondent's failure to engage hitherto with the proceedings, a direction was made that the Respondent should be allowed a further 14 days within which to file his Answer and any evidence upon which he wished to rely, failing which he would require permission from the Tribunal to adduce any evidence thereafter. At the substantive hearing, the Respondent wished to make an application for an adjournment. He was provided with a copy of the Tribunal's Policy/Practice Note on Adjournments. The Respondent referred to an application for an adjournment which he had brought to the hearing and to his witness statement dated 4 January 2016. He informed the Tribunal that in the first paragraph of the statement he had given the reason for his late application for an adjournment and for permission to be permitted to defend the proceedings. The statement set out that since the death of a dear friend he had been travelling for the past years doing charity work and had not been able to have full access to the documentation outlining the allegations made against him due to poor Internet connection. The Respondent also submitted that he had been served with additional documentation about an allegation of recklessness two days before. He could not deal with that matter and needed to seek counsel's advice. He also referred to having suffered lower back injury due to his travels and stated that he was in constant pain and had difficulty sitting down for long periods. A letter from the Respondent's GP dated 5 January 2016 confirmed that he was being seen with low back pain which required him to move position approximately every 20 minutes. It confirmed that the Respondent was taking an analgesic which he felt made him drowsy. The Tribunal indicated that it could make adjustments to accommodate the Respondent's back problems such as taking more frequent breaks, permitting him to stand when addressing the Tribunal if that was more comfortable and not expecting him to rise when the Tribunal entered the room. It noted that his condition was not such as to have prevented his attendance at the hearing. The Respondent did not make any further points about his medical condition.

4. For the Applicant, Mr O'Malley referred to the Applicant's service bundle which had been provided immediately before the hearing. The Applicant had lost contact with the Respondent in May 2015. He had acknowledged receipt of the Rule 5 Statement and said he would respond but had not done so and so the Applicant had sought the direction referred to above. Mr O'Malley had only seen the Respondent's documents including his statement immediately before the hearing. He submitted that the Respondent was aware of the nature of the allegations. The Applicant took a neutral stance regarding whether the Tribunal should admit his documents but expressed concern about late service.

5. The Tribunal considered the Respondent's applications. It noted that after a period of non-engagement, the Respondent had attended for the substantive hearing. The direction given in July 2015 did not prevent him from defending the proceedings but only required that he should obtain leave before relying on any documents. The matter was set down for a two-day hearing and the Tribunal considered that there would be time over that period for the Applicant to study the documents which the Respondent had provided and that it would be in the interests of justice for them to be admitted into evidence.

6. Mr O'Malley referred to the Respondent's statement where he had said:

> "With regards to the SRA late submission of recklessness I will have to engage Counsel on this matter given the gravity of the allegation and threat to my legal reputation."

While the Applicant took a neutral position on the application for an adjournment Mr O'Malley referred to the length of time which the documents had been available to the Respondent and the lack of any response by him up to this point. If the Tribunal decided to proceed with the hearing Mr O'Malley would need some time with one of his witnesses in order for him to see the contents of the Respondent's statement. Mr O'Malley also requested that the Respondent give an indication of any admissions and denials which he was prepared to make. The Tribunal asked the Respondent whether his reference to engaging Counsel related solely to the recklessness point. The Respondent replied that he needed Counsel to undertake the whole matter because now that he had seen everything he was not capable of dealing with it.

7. The Tribunal had regard to its Policy/Practice Note which indicated that the Tribunal would be reluctant to agree an adjournment unless the request was supported by both parties or if it was not, the reasons appeared to the Tribunal to be justifiable because not to grant an adjournment would result in injustice to the person seeking the adjournment. The Note went on to set out reasons which would not generally be regarded as providing justification for an adjournment. Of those that were relevant, ill-health had already been addressed in that the medical evidence did not indicate that the Respondent was not fit to participate in the proceedings and the Tribunal could accommodate his medical condition by a flexible approach to the hearing including by breaking every half an hour if that would assist him. As to lack of readiness the Respondent had known about the proceedings for over six months including the most serious allegation of dishonesty and had chosen voluntarily to absent himself from the UK until the last moment. Recklessness was a lesser allegation than dishonesty and so even were the Tribunal to admit that allegation, the Tribunal did not consider that it would be a good reason for adjourning the proceedings. The Note also set out that the inability of the Respondent for financial or other reasons to secure the services of a representative at the hearing would not generally be regarded as justification for an adjournment. The Policy also referred to the overriding objective to ensure that cases were heard with reasonable expedition so that the interests of the public as well as the profession could be protected. The efficient and timely determination of cases before the Tribunal would usually be in the best interests of all concerned and the Tribunal would always need to be convinced that the interests of justice in any particular case would be best served by agreeing to an adjournment. The allegations in this case were serious and the matters they referred to had been outstanding for some time; ILEX

had made an adverse finding against the Respondent in 2011 and a complaint had been made against him in 2013. The Tribunal therefore refused the application for an adjournment.

Application on behalf of the Applicant to amend the Rule 5 Statement

8. Mr O'Malley applied on behalf of the Applicant to amend the Rule 5 Statement at paragraph 15.3 by removal of the words "conduct of certain litigation" and substitution of the words "the exercise of a right of audience" from the recital of the findings of the ILEX Disciplinary Tribunal. He explained that this was to correct an error in drafting and designed to reflect the allegations in the ILEX proceedings. He also applied to correct a typographical error in a heading. He submitted that there would be no prejudice to the Respondent by these minor changes and the Respondent made no observation. The Tribunal gave its permission to amend.

9. Mr O'Malley applied to add an allegation to the Rule 5 Statement to follow the allegation of dishonesty. He submitted that notice had been given to the Respondent (by letter dated 22 December 2015) and to the Tribunal (by letter dated 23 December 2015). The proposed allegation would read:

> "Allegations [1.2] and [1.4] are made on the basis that the Respondent acted recklessly, but it will be open to the Tribunal to find allegations [1.2] and [1.4] inclusive proven without finding recklessness."

Mr O'Malley submitted that the proposed allegation touched on the Respondent's misconduct at the material time, that the Tribunal would be considering the issue already with regard to dishonesty and that it did not significantly change the nature of the underlying case and would relate to a "could not care less attitude". The Tribunal pointed out that the Christmas and New Year holiday had intervened since the letter was sent. Mr O'Malley submitted that the Applicant's letter to the Respondent dated 22 December 2015 provided both the proposed allegation and the Applicant's submissions and so the Respondent had received adequate notice. As the allegation of dishonesty had been made from the start of the proceedings this was not a bolt from the blue and the Respondent had received some notice.

10. The Respondent objected to the proposed amendment. He submitted that he had informed the Applicant that ILEX had taken proceedings against him and that a District Judge had said that he would inform the Applicant of his complaint and the Respondent had written a letter to the District Judge regarding the mistake on his part in that he believed he had a right of audience. There had been no dishonesty. He indicated that he understood that recklessness could be looked at in a different way to dishonesty. The Tribunal enquired of Mr O'Malley why the additional allegation was being proposed so late and he responded that there had been a further review of the matter and the Applicant wished to make the allegation of recklessness available as an alternative. The Tribunal did not consider that a satisfactory explanation had been advanced on behalf of the Applicant for this very late proposal to add an alternative allegation. It had regard to the Respondent's right to a fair trial under Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and considered that there could be prejudice to the Respondent if this additional allegation were permitted. The Tribunal accordingly refused the application.

Application to admit Witness Statement

11. Mr O'Malley made a further application which was to rely on the second statement of Ms Saadia Siddiqui of CILEx (at the material time ILEX Professional Standards) The Applicant had had no contact from the Respondent and Mr O'Malley sought further clarification from Ms Siddiqui to confirm delivery of the letter dated 28 September 2011 contained in the exhibit to the Rule 5 Statement notifying the Respondent of the outcome of the ILEX proceedings against him as it was evident on the ILEX papers that the letter might have been returned. Her second statement referred to a further letter enclosing the findings which was sent to a different address and signed for by another individual. (The statement also indicated that the second address used was one which the Respondent had confirmed by email was his new address). The second statement also dealt with the fact that the Respondent had commenced paying his ILEX fine and costs. Ms Siddiqui would in any event give live evidence. The Respondent had confirmed the previous day that he had no objection to the admission of the second statement. The Tribunal gave permission for it to be admitted. The Tribunal then retired for a longer than usual lunchtime adjournment in order to give Mr O'Malley the opportunity to study the documents submitted by the Respondent that day and for the parties to have any discussions which might be desirable.

12. Upon the hearing resuming, the Respondent informed the Tribunal that he admitted allegation 1.1.1. Mr O'Malley informed the Tribunal that there was no objection by the Respondent to any of the evidence of District Judge ("DJ") Zimmels or Ms Siddiqui and no particular questions which the Respondent needed to put to them but it might be of assistance to the Tribunal if they gave their oral evidence.

Double Jeopardy

13. The Tribunal raised a concern about potential double jeopardy in respect of the allegation at 1.1. It understood the facts were those that were before the ILEX Tribunal. It noted that the other Tribunal had not found proof of lack of integrity and the Tribunal was concerned as to whether it was open to it to add to a finding as opposed to subtracting from it. Mr O'Malley submitted that he was mindful of the double jeopardy issue. The Applicant had not previously dealt with the Respondent regarding that conduct until Mr Kilroy ("Mr K") raised it with the Applicant. The Applicant relied on the ILEX findings because of Rule 15(3) of The Solicitors (Disciplinary Proceedings) Rule 2007:

> "The finding of and penalty imposed by any tribunal in or outside England and Wales exercising a professional disciplinary jurisdiction may be proved by producing a certified copy of the order, finding or note of penalty in question and the findings of fact upon which the finding in question was based shall be admissible as proof but not conclusive proof of the facts in question."

The findings alone were not conclusive and that was the reason for calling DJ Zimmels as a witness. He had dealt with the hearing to which the findings related and with the Respondent in respect of the matters under allegation 1.1. The ILEX findings were also relevant to the later allegation that the Respondent did not declare those findings to the Applicant. The issue for the Tribunal was what weight to attach to the

findings. The District Judge could explain what had occurred. Mr O'Malley accepted that the fact that the Respondent had been subject to a disciplinary proceeding elsewhere was a consideration which the Tribunal could take into account on sanction. The ILEX allegations while very similar to those before the Tribunal were relevant to the Respondent's behaviour as a whole and his failure to declare them (allegation 1.2) and served to aggravate his subsequent involvement in the LE Ltd ("LEL") proceedings in which it was alleged that he subsequently practised unauthorised as a solicitor (allegation 1.3). At this point the Respondent had no comment to make. The Tribunal noted Mr O'Malley submissions.

Use of material obtained in other Proceedings

14. During the hearing, the Tribunal raised an issue with Mr O'Malley about the use of Mr C's bank statements. Mr C was the Respondent's client in the proceedings the subject of allegations 1.3 and 1.4. The witness Mr K had obtained authority from Mr C to have access to his bank statements during separate proceedings. This normally implied an undertaking not to disclose them in other proceedings. The Tribunal's feeling was the bank statements contained information that prima facie had a bearing on the Respondent's conduct and so the witness as a solicitor had a positive duty to disclose the information to the Applicant. On that basis the Tribunal was prepared to allow the bank statements to be used in evidence in the Tribunal proceedings.

Factual Background

15. The Respondent was born in 1953 and admitted to the Roll in 2005. He held practising certificates between 2005 and 2008. His practising certificate for 2008/2009 was terminated on 9 December 2009 as he did not apply to renew it. The Respondent remained on the Roll as a non-practising solicitor for 2010 and 2011. He also held practising certificates for 2012/2013 and 2013/2014. His 2013/2014 certificate was terminated on 11 December 2014 because he did not apply to renew it. The Respondent's practising certificates had been unconditional.

16. On 17 May 2013, the Applicant received a complaint from a Mr K of Kilroy Solicitors indicating concern about whether the Respondent was authorised to practise.

Allegation 1.1

17. The Respondent was involved in mortgage possession proceedings and had appeared in Chambers before DJ Zimmels on 9 December 2010 on behalf of a defendant AJ (Claim No 9PA71***). The District Judge provided a statement dated 15 June 2011 to ILEX Professional Standards Ltd concerning the proceedings.

18. An Application Notice on Form N244 dated 7 December 2010 had been filed with Lambeth County Court seeking to suspend a warrant for possession of the Defendant's property. The Application Notice was signed "H James JPS Legal Services" "Position held: Legal executive (ILEX)" and appeared to have been signed by the Respondent leaving the word "solicitor" appearing below his signature.

19. A Notice of Acting was attached to the Application Notice and stated that "...JPS Legal Services of ... [TS] Road, London... have been appointed to act as solicitors for the Defendant" and was signed in the name of JPS Legal Services ("JPS") at the address S Road.

20. The District Judge asked the Respondent if he had any headed paper or business card and, as he did not, DJ Zimmels contacted the Applicant and was informed that JPS was not registered as a solicitors' practice. When questioned by DJ Zimmels, the Respondent replied that the practice was in the process of being set up and he had been mistaken to file the Notice of Acting adding that, as a legal executive, he was entitled to represent and appear as advocate on behalf of clients. DJ Zimmels flagged that the fact he was a legal executive was irrelevant as he had signed the Application Notice and stated that he was appearing on behalf of a firm of solicitors that did not exist. The Respondent added that he too was a solicitor.

21. DJ Zimmels dismissed the application made by the Respondent on behalf of his client. The District Judge checked the court file and noted that the Respondent had appeared before him on 5 June 2009 and 8 March 2010 in relation to the same proceedings. The Respondent had also filed an earlier different hand written Notice of Acting with Lambeth County Court on 5 June 2009 which stated that "... Mr H James JPS Legal Services ... [H] Road … has been appointed in this matter" and the Notice was signed in the name of JPS.

ILEX Findings

22. The ILEX Disciplinary Tribunal found charges proved and made findings on 8 September 2011 against the Respondent that he had failed to uphold the rule of law and/or maintain high standards of professional conduct in relation to the following particulars:

> "On or about 7 December 2010 [the Respondent], a Fellow of the Institute of Legal Executives misled Lambeth County Court by:
>
> (a) filing or causing to be filed at court a Notice of Acting for the Defendant in claim number [9PA71***]; and/or
>
> (b) an application notice dated 7 December 2010 in the said proceedings,
>
> stating that JPS Legal Services were acting as solicitors for the Defendant when in fact no such firm of solicitors was registered by the Solicitors Regulatory (sic) Authority."

and

> "Between on or about 5 June 2009 and 9 December 2010 [the Respondent] a Fellow of the Institute of Legal Executives carried on a reserved legal activity within the meaning of the Legal Services Act 2007, namely the conduct of certain litigation in the Lambeth County Court in the defence of Claim Number [9PA71***], when he was neither an authorised nor exempt person in relation to such activity."

and

> "On 5 June 2009, 8 March 2010 and 9 December 2010 [the Respondent], a Fellow of the Institute of Legal Executives carried on a reserved legal activity within the meaning of the Legal Services Act 2007 namely the exercise of a right of audience at Lambeth County Court Claim Number [9PA71***], when he was neither an authorised nor exempt person in relation to such activity."

23. The Respondent was aware of the proceedings before the ILEX Tribunal as he submitted written representations. On the Respondent's admissions the Tribunal found the charges proved and added that, in the absence of an admission, it would have found the charges proved on the basis of the facts before it. The Tribunal fined the Respondent £2,000 and ordered that he pay costs in the sum of £1,200.

Allegation 1.2

24. The Respondent submitted an application to the Applicant for an initial practising certificate on 4 February 2013 in relation to the 2012/2013 practising year. The Respondent left marked on the application form "Yes" in response to the question "Do any events in Regulation 3 apply to you". This related to Regulation 3 of the SRA Practising Regulations 2011 ("the 2011 Practising Regulations"). Regulation 3.1(a)(iv) of the 2011 Practising Regulations stated:

> "The applicant has been: "(iv) made the subject of a disciplinary sanction by… another approved regulator, professional or regulatory Tribunal, or regulatory authority, whether in England or Wales or elsewhere."

25. The form indicated that Regulation 3.1 C applied which was not relevant to the circumstances.

26. The form also asked "If you are aware of any further paragraphs that apply to you, then please enter details. Please upload any supporting documents (Optional)."

27. The form also asked in relation to his character and suitability: "Have you/the individual/candidate ever been involved in other conduct which calls into question your honesty, integrity or respect for the law". The Respondent responded "No".

28. The Respondent submitted an application to the Applicant for renewal of his practising certificate on 9 December 2013 in relation to the 2013/2014 practising year. The Respondent marked on the application form "No" in response to the question "Do any events in Regulation 3 apply to you".

Allegation 1.3

29. Mr K contacted the Applicant by email dated 17 May 2013 informing it that he was involved in legal proceedings in the High Court Birmingham District Registry and the solicitor on the record for the defendant (Mr C) was the Respondent.

30. Mr K wrote to the Applicant by letter dated 20 June 2013 providing various documents relating to the Birmingham proceedings including:

- Notice of change of solicitor dated 26 February 2013 signed by the Respondent as solicitor and indicating the address of SN Road London;

- Application Notice dated 26 March 2013 submitted by Mr C which recorded the applicant's address as "Hubert James (Solicitor)...SN Road...";

- A statement dated 29 April 2013 from C containing a certification from the Respondent which included an address of SN Road.

31. Mr K reported that the Respondent had not mentioned LEL until 15 April 2013 when he had indicated to the Respondent that he would be writing to the Applicant.

32. Mr K sent a further letter dated 20 March 2014 to the Applicant providing copies of a skeleton argument filed at court and providing the background to the Birmingham proceedings. Mr K had obtained a default judgment against Mr C a former client, on 3 December 2012 concerning costs owed and C had instructed the Respondent to make an application to set aside the judgment. The application was lodged in January 2013 and struck out on 4 December 2013.

33. Mr K reported that from 27 February 2013 until 15 April 2013 the Respondent corresponded with him as "Hubert James" or "H James" and did not describe himself as a solicitor and used the SN Road address.

34. Mr K received a letter dated 26 March 2013 from the Respondent and responded by email dated 2 April 2013 in which he stated:

> "As for your letter dated 26th March 2013 I have never before seen a solicitor's notepaper which is so far short of the requirements of [the Applicant] in terms of the information that must be provided by solicitors. What is your [Applicant] identification number?

35. Mr K wrote again on 8 April 2013 stating:

> "I await your [Applicant] identification number. If you do not supply it by close of business tomorrow I shall forward to the [Applicant] copies of your stationary (sic) and make a report that you are in breach of the rules on such matters."

36. On 15 April 2013, Mr K received a letter from the Respondent marked with the heading LEL which provided the SN Road address. The Respondent signed off the letter as "Legal Consultant [LEL]. Mr K noted that the telephone and fax numbers for LEL were the same as those for JPS Legal Services used by the Respondent in the case before Lambeth County Court of ME v AJ 9PA71***. Mr K responded by email dated 15 April 2013 making enquiries in relation to LEL and the Respondent's role.

37. After further correspondence in relation to the proceedings, the Respondent responded by email dated 23 May 2013 stating:

> "[LEL] is a small independent non-profit advice agency, which gives free independent advice to general members of the public.

> My employers have professional indemnity insurance in place with, [T] Insurance Ltd.
>
> I am paid directly by [LEL].
>
> Any fees or costs recovered on behalf of clients are paid directly to [LEL].
>
> The company is currently in the process of making (sic) application for charitable status.
>
> The service that we are providing to Mr [C] is totally free of costs."

The Respondent also quoted Rule 4.16 (Rule 4 related to in-house practice) from the SRA Authorisation Rules 2011 as follows:

> "Law Centres, charities and other non-commercial advice services
>
> If you are employed by a law centre or advice service operated by charitable or similar non-commercial organisation you may give advice to and otherwise act for members of the public, provided:
>
> (a) no funding agent has majority representation on the body responsible for the management of the service, and that body remains independent of central and local government;
>
> (b) all fees you earn or costs you recover are paid to the organisation for furthering the provision of the organisation's services;
>
> (c) the organisation is not described as a law centre unless it is a member of the Law Centres Federation; and
>
> (d) the organisation has indemnity cover in relation to the legal activities carried out by you, reasonably equivalent to that required under the SRA Indemnity Insurance Rules."

38. Mr K also provided an email from the Respondent dated 24 May 2013 attaching documents entitled "Statements of Costs (summary assessment)" dated 26 February 2013 and 23 May 2013 served by the Respondent during the Birmingham proceedings. Both statements of costs were signed by the Respondent and indicated that LEL was a firm of solicitors.

39. Office Copy Entries obtained from the Land Registry by the Applicant on 27 January 2015 in relation to SN Road London indicated that the proprietor of the address since 19 April 1996 was an individual with the same surname as the Respondent but a different forename.

40. Mr K provided redacted copies of accounts of C with HSBC Bank plc which recorded the following transactions: on 22 May 2013, C paid £3,000 to "Hubert James" from the same account; and 25 November 2013 the account of C was credited with £600 from "Hubert".

Allegation 1.4

41. On 5 August 2014, the Applicant issued a notice pursuant to s 44B of the Solicitors Act 1974 (as amended) to the Respondent which set out the following requests for documents/information in the schedule as follows:

> "1. Advice of your role in the company [LEL and evidence this with:
>
> (a) contract of employment or terms of engagement;
> (b) copy wage slips or advices of remunerations;
> (c) company accounts.
>
> 2. Advice in what capacity you act/acted for Mr [C] in the claim brought against him by Mr Christopher Kilroy t/a Kilroys.
>
> 3. A copy of your file on the matter of Kilroys -v- [C]...in the Birmingham County Court including any relevant account ledgers.
>
> 4. Details of all costs incurred by you in acting for Mr [C] and copies of any bills or fee notes prepared and/or issued.
>
> 5. Details of all monies paid to you by Mr [C] and the reasons for those payments.
>
> 6. A schedule of all matters which you currently, or in the past 2 years, have had conduct either as a solicitor or through [LEL] or any other company or charity detailing the capacity in which you acted in each of those matters."

42. The Respondent replied to the s 44B notice by email dated 28 August 2014 the relevant parts of which were as follows:

> "I write in response to your email dated 20th August and respond briefly as follows
>
> 1a. I was self-employed
>
> b. I have not received any wages or renumeration (sic) from [LEL]
>
> ...
>
> 2. I acted on behalf of Mr C...in the matter of Kilroys solicitors in an advisory capacity...
>
> ...
>
> 4. No bills have ever been issued to Mr [C], or any request to make the payments. [LEL] offer a free Legal Service".
>
> ...

5. No payments whatsoever was (sic) paid by Mr C to [LEL] who offer a free legal service.

6. I have only acted on behalf of clients for [LEL] in and (sic) advisory capacity."

The Applicant's Investigation

43. A Supervisor of the Applicant spoke to the Respondent on his mobile number on 21 March 2014. The Respondent explained that he was not working abroad at present and that he previously worked for a charity, LEL which was now closed. The Respondent stated the address as M Street and that the charity provided advice and guidance on litigation and rates matters to small business. The Respondent said that C did not have any money to continue in the Birmingham proceedings and that he stopped working for the charity in September 2013. The Respondent said that he did update his mySRA account to reflect that he was working at the charity but the Applicant's records did not reflect his assertion. The Supervisor confirmed that she would send him a copy of the RF form completed but, in any event, the Respondent stated that he was no longer working. The Supervisor asked the Respondent to confirm certain details on his RF form firstly his postcode and the Respondent said that he was abroad and then provided a B Road address in Birmingham. The Supervisor asked the Respondent to confirm his email address and he provided a Yahoo address which was different to the email address on the letterhead of LEL. When asked to clarify, the Respondent said that the email address on the letterhead was the address of the charity and that the registered address was M Street but, as post used to get lost, they had to use SN Road London which the Respondent stated was his private address. The Respondent confirmed that he intended on returning from abroad sometime in June 2014.

44. The s 44B notice issued by the Applicant on 5 August 2014 and chaser letter dated 20 August 2014 had been returned to the Applicant marked as "Unclaimed".

45. The Applicant wrote to the Respondent on 13 October 2014 raising allegations relating to his conduct but no response was received as at the date of the issue of the Rule 5 Statement.

46. The Applicant sent a further letter to the Respondent on 18 November 2014 informing him that the matter had been referred to the Tribunal. The Applicant wrote further on 2, 10 December 2014 and 27 January 2015 in relation to the proceedings and no response was received.

Witnesses

47. **District Judge Martin Zimmels** gave evidence. He confirmed the truth of his witness statement dated 18 March 2015 to which was attached his statement dated 15 June 2011 in the ILEX proceedings. The witness was a District Judge sitting in the South Eastern Region. A mortgage possession order had been made in September 2008 and when the Respondent appeared before him on 9 December 2010 it was for the second application by the defendant Ms AJ to suspend the warrant. The applications were designed to prevent the Bailiff taking possession of the premises.

The second application included seeking to vary the current order to allow the Defendant to pay the claimant the current mortgage plus an additional sum of £100 per month which was a lesser amount than she had previously been paying under an order made at the March hearing. It was the witness's understanding of the Respondent's role in the case that it was clear that he described himself as a legal executive appearing for JPS which was consistent with a Notice of Acting attached to the Application Notice. The Defendant was not present at the hearing. The witness noted that the address for service on the Application Notice K Road was the Defendant's home address and not the solicitor's office shown on the Notice of Acting which was S Road.

48. The witness testified that he had been a solicitor in North West London since 1976 and a Judge attached to Lambeth County Court since early 1992 and he had never come across a firm called JPS and that was a matter which concerned the witness even before the Respondent entered his Chambers. The witness confirmed the account of events on 9 December 2010 set out in his statement. The witness had told the Respondent that he had signed the Application Notice as a legal executive and had no right to address the court in the absence of the Defendant. He was not appearing as a member of a firm of solicitors in accordance with the Notice of Acting filed a couple of days earlier. The witness had noticed in the file a different and earlier Notice of Acting which gave the address of JPS as H Road. In his witness statement the witness said that the handwritten notice while undated was filed at Lambeth County Court on 5 June 2009.

49. The witness confirmed that he had made the order exhibited to his witness statement and it described the issues which arose during the hearing:

> "Upon reading a letter from the Claimant's solicitors dated 9 December 2010
>
> AND UPON hearing Mr James who stated that he was attending on behalf of the Defendant as a legal executive employed by JPS Legal Services in accordance with the Notice of Acting filed on the 7 December 2010 the Defendant herself not appearing on her application dated 7 December 2010.
>
> AND UPON the said Mr James later conceding when challenged by the Court that the said JPS Legal Services was not currently registered with the Solicitors Regulation Authority as a solicitors practice with a current practising certificate.
>
> IT IS ORDERED THAT
>
> 1. The application dated the 7th December 2010 to suspend the warrant for possession and vary the current order is dismissed."

50. The witness stated that the case involved a more or less last-minute application to suspend a warrant which was due to be executed on 10 December 2010. The Defendant was not present and sent a representative who had no right to speak. The practical outcome of the hearing was that the application could not be considered on its merits and was dismissed. In the normal course of events the warrant would have been executed.

51. The witness agreed that he had checked about earlier appearances made by the Respondent in the matter and discovered that the Respondent had appeared before him in March 2010. He could not tell from the record whether the lay client had appeared but there was nothing to put him on notice about something untoward. The Respondent had also appeared before him in June 2009. On both occasions the application had been successful and the warrant was delayed and suspended on terms.

52. The Tribunal raised an issue about a letter dated 13 March 2011 which the Respondent had sent to ILEX. The witness would not have seen it. It stated:

> "With regards to the outlined complaints I admit I do not have any defence other than I genuinely believed that I was acting honestly and in good faith because at a (sic) time I believed that changes had been made to the Legal Services Act 2007, that allowed Fellows of the Institute of Legal Executive (sic) to act un-supervised, namely without a solicitor.
>
> Indeed this is the point I argued with Hon DJ Zimmels as I frankly believed that changes had been implemented to allow qualified Legal Executives to represent clients at court without the supervision of solicitor(s), as I had previously been shown an Internet extract by a colleague in respect of the Legal Services Act 2007..."

The witness did not recall the Respondent making the point referred to in his letter and as soon as the Respondent left his Chambers the witness had made a file note for his own record. The witness was not cross-examined by the Respondent.

53. **Ms Saadia Siddiqui** gave evidence. She was an investigation manager at CILEx Regulation. The witness oversaw the team that investigated misconduct alleged against members of CILEx. She confirmed the truth of her two witness statements, dated 8 October 2015 and 5 January 2016 the latter of which bore an electronic signature. The witness confirmed that she had been in contact with JK of the Applicant by email dated 27 March 2014 by which she had provided the Respondent's membership details and the order of the Disciplinary Tribunal made in 2011. The hearing had taken place on 8 September 2011. She confirmed that the findings attached to her statement were a true and accurate copy.

54. The witness was referred to her second statement where she had referred to doubt about the delivery of the letter dated 28 September 2011 from her organisation to the Respondent at the SN Road address. The letter and envelope were no longer available. The witness confirmed that the letter had also been sent by email on that date as had the findings and that a copy been sent on 7 November 2011 to an address in Birmingham where they had been signed for and copy of proof of delivery provided by Royal Mail was attached to her second statement. She could confirm from her records that the Birmingham address had been provided in an email dated 9 September 2011 from the Respondent to Ms DB of her organisation which was also attached her statement as was a letter dated 1 December 2011 informing the Respondent that the time allowed for an appeal against the decision of the Disciplinary Tribunal had now passed and that the fine and costs order fell due immediately. The witness confirmed a schedule of monthly payments showing date of payment received and confirmed that it demonstrated that periodic payments were

being made from 1 December 2011 to 25 November 2015 and were ongoing. The witness was not cross-examined by the Respondent.

55. **Mr Christopher Kilroy** gave evidence. The witness confirmed his statement dated 3 July 2015. He was admitted as a solicitor in 1976 and was winding down to retirement. He was a general litigator. He confirmed that the background facts were set out in letters to the Applicant dated 17 May 2013, 20 June 2013 and 20 March 2014 which were exhibited to his statement. The witness stated that the Respondent acted in proceedings in the Birmingham District Registry for a former client of the witness Mr C. The witness assumed that the Respondent was a solicitor. The client retainer had ended with a substantial amount of money owing to the witness. He took proceedings against his former client and obtained a default judgment. He started an action to enforce the judgment by way of a charging order on C's home. He obtained an interim charging order without notice and a date was set for the hearing on 27 February 2013. The witness was advised that Mr C was represented by Ms N of counsel. She pointed the Respondent out although they did not speak. The hearing turned into an application to set aside the judgment which the witness was handed at court. Directions were given and the hearing was adjourned and was over and done in eight minutes. The application ultimately failed. The witness had thought that something was wrong as C started writing in a slightly different style and he was not entirely surprised that something happened but he was somewhat surprised that it happened at that hearing.

56. After the February 2013 hearing the witness had looked into how what happened had come about and how he had known nothing about it. The court staff said that the Respondent had made an application to set aside which the District Judge had considered without a hearing and it had been listed and sent to the witness the previous day.

57. The witness stated that at court he had been handed a Notice of Change by the Respondent dated 26 February 2013, the previous day. He confirmed that there were letters and emails from the Respondent. He referred to an email dated 24 May 2013 which he said was typical of the emails which the Respondent sent. There was a complete absence of anything to identify him or the nature of his calling. The Respondent was the Solicitor on record and the witness knew that the Applicant was very particular about the correctness of details on correspondence and started to ask the Respondent questions to establish that he was a solicitor. What he expected by way of communication from the Respondent was something like an email that he had sent on 23 May 2013 which he described as having "boilerplate" disclosures showing that he was a solicitor regulated by the Applicant and giving the firm's registration number, stating that he was sole principal and giving his registration number in that respect as well.

58. The witness was taken through the correspondence which is referred to in the background to this judgment. He never received an amended Notice of Acting regarding LEL and the day before the final hearing C filed a notice of acting in person. The only address that the Respondent ever used in the correspondence from 27 February 2013 until September 2013 was the SN Road address. During the exchanges the witness sent an email on 15 April 2013 in which he asked whether the Respondent was holding out LEL as a legal practice recognised by the Applicant and

asked for its ID number. The witness stated that he had made an Internet search regarding the Respondent and came up with the ILEX disciplinary hearing and he wrote to ILEX. They were not prepared to release copy documents (in his statement he referred to these as the Notice of Acting and Notice of Application in the Lambeth County Court proceedings involving ME and Ms AJ) but ILEX confirmed that the subject of the disciplinary proceedings had resigned as a legal executive. The witness had been unsure it was the same person as he understood that the Respondent was a solicitor. The witness decided to write to Lambeth County Court and requested copies of the Notice of Acting and the Notice of Application in the earlier action. He noted from those documents that the same telephone number and fax number were still being used by the Respondent when he corresponded with the witness between February and September 2013. He then made his report to the Applicant dated 17 May 2013.

59. The witness stated that the email from the Respondent dated 23 May 2013 did not really satisfy his concerns. He had got to a particular point and was looking at the matter from a practical point of view in terms of whether if he lost his opponent could obtain costs against him. As the service provided by the Respondent was free of charge he could not apply for costs so, the witness understood that if things went badly wrong the witness would not have to pay costs. He had looked at LEL and found a large law centre was in the same building. The telephone number seemed to be that of the management of the building. He thought LEL was a shell and not really doing anything but his concern about his costs had been resolved.

60. The witness was referred to an email dated 23 May 2013 which he had sent to the Respondent saying "Do you intend to serve a Statement of Costs?" The Respondent replied on 24 May 2013 attaching two PDFs "summary cost 24.05.13" and "summary cost 27.02.13". The first one was a statement of costs for a hearing on 24 May 2013. It included counsel's fees of £2,000, was dated "23rd May 2013" and signed by the Respondent with the name of the firm of solicitors given as LEL. The second one was for the hearing on 27 February 2013 dated 26 February 2013, and was again signed by the Respondent with the name of the firm of solicitors again LEL. The witness stated that nothing had changed; he still thought that LEL was a shell entity. In his statement the witness said that the Respondent attempted to make an application for a costs order against him in respect of the application made by the Respondent on 16 April 2013 that he be debarred from serving evidence by reason of his alleged failure to comply with the terms of the directions order made on 27 February 2013. The application was dismissed and the court refused to hear the application for costs. His statement continued that the Respondent attempted to hand up to the court a statement of costs which he claimed to the District Judge he had lodged at court. There was no copy of it before the District Judge who did not accept the copy being presented by the Respondent. The witness was not served with a copy of the statement. Since the court was in the process of refusing to hear the costs application he saw no point in asking the Respondent for a copy. It was his belief that that statement of costs did not mention LEL. The witness stated that the version of the statement of costs which was on the District Judge's desk on 16 April 2013 was not the one which the Respondent sent to him but he could not be sure because he did not pick up a copy.

61. The witness was asked about the provenance of two HSBC bank statements which were attached to the Rule 5 Statement. He stated that these were bank statements for his former client Mr C. He had lost the action brought by the witness and a final charging order was made over his property. The witness revived enforcement proceedings and made an application for an oral examination. He took pre-typed authorities with him and obtained one in respect of the HSBC account and one relating to another entity. The witness had sent them to Mr C so that the witness could make enquiries. He asked Mr C through the court officer if he had signed them. He definitely signed the HSBC authority during the hearing and it was probably mentioned in the transcript of the oral examination. The witness was asked whether he was concerned about references in the HSBC bank statement to a payment to the Respondent of £3,000 on 22 May 2013 and a receipt of £600 from him on 25 November 2013. The witness replied that he was not concerned at the time; it was not important because he was busy with the oral examination. He saw it slightly later and included it in his report to the Applicant. The witness confirmed that he subsequently made an application in respect of the Respondent and LEL for wasted costs orders both of which were successful. On 10 April 2014 an order was made for payment of costs thrown away amounting to £14,174. Letters had been left at the SN Road address but no contact had been made; the property did not seem to be occupied and was not in the Respondent's name and so the witness had not filed a bankruptcy petition but decided to wait. LEL made an application to the Registrar of Companies to be struck off but the witness opposed the application because there might be matters that the company could be compelled to disclose.

62. The Respondent cross examined the witness about the costs statements. He put it to the witness that he the Respondent had tried to give them to the Judge in court. The witness rejected that and said that the Respondent tried to hand up a statement of costs but the statement of costs before the Tribunal for the hearing on 27 February 2013 was not the same document. The one before the Tribunal was created at the same time as its companion document for the May 2013 hearing. The witness had not established the reason for the cash sum that C had paid to the Respondent.

Findings of Fact and Law

63. 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.

(Paragraph numbers in quotations have been omitted unless they aid comprehension.)

General Submissions for the Applicant

64. In allegations including breach of Rule 1.02 of the 2007 Code or Principle 2 of the SRA Principles, Mr O'Malley relied on the case of Mark Anthony Financial Management and Mark Anthony Hurst Ainley v The Financial Services Authority FS/2011/0020 & 0021 in respect of the allegation of lack of integrity. The judgment stated:

"15. The meaning of integrity was considered by the Tribunal in Hoodless and Blackwell v FSA 2003). The Tribunal observed at [19]

> "In our view "integrity" denotes moral soundness, rectitude and steady adherence to an ethical code...
>
> ... In the subsequent cases of Vukelic v FSA (2009) at [23] and Atlantic Law LLP and Greystoke v FSA (2010) at [96], the Tribunal has cautioned against attempting to formulate a comprehensive definition of integrity. As the Tribunal in Vukelic observed, integrity remains a concept "elusive to define in a vacuum but still readily recognisable by those with specialist knowledge and/or experience in a particular market.

16. A lack of integrity does not equate to dishonesty. While a person who acts dishonestly is obviously also acting without integrity, a person may lack integrity without being dishonest. One example of a lack of integrity not involving dishonesty is recklessness as to the truth of statements made to others who will or may rely on them...

...

The Tribunal in Allen v FSA (2009) adopted the view of the Tribunal in Vukelic that to turn a blind eye to the obvious and to fail to follow up obviously suspicious signs is a lack of integrity. We take the same view in this case."

65. **Allegation 1.1 - The Respondent conducted litigation and exercised a right of audience (being reserved legal activities) in the matter of ME- v- AJ in Lambeth County Court under Claim Number 9PA71*** whilst not authorised to do so and thereby:**

1.1.1 undertook reserved legal activities in breach of Section 14 of the Legal Services Act 2007;

1.1.2 failed to uphold the rule of law and the proper administration of justice contrary to Rule 1.01 of the Solicitors Code of Conduct 2007 ("the 2007 Code");

1.1.3 failed to act with integrity contrary to Rule 1.02 of the 2007 Code;

1.1.4 behaved in a way that is likely to diminish the trust the public places in him or the legal profession contrary to Rule 1.06 of the 2007 Code;

65.1 For the Applicant, Mr O'Malley submitted that concerns had been raised with the Applicant about the Respondent by DJ Zimmels in 2011. Attempts were made to contact the Respondent unsuccessfully and the matter was left on the file and resurrected later on. The allegations relating to repeatedly conducting litigation when unauthorised were serious.

65.2 Mr O'Malley submitted that the Respondent did not hold a practising certificate from the Applicant when he filed the application notice on or around 7 December 2010 indicating that he was with the firm JPS which was not a firm of solicitors and had never been authorised or regulated by the Applicant. The Respondent did not hold a practising certificate from the Applicant when he attended the Lambeth County Court before DJ Zimmels on 8 March 2010 and 9 December 2010. As a result, the Respondent was conducting litigation and exercising rights of audience being reserved legal activities as defined in s 12 of the Legal Services Act 2007 ("LSA 2007"). The Respondent was not an authorised person or an exempt person in relation to both those reserved legal activities so was carrying out such activities where not entitled contrary to s 14 of the LSA 2007. The Applicant relied on the evidence of DJ Zimmels and his statement. The Tribunal was invited to consider the ILEX findings when considering allegation 1.1 and the admissions made by the Respondent in relation to his conduct in relation to Claim Number 9PA71***. Mr O'Malley relied on s 13 of the LSA 2007 which defined a person entitled to carry on a reserved legal activity, s 12 which defined reserved legal activity, s 4(1) Schedule 2 of the Act which defined the conduct of litigation and s 3(1) of the schedule which defined right of audience. He referred the Tribunal to the rule breaches which were alleged to have arisen from what the Respondent had done. He had failed to uphold the rule of law and the proper administration of justice (Rule 1.01) because he had conducted litigation and appeared in proceedings as a result of which an order was made dismissing the application and thereby he had failed both his client and the court. The Respondent said that the failures were those of others. Mr O'Malley submitted that integrity (Rule 1.02) was central to the role of a solicitor as a trusted advisor including in the role in court. The Respondent had taken multiple steps and there were references to earlier appearances that he had made. When challenged by the District Judge he accepted that JPS was not registered with and authorised by the Applicant. The Respondent was not properly authorised and so his client would not be indemnified for his actions and thereby he created a risk to the client. He had thereby damaged public trust in himself and the profession (Rule 1.06).

65.3 Mr O'Malley referred the Tribunal to the findings of the ILEX Disciplinary Tribunal and asked that they be considered in respect of the underlying conduct and proof of that underlying conduct. In relying on the findings the Tribunal should be aware that the Respondent had known of the ILEX proceedings and submitted written representations explaining his misunderstanding of the rules.

65.4 The Respondent stated in evidence that he had fully admitted that he was under the mistaken belief that he had a right of audience before Lambeth County Court. He had argued the position with DJ Zimmels and found out later that he did not have the right. He apologised profusely to the District Judge and wrote to the court and pointed the fact out to ILEX in his letter dated 13 March 2011 quoted under the District Judge's evidence. The Respondent maintained that even though in giving evidence the District Judge had not recollected it. ILEX said it had taken account in its judgment that he "responded to the matters, which amounted to admission of the charges, and that he apologised to the District Judge and the court." Elsewhere in the findings it was stated:

> "Mr James concluded his letter by apologising to DJ Zimmels and to the court for wrongly arguing with DJ Zimmels, mistakenly acting in his capacity as a Legal Executive believing changes had been allowed to enable him to appear in the court..."

65.5 Mr O'Malley referred the Respondent to one of the documents in his bundle an unaddressed letter dated 13 March 2011 headed "Complaint District Judge Zimmels" which he concluded by saying:

> "I would be grateful if you could put this letter before his Hon District Judge Zimmels on my behalf."

This last sentence did not appear in the version of the letter which appeared in the exhibit to the Rule 5 Statement (which showed that the letter was addressed to ILEX). The Respondent said he could not remember if he had sent a separate letter to the District Judge. The Respondent stated that the version with the additional sentence was one which he had sent to the District Judge and the other version went to ILEX with a copy of the letter to the District Judge attached.

65.6 The Tribunal pointed out to the Respondent that ILEX and the Applicant had different jurisdictions and that in admitting allegation 1.1.1 the Respondent was admitting that the Applicant has a right of control over him but it was open to him to address the Tribunal around the fact that a sanction had already been imposed upon him and that he was paying off the financial penalty and costs. The Respondent submitted that he should not be further penalised by the Tribunal.

65.7 The Respondent was also invited by the Tribunal to address the allegation of lack of integrity (allegation 1.1.3) which had not been found proved by the ILEX Disciplinary Tribunal. The Respondent was directed to the authority of the Mark Anthony case which Mr O'Malley relied on in respect of the meaning of integrity. The Respondent stated that he was honest, straightforward and very forthright as soon as he found out that he had no right of audience. He withdrew from representing the client any further. At all times he upheld the standards required of him as a solicitor and had not breached them in any way. Mr O'Malley put it to the Respondent that the allegation of lack of integrity related to him in making his appearance before the District Judge and conducting litigation and taking steps in advance including service of two Notices of Acting rather than the steps he had taken afterwards in respect of his apology to the District Judge. The Respondent stated that when he went to court he had an honest belief that he had a right of audience and the right to serve notices; he had not done this dishonestly or tried to mislead the court about his status in any way. He acted on information from another colleague that they had the right of audience because several changes were going through as a result of the LSA 2007 but the changes had not yet gone through Parliament.

65.8 The Respondent referred the Tribunal to his witness statement dated 4 January 2016, where he referred to complaints made by Mr C against Mr K. The Respondent asserted that the painstaking complaints against him by Mr K were prompted by Mr C making detailed complaints against Mr K. The Tribunal explained to the Respondent that the allegations in this matter were against him but the Tribunal would note what he said as background information. The Respondent also complained that the

Applicant only took up the District Judge's complaint prompted by complaints from Mr K. Mr O'Malley expanded on his opening submissions and agreed that District Judge Zimmels had complained about the Respondent in January 2011. An Explanation with Warning letter had been sent to him but there was no response and an internal decision was taken by the Applicant to let the matter lie on file.

65.9 In cross-examination, the Respondent confirmed that his client in the Lambeth County Court action Ms AJ was his niece. He stated that she made no payments to him or to JPS. As to the use of S Road as the address for JPS whereas the address for service of documents was K Road, the Respondent stated that he did not draft the documents in the proceedings. At that time an attempt was being made to establish JPS and those involved were meeting at different people's houses about changes in the LSA 2007 and confusion arose. He accepted that the District Judge would be under the impression that JPS was a firm of solicitors and that the Respondent was working under its authority. The Respondent was referred to paragraph 7 of his statement which included (spelling and grammar following that of the statement):

> "... Before I attended the hearing I did request that they renew my practise certificate and ensured that they (sic) adequate insurance in place. They failed to renew my practice (sic) without my knowledge and I attended before District Judge Zimmell (sic) who I have been appearing before for the past 20 odd years and wrongly argued that I had right audience as a legal executive and that my practice certificate had been renewed, for which I promptly apologised for upon discovering that it had not been…"

The Respondent confirmed that indemnity insurance was in place but his practising certificate was not; this was someone else's fault. It was put to the Respondent that in his statement for ILEX the District Judge stated that the Respondent said that:

> "...a practice was in the process of being set up and "it was a mistake on [his] part" to file the Notice of Acting..."

The District Judge also reflected this in the order that he made. The Respondent was asked to explain why there was no reference to the explanation about his practising certificate in his letter to ILEX which he said he had copied to the District Judge. The Respondent stated that he could not remember why but he tried to deal with the issues about his attendance at court. It was put to him that he was raising a different point in evidence to what he had said to the District Judge and to ILEX. The Respondent stated that the reason that he did not do this was that he did not want to get the person responsible for day-to-day administration and trying to set up JPS into any trouble as he was a certified accountant. The Respondent explained that a group of people was trying to set up a firm in order to take advantage of the LSA 2007 enabling different professions to get together. The people in the group were supposed to renew his practising certificate and did not do so. The Respondent did not accept that his statement was inconsistent with what he had said to ILEX and the District Judge. He was not aware when he appeared before the District Judge whom he described as very strict that he had no right of audience. He would not have appeared before him or dealt with papers in the matter if he had.

65.10 The Respondent clarified for the Tribunal the evidence of Ms Siddiqui about the periods of his membership of ILEX which he explained was about maintaining subscriptions. He also clarified that in the 20 years he had appeared before the District Judge he had done so as a legal executive/paralegal. In respect of other gaps when he was neither with ILEX or had a practising certificate as a solicitor, the Respondent stated that he first joined the legal profession as a legal executive/paralegal in 1981. He had returned to college lecturing in law and social studies for a period. He had worked for a local authority as a director from 1981 to 1989 and had been a partner in a firm; he thought in 2006. The litigation he had conducted before the District Judge had mainly been related to housing possession cases.

65.11 The Respondent stated that there was no significance in the fact that he had acted for his niece and for an old friend in the two matters which were the subject of the allegations; he helped quite a few people in legal matters. He did not do so for financial gain.

65.12 The Tribunal had regard to the evidence including the oral evidence and the submissions for the Applicant and by the Respondent. S 14(1) of the LSA 2007 provided that it was an offence for a person to carry on an activity which was a reserved legal activity unless that person was entitled to carry on the relevant activity. At the time the Respondent appeared in Lambeth County Court on 9 December 2010 and conducted litigation and exercised a right audience, both reserved legal activities, he did not have a practising certificate. He was a Fellow of the Institute of Legal Executives; an email dated 27 March 2014 from Ms Siddiqui of CILEx to JK of the Applicant recorded that the Respondent was reinstated as a legal executive on 12 April 2010 and remained a fellow until 10 July 2012 but at the material time JPS was not registered with the Applicant and so the Respondent was unsupported by a firm of solicitors who could give him instructions to act in the litigation. S 13(2) of the LSA 2007 provided:

> "A person is entitled to carry on an activity which is a reserved legal activity where-
>
> (a) the person is an authorised person in relation to that activity, or
> (b) the person is an exempt person in relation to that activity"

The Respondent was neither authorised nor exempt. It was not disputed that the work he did as defined by s 12 of the LSA 2007 came within the definition of a reserved legal activity as it comprised the conduct of litigation defined by s 4(1) of Schedule 2 and the exercise of a right audience as defined by s 3(1) of Schedule 2. The Tribunal found allegation 1.1.1 proved on the evidence to the required standard; indeed it was admitted.

65.13 In respect of allegation 1.1.2, the Tribunal noted that the District Judge reported to the Applicant that the Respondent had appeared before him and exercised rights which he did not possess; this indicated to the Tribunal the seriousness of the admitted misconduct. The Respondent could not default to acting as a next friend for the Defendant because she was not present. The Respondent's mistake meant that the Defendant was not represented and the application he had made on her behalf was dismissed. The Tribunal was satisfied that in acting as he did the Respondent had

failed to uphold the rule of law and the proper administration of justice contrary to Rule 1.01 of the 2007 Code and therefore allegation 1.1.2 was proved on the evidence to the required standard.

65.14 In considering allegation 1.1.3 relating to integrity, the Tribunal had regard to the description of integrity from the Mark Anthony case quoting the case of Hoodless v Blackwell v FSA (2003) that integrity connoted "moral soundness, rectitude and steady adherence to an ethical code..." The Respondent's evidence was that he applied his mind to the matter and got it wrong; that he was acting under the mistaken belief that the people setting up JPS had applied for his practising certificate and for JPS to be registered which would have enabled him to carry out the reserved activities. He also relied on their having misunderstood and anticipated a change under the LSA 07. There was a discrepancy in the Respondent's evidence about his exchanges with the District Judge on the day in question and the latter had given clear and convincing evidence on the subject. However aside from that the Tribunal considered that the Respondent's evidence constituted a plausible explanation for what had happened and it could not be sure that the Respondent had failed to act with integrity. The Tribunal found allegation 1.1.3 not proved on the evidence to the required standard.

65.15 In respect of allegation of 1.1.4, the Tribunal was in agreement with the ILEX Disciplinary Tribunal that the Respondent failed to keep abreast of the rules in terms of his role as a legal executive and had left it to others in terms of his role as a solicitor. The Tribunal considered that the public trust would be diminished by such conduct and found that a breach of Rule 1.06 had occurred. The Tribunal found allegation 1.1.4 proved on the evidence to the required standard.

66. **Allegation 1.2 - The Respondent failed to notify the SRA of the ILEX Tribunal findings/order dated 8 September 2011 as necessary and, in particular, when he applied for practising certificates for the 2012/13 and 2013/14 practice years and thereby:**

1.2.1 failed to comply with Rule 1.2 of the SRA Practising Regulations 2011;

1.2.2 failed to act with integrity contrary to Principle 2 of the SRA Principles;

1.2.3 failed to behave in a way that maintains the trust placed in him and in the provision of legal services contrary to Principle 6 of the SRA Principles;

1.2.4 failed to comply with his legal and regulatory obligations and deal with his regulators and ombudsmen in an open, timely and cooperative manner contrary to Principle 7 of the SRA Principles.

66.1 For the Applicant, Mr O'Malley relied on the Rule 5 Statement and referred the Tribunal to the SRA Practising Regulations 2011. Rule 1.1 provided:

> "An application under these regulations must comprise:
>
> (a) the prescribed form, correctly completed;…"

Rule 1.2 provided that:

"Every applicant must:

(a) Ensure that all details relating to him or her given on any form prescribed under these regulations are correct and complete;

(b) notify the SRA as soon as he or she becomes aware that any information provided in an application under these regulations has changed."

The Respondent was required by Rule 1.2 of the Practising Regulations 2011 to declare the existence of the earlier findings. He was aware of the proceedings before the Disciplinary Tribunal as he submitted written representations to it. Mr O'Malley relied on the second statement of Ms Siddiqui in saying that the Respondent had knowledge of the ILEX findings when he submitted forms to the Applicant. He submitted that the Respondent was aware of both the proceedings and the findings when he completed the application forms for Practising Certificates in respect of practising years 2012/2013 and 2013/2014 but failed to make the appropriate declarations and in doing so he was dishonest as well as being in breach of the Rules pleaded.

66.2 In respect of the detailed evidence in support of allegation 1.2, Mr O'Malley referred the Tribunal to Regulation 3 of the SRA Practising Regulations 2011:

"3.1 Regulation 3 applies to an initial application for a practising certificate, an application for replacement of a practising certificate… in any of the following circumstances…

(a) The applicant has been:
...

(iv) made the subject of a disciplinary sanction by, or refused registration with or authorisation by, another approved regulator, professional or regulatory Tribunal, or regulatory authority, whether in England and Wales elsewhere."

Mr O'Malley referred the Tribunal to the application submitted by the Respondent on 4 February 2013 for an initial practising certificate which showed the answer "Yes" to the question about whether any events in Regulation 3 applied to him. Mr O'Malley explained that answer would have been automatically populated by the Applicant's system because of what was set out on the following page:

"Our records show that the following paragraphs of regulation 3.1 apply to you: Reg 3.1 C"

The entry arose because the Respondent had previously failed to deliver an accountant's report: The line below that just quoted stated:

"If you are aware of any further paragraphs that apply to you, then please enter details. Please upload any supporting documents. (Optional)"

Under Regulation 3.1(a)(iv) the Respondent should have notified at that point the disciplinary proceedings undertaken by ILEX because it was an approved regulator. There was also a question further down the same page:

> "Have you/the individual/candidate ever been involved in other conduct which calls into question your honesty, integrity or respect for law;"

The Respondent again answered "No" and did not declare the ILEX proceedings.

66.3 Mr O'Malley then referred to the Respondent's application for a practising certificate when he applied to renew for the 2013/2014 practising year. The accounts matter had been resolved and so the answer to the question in respect of Regulation 3 was not pre-populated and the Respondent answered "No" as a specific response. Mr O'Malley submitted that he was required to declare the earlier ILEX findings of which he was aware and in respect of which when he submitted these forms he was paying off the costs. He therefore acted without integrity and undermined the trust of the public and failed to comply with his legal and regulatory obligations and was therefore in breach of the Rules pleaded. The 2012/2013 application was the first application he made after he had been notified of the outcome of the ILEX proceedings and he applied less than a year and a half after he was notified of them. Mr O'Malley submitted that Regulation 3.1(a)(iv) clearly referred to them. The further question on the form was not so clear but the Respondent should have considered its relevance, erred on the side of caution and should have disclosed the findings. The context was that he had already been before ILEX and so he should have been taking care about proper disclosure. His nondisclosure frustrated the Applicant in ensuring that proper standards were met and it created a risk to clients. Mr O'Malley submitted that what the Respondent had done met the objective test for dishonesty in the case of Twinsectra v Yardley [2012] UKHL. The Respondent had held practising certificates between 2005 and 2009 and so he was aware of the process and of the need to make declarations; he was aware of the ILEX proceedings and their outcome. He had three separate opportunities on the forms to tell the Applicant of the findings and he chose not to do so. Mr O'Malley submitted these facts satisfied the subjective test in that he was aware that what he was doing was dishonest.

66.4 In evidence the Respondent referred the Tribunal to his statement where he said:

> "When I applied for the renewal of my practise (sic) certificates I was not aware that I had to repeat details of the ILEX findings on every application for renewal, because as stated the matter had been reported by District Judge Zimmell (sic) and myself and I presumed that since the matter had already been dealt with by ILEX, the SRA took no further action."

The Respondent stated that he had told Mr O'Malley that in 2011 he reported to the Applicant but he could not remember to which of the Applicant's email addresses. He knew he had an obligation to inform the Applicant and he attached DB's email to the one that he sent to the Applicant. The decision was on the Internet so it would have been foolish of him to try to hide it. He had sent an email from his own personal email via Yahoo; he was abroad at the time. He had no record or proof of having done so. He had not received any response. He thought that with

District Judge's report the Applicant would take the ILEX findings from the Internet and that the matter had been dealt with.

66.5 Mr O'Malley informed the Tribunal that after the Respondent's assertion that he had reported to the Applicant in 2011 had been raised by the Respondent for the first time the previous day, Mr O'Malley's colleagues had checked the Mimecraft email system which the Applicant employed. The Applicant's IT department advised that there were two addresses available to the public; the Report address and the other was the Contact centre address. Both had been checked and no emails from the Respondent had been identified. Mr O'Malley therefore disputed the Respondent's evidence.

66.6 The Respondent confirmed to the Tribunal that he looked at Regulation 3 when he completed the forms but he assumed that it applied to the current year only, otherwise he would have submitted the ILEX documents to the Applicant again. In cross-examination, the Respondent stated that an accountant would have made the applications on the firm's behalf for his earlier practising certificates following his admission on 15 August 2005. When he completed the forms which were the subject of the allegation this was the first time that he had done so himself. Mr O'Malley referred the Respondent to Rule 1.1 and 1.2 of the SRA Practising Regulations 2011. The Respondent accepted that he was the applicant for the purposes of those rules and that Rule 1.2(a) and (b) applied to him and he stated that he had already complied by sending information about the ILEX proceedings to the Applicant and that the rules did not say that he had to do so year by year. Mr O'Malley put it to him that Regulation 3.1 seemed to contradict the Respondent's presumption that he only needed to inform the Applicant once, (it stated that it applied to an initial application for practising certificate and an application for replacement of a practising certificate) although Mr O'Malley accepted when it was put to him by the Tribunal that the application form was silent on the point. He submitted that if the Respondent was being open and transparent he would have done it or checked with the Applicant in respect of submitting the form. The Respondent maintained that the form did not say that he had to repeat the same information annually.

66.7 In respect of the allegation of dishonesty associated with allegation 1.2, the Respondent stated that had he not submitted the ILEX documents to the Applicant in November 2011 he would have been dishonest. Since he had informed the Applicant he was not aware that he needed to report annually; if he had been asked to repeat the information annually he would have done so. He denied dishonesty and had not acted with malice or intention to mislead and referred to the fact that the information was on the Internet and could be read by anybody. He acted in accordance with his interpretation of the form.

66.8 The Tribunal had regard to the evidence including the oral evidence and the submissions for the Applicant and by the Respondent. It was the Respondent's evidence that he had sent a copy of the ILEX Disciplinary Tribunal findings to the Applicant in 2011 by email at a time when he had no practising certificate. The Applicant had been unable to find any evidence of having received notification. The Tribunal did not consider it possible to establish what had happened. There was no dispute about what the Respondent had completed on his application for a

practising certificate for the 2012/2013 and 2013/2014 practice years. He did not provide information about the findings of the Disciplinary Tribunal. It was the Respondent's own evidence that he looked at Regulation 3.1 when he filled out the form, relating to whether he had been subject to a disciplinary sanction by another approved regulator, professional or regulatory Tribunal or regulatory authority. It was also not disputed that he had not made any declaration in response to a question about awareness of any further paragraphs that applied to him, the relevant paragraph relating to conduct which called into question his honesty and integrity or respect for the law. The Respondent relied on having notified the Applicant of the Disciplinary Tribunal findings by email when they were sent to him, on those findings having been available to the Applicant if it chose to look on the Internet and on the complaint which had been made by the District Judge and in respect of which the Respondent believed no action had been taken and indeed none had been taken by the Applicant because it could not establish contact with the Respondent. The Tribunal noted that the application for the 2012/2013 practice year was the first which the Respondent made following the hearing but that the ILEX hearing did not take place within that year. The Tribunal made the following findings in respect of allegation 1.2:

66.9 The Tribunal considered that the undisputed fact that the Respondent made no reference to the ILEX hearing on his practising certificate applications constituted proof of the underlying fact of nondisclosure and constituted a breach of Rule 1.2 of the SRA Practising Regulations 2011. The Tribunal found allegation 1.2.1 proved on the evidence to the required standard.

66.10 Allegation 1.2.2 related to failure to act with integrity. The Tribunal found that the Respondent gave a not implausible explanation of his failure to complete the form correctly. He testified that he thought that declarations on the application form only related to what had occurred within the previous practice year. The Tribunal found that allegation 1.2.2 had not been proved on the evidence to the required standard.

66.11 Allegation 1.2.3 related to public trust and having regard to the not implausible explanation given by the Respondent for his omission, for the same reason as set out at 66.10, the Tribunal found allegation 1.2.3 not proved on the evidence to the required standard.

66.12 Allegation 1.2.4 related to compliance with legal and regulatory obligations. Having regard to its findings in respect of allegations 1.2.2 and 1.2.3 the Tribunal did not consider that the Applicant had proved to the required standard that the Respondent had concealed anything when he completed the form and it would not be logical to find that he had acted in a way that was not open. Having regard to timeliness of cooperation with the regulator, the Respondent was aware that his conduct leading to the proceedings at the Disciplinary Tribunal had been reported to the Applicant by the District Judge and it was his evidence that he too had reported it. The matter was not brought against him until Mr K made his complaint to the Applicant and in the circumstances the Tribunal did not consider that timeliness was relevant in respect of the Respondent. It also found the use of the words "cooperative manner" did not add anything to the allegation and found allegation 1.2.4 not proved on the evidence to the required standard.

66.13 An allegation of dishonesty was brought in respect of allegation 1.2. The Tribunal considered that having found the lesser allegation of failure to act with integrity not proved it flowed that an allegation of dishonesty could not succeed and found allegation 1.5, insofar as it related to allegation 1.2, not proved on the evidence to the required standard.

67. **Allegation 1.3 - The Respondent practised as a solicitor otherwise than as permitted by Rule 1.1 of the SRA Practice Framework Rules 2011 and thereby:**

1.3.1 failed to uphold the rule of law and the proper administration of justice contrary to Principle 1 of the SRA Principles 2011 ("the SRA Principles");

1.3.2 failed to act with integrity contrary to Principle 2 of the SRA Principles;

1.3.3 failed to act in the best interests of each client contrary to Principle 4 of the SRA Principles;

1.3.4 failed to behave in a way that maintains the trust placed in him and in the provision of legal services contrary to Principle 6 of the SRA Principles.

67.1 For the Applicant Mr O'Malley referred the Tribunal to the SRA PFR 2011 which included:

> "1.1 You may practise as a solicitor from an office in England and Wales in the following ways only:
>
> (a) as a sole practitioner of a recognised sole practice;"

LEL was never authorised or regulated by the Applicant and the Respondent was never recognised or authorised as a recognised sole practitioner. There was evidence that he was conducting litigation for Mr C. He was signing documents and practising as a solicitor. He held a practising certificate but was practising otherwise than as permitted. In the email to Mr Bint of the Applicant on 28 August 2014 quoted in the background to this judgment, the Respondent stated that he was self employed. By contrast in the email to Mr K of 23 May 2013 quoted above he said that he was employed by LEL and Mr O'Malley submitted that based on his email to Mr Bint he could not rely on Rule 4.16 of the SRA Authorisation Rules 2011 to justify practising because the Rule related to acting while employed. The Applicant also relied on the receipt of money from the client by the Respondent; the account statements of Mr C recorded transfers of money between him and the Respondent. These payments occurred during the period when the Respondent represented him in the Birmingham proceedings. Mr O'Malley invited the Tribunal to conclude that the proviso within Rule 4.16(b) was not satisfied in any event (that is all fees earned and costs recovered were paid to the organisation to further the provision of its services). Mr O'Malley submitted that this conduct was similar to the Respondent's earlier conduct save that in this instance he had a practising certificate but he was still not authorised as a sole practitioner and was working in unauthorised firm. As a result, the Respondent in dealing with the Birmingham proceedings, practised as a solicitor otherwise than permitted by Rule 1.1 of the SRA PFR 2011. This again was serious misconduct

because the client would not be indemnified and Mr O'Malley submitted that this constituted breaches of the rules pleaded.

67.2 In evidence, the Respondent stated that before he was employed by LEL he telephoned the solicitors' helpline to check if he could be employed by LEL and was referred to Rule 4.16. He had acted in accordance with the remit of the rule regarding LEL. He did not charge Mr C or Mr K in any way in respect of his services and so he had upheld the rule of law and acted with integrity because he had complied with Rule 4.16. As to acting in his client's best interests, Mr C never complained and the Respondent acted to the best of his ability to assist Mr C in his litigation matter. In respect of maintaining the public trust the Respondent asserted that of thousands of documents Mr O'Malley had handpicked and referred to a handful of minor documents.

67.3 It was put the Respondent that when he replied to Mr Bint of the Applicant he mentioned his involvement with LEL but in his statement for the Tribunal there was no mention of LEL at all. He rejected the suggestion that he used LEL as a cover to indicate that he had authority to act in the proceedings. He agreed that the documents that Mr K had referred to especially regarding the Birmingham proceedings, referred to LEL as the relevant firm. He did not dispute that the LEL letter heading appeared on 15 April 2013 with an address at SN Road. He used that address because letters had gone missing. The Respondent rejected the assertion that its appearance was a response to Mr K raising the issue with him about lack of headings. He stated that they used to correspond by email and the emails did not have that information. He was then referred to a letter which showed the SN Road address dated 26 March 2013 enclosing a copy application and draft order which did not have the LEL heading. He could not remember whether this had been sent by email; he could not say which documents had been sent by email to Mr K. The Respondent stated that at all times he was acting for Mr C in his legal matters under the auspices of LEL.

67.4 The Tribunal considered the evidence including the oral evidence and the submissions for the Applicant and by the Respondent. The Tribunal noted that the Respondent's explanation was that he was to be employed by LEL but this did not happen because of lack of funding and he therefore became a consultant to the organisation. The Tribunal determined that this was not an adequate defence because LEL had never been authorised and regulated by the Applicant; it was never an approved entity. The Respondent was therefore not working for a recognised body. It was also an undisputed fact that the Respondent had never been regulated by the Applicant as a registered sole practitioner. None of the ways that a solicitor was permitted to practise as set out in the Rule 1.1 applied to him. The Respondent sought to rely on Rule 4.16 to allow him to practise in what he said was an advice service but he could not rely on that Rule because LEL was not a regulated body. The Tribunal therefore found proved on the evidence to the required standard the underlying allegation 1.3 that the Respondent practised as a solicitor otherwise than as permitted by Rule 1.1. The Tribunal found as a consequence that he had failed to uphold the rule of law and proper administration of justice and found allegation 1.3.1 proved on the evidence to the required standard.

67.5 The Tribunal then considered allegation 1.3.2 relating to failure to act with integrity. It examined the information which the Respondent had provided to Mr K:

- On both the costs statements which the Respondent sent to Mr K as proved by the covering email, the Respondent described LEL as a firm of solicitors by completing the appropriate box with its name.

- In his letter of complaint to the Applicant dated 20 March 2014, Mr K reported that from 27 February 2013 until 15 April 2013 the Respondent corresponded with him as Hubert James or H James. He used his home address SN Road which was owned by a relative.

- It was not disputed that on 15 April 2013, Mr K received from the Respondent for the first time a letter purporting to be on the notepaper of LEL. Again the private address SN Road and the same telephone number and fax number used in relation to JPS in the Lambeth County Court case were shown.

- The Tribunal noted as had Mr K that use of the LEL letterhead shortly followed on from letters from Mr K: on 2 April 2013 asking for the Respondent's Applicant number; on 8 April 2013 informing the Respondent that unless he provided the number Mr K would forward copies of his office stationery to the Applicant and on 12 April 2013 a letter and email from Mr K.

- Mr K also pointed out that at all material times the Respondent corresponded from SN Road even after 15 April 2013 when he purported to involve LEL and the Tribunal considered that this was relevant evidence. It did not find showing the M Street address as the registered office of LEL to have any significance. Use of a registered office address which was different from an operating address was quite common.

67.6 Having examined the 15 April 2013 letter, the Respondent agreed that the information provided about him and the use of the Applicant number might cause a reader to believe they were dealing with a firm regulated by the Applicant. The Tribunal considered that the Respondent's letter of 15 April 2013 was a key document. This was a Respondent who had had previous problems with another regulator about his right to practise. He stated that he had called the Law Society and been referred to Rule 4.16. The notepaper which he was using in his early correspondence with Mr K was deficient and when he was challenged, notepaper which he thought complied with Rule 4.16 materialised three days later. However Mr K continued to challenge him and by his email of 15 April 2013 asked the Respondent whether he was holding out LEL as a legal practice recognised by the Applicant. The Respondent then gave the answers in his email of 23 May 2013. The Tribunal considered the use of LEL to be cynical manoeuvring by the Respondent in an attempt to put off Mr K. The Respondent was challenged and relied on rule 4.16 which was spurious because LEL was not a recognised entity. The Tribunal had regard to the description of integrity from the Mark Anthony case quoting Hoodless as denoting "moral soundness, rectitude and steady adherence to an ethical code..." The Tribunal found that the Respondent had failed to display these characteristics in practising other than as permitted and thereby was in breach of Principle 2. The Tribunal found allegation 1.3.2 proved on the evidence to the required standard.

67.7 In respect of allegation 1.3.3 because the Respondent was practising unauthorised if something went wrong the client would have no right to be indemnified and the Respondent exposed the client to risk as a result. The Tribunal found that in doing this the Respondent had failed to act in the best interests of his client contrary to Principle 4 and allegation 1.3.3 was proved on the evidence to the required standard.

67.8 In respect of allegation 1.3.4 the Tribunal considered that the public would be alarmed by the lack of integrity displayed by the Respondent; someone who should not be practising but who was practising unauthorised in litigation. The Tribunal found allegation 1.3.4 proved on the evidence to the required standard.

68. **Allegation 1.4 - The Respondent provided a false explanation that LEL provided a free legal service in response to a Notice issued pursuant to s 44B of the Solicitors Act 1974 (as amended) and dated 5 August 2014 and thereby:**

1.4.1 failed to act with integrity contrary to Principle 2 of the SRA Principles;

1.4.2 failed to comply with his legal and regulatory obligations and deal with his regulators and ombudsmen in an open, timely and cooperative manner contrary to Principle 7 of the SRA Principles.

68.1 For the Applicant, Mr O'Malley referred the Tribunal to the schedule to the s 44B notice quoted in the background to this judgment which set out the information required by the Applicant. It was set out in the Rule 5 Statement that the responses provided by the Respondent to the questions in the notice pursuant to the s 44B notice that LEL offered a free legal service were contradicted by:

- The statements of costs filed in the name of LEL which suggested that costs had been incurred for LEL;
- The transactions as detailed in the copies of the accounts of Mr C with HSBC Bank plc;
- The responses provided to Mr K in the Respondent's email of 23 May 2013.

Mr O'Malley asked the Tribunal to consider the context in this matter; correspondence was being sent to SN Road and the same contact numbers were being used by the Respondent as he had used before DJ Zimmels on behalf of JPS. The Tribunal was asked to consider the Respondent's explanation which he had given to JK of the Applicant's Supervision Team in a telephone conversation. The Respondent informed JK that LEL was now closed. The telephone note made by JK of the Applicant continued:

> "I asked where they were based he stated the address as [M] St, as on the letterhead and that the charity provided advice and guidance on litigation & rates matters to small business, I said that I had been referred a matter the [C] matter and wanted to know what the outcome of that was – he said that the client didn't have any money to continue and that he stopped working for the charity in Sept 2013. He said that he did update his mySRA account to reflect that he was working at the charity I said that looking at his post in Dynamics

> this was not the case and would send him a copy of the RF form completed, in any event he was no longer working he stated. I asked him to confirm certain details on his RF form firstly his postcode which he was extremely cagey about and said that he was abroad and then gave me the [B] Road address which is in Bham (sic), I asked him to confirm his email address and he gave me a yahoo new address which was different to the one on the letterhead of [LEL] – I asked him to clarify this – [the Respondent] said that the email address on the letterhead was the address for the charity and that the registered address was [M] Street but as post used to get lost they had to use [SN] Road, which according to Mr Kilroy is his private address."

Mr O'Malley submitted that a false explanation was given that LEL gave a free legal service and this displayed a lack of integrity and failure to comply with legal and regulatory obligations. There was also dishonesty because the Respondent deliberately intended to deceive the Applicant. The s 44B notice had been directed at the Respondent personally and he responded personally to questions 1 and 2. There were also contradictions in his answers to questions 4 and 5 as evidenced by the bank statements and the statements of costs. Mr O'Malley submitted that satisfied the subjective test for dishonesty He submitted that these false explanations were deliberate explanations and constituted dishonesty.

68.2 In evidence, the Respondent referred the Tribunal to his documents which included a bank statement dated 12 July 2011 which the Respondent stated belonged to Ms D. It was dated well before he started acting for Mr C. He had known Mr C for 40 odd years; they went to school together. They were in touch from time to time and he had helped Mr C financially in the past; well before the Tribunal hearing. Ms D's bank statements showed that she made a payment on 17 June 2011 of £22,000. (The bank statement included the first name and part of the surname of Mr C as the payee.) This was supported by a CHAPS transfer slip of the same date showing her name and Mr C's save that she had spelt Mr C's name wrong. (Mr O'Malley confirmed that the account number on an un-redacted copy of Mr C's bank statement matched the CHAPS payment and he did not take issue about the fact of the payment.) The Respondent stated that the loan to Mr C was to be paid back in four months or as soon as possible and that payments had been made in late 2014 and 2015. The Respondent also referred to a "Security Agreement" dated 15 July 2011 between the Respondent and Ms D in which he was described as the "Debtor" and she was described as the "Secured Party". Mr C's bank statements would show other payments to the Respondent in repayment of the debt owed to Ms D. In his statement, the Respondent referred to attaching "copies of Ms [D's] bank statements to show that payments are being made via my personal account in respect of the debt owed by Mr [C] to Ms [D] direct." In fact Document 5 was the schedule which the Respondent had prepared. The Respondent stated that he had asked Ms D for copies of her bank statements but her email was giving trouble and she could not send them. The schedule had been created from reviewing the Respondent's own bank statements and he could have the bank statements sent to show the payments. The Respondent stated that the schedule he had prepared detailing various payments to Ms D in respect of the loan taken by Mr C also showed the loan was ongoing. The Respondent stated that Mr C had been made bankrupt and security fell onto the Respondent's brother to make the payments of the outstanding loan. The Applicant had not contacted Mr C to establish what the payment was for. The Tribunal suggested that if the debt was one of Mr C to Ms D it

would have been more regular for Mr C to pay her and not the Respondent if he was the surety. The Respondent stated that because of his bankruptcy C could not pay Ms D. In cross-examination, the Respondent stated that the money was not paid directly by Mr C to the Respondent's brother because the latter resided in America. Mr C could not pay the loan back and so the Respondent's brother had to do so and Mr C reimbursed him when he had some money. The Tribunal questioned why the explanation of the loan had only arisen at the previous day's hearing. The Respondent said that when the Applicant asked him he had replied that he had received no money for legal services; he had openly answered "No" in writing (in his email of 28 August 2014), which he followed up on the same day with an email quoting Rule 4.16. The Respondent relied on his answers to questions 4 and 5.

68.3 The Tribunal also asked the Respondent about his reply to Mr K where he had said that the service provided to Mr C was "totally free of costs" and how he equated what he said in that email with sending the cost schedules to Mr K. The Respondent relied on Rule 4.16(b) that all the fees and costs recovered were to be paid to the organisation for furthering the provision of the organisation's services. He looked at Rule 4.16(b) and prepared the costs statements in accordance with it. The Tribunal raised the indemnity principle, in respect of the costs statements being sent to the court. The Respondent said that he was not sure that he sent the cost statement to Mr K and it was pointed out by the Tribunal that his email of 24 May 2013 indicated that he did. He stated that he would have sought clarification on this point regarding what he could recover for LEL but the matter did not come to court. The Respondent agreed that he represented to Mr K that his costs had reached certain levels. He stated that Mr K had given him a costs statement and he responded. He stated that apart from counsel being instructed direct, LEL had incurred other costs and that Mr K would have to pay them to the organisation. The Tribunal referred the Respondent to the statement incorporated in the costs statement for the hearing of 24 May 2013:

> "The costs estimated above do not exceed the costs which (party) is liable to pay in respect of the work which this estimate covers."

The box opposite the statement had been completed "Defendant". The Respondent stated that he did not look at that and the signature on it was not his. The Tribunal noted that it was an electronic signature and the Respondent stated he had looked but he did not approve the form. The Respondent said he saw the Tribunal's point but he was unclear on the actual costs position regarding LEL; normally these matters were sent to a cost draftsman. The Respondent accepted that he was familiar with the indemnity principle Mr O'Malley pointed out that on 15 April 2013, Mr K had asked:

> "You have claimed costs against me which must mean that you claim to have an agreement with Mr [C] which makes him responsible for your costs."

It was in response to this question that the Respondent stated the service was totally free of costs.

68.4 With particular reference to allegation 1.4.2, the Respondent stated that he had replied in a prompt manner to the s 44B notice by virtue of his two emails on 28 August 2014. The Respondent stated no one ever asked him what the payment of £3,000 from

Mr C to him was for. He was asked if there were payments to LEL and he responded openly "No".

68.5 In cross-examination the Respondent said he did not know whether there were any inconsistencies in the information that he had sent to Mr K and to the Applicant in response to the notice because he said that he did not know what information he had given to Mr K. The Respondent rejected the suggestion that his email of 23 May 2013 to Mr K and his email to Mr Bint of 28 August 2014 were inconsistent because a couple of months had occurred between the two responses. When he was approached by LEL he was going to be employed but unsuccessful applications for funding were made and his status changed; he became a consultant and although he told Mr K he was paid directly he had received no payment of wages.

68.6 The Respondent also clarified for the Tribunal that LEL had recommended counsel to Mr C for direct access and that the Respondent had assisted Mr C to prepare instructions to counsel. As to the payment of £3,000 which he had received from Mr C on 23 May 2013 and that a statement of costs had been sent to Mr K for the hearing on 24 May 2013 which showed that counsel had been instructed at a cost of £2,000, the Respondent stated that counsel had been employed through the direct access scheme by Mr C and the Respondent was recovering costs for him.

68.7 The Respondent submitted that he acted in the framework of Regulation 4.16 which allowed him to act as a solicitor for an advice agency. No application for funds had been made to the client or received from the client for the work that the Respondent did at LEL. The only question that was doubtful related to the costs statements. He had prepared them but he did not sign them. He was going to check before he submitted the final costs statements whether the rules allowed him to charge for legal costs. He acted in accordance with the regulations and had received no payments from the client and did not see how he breached the rules regarding his conduct as a solicitor with LEL. The Respondent denied that he had provided a false explanation about LEL providing a free legal service in response to the s 44B notice. He checked with the helpline before acting as an employee/consultant with LEL. He submitted that the objective and subjective tests for dishonesty in the case of Twinsectra did not arise nor did the question of integrity because he had not received monies from Mr C regarding LEL. The Respondent also asked the Tribunal to take into account the comments made by the ILEX Tribunal including:

> "... This was not conduct that amounted to a deliberate flouting of the rules but a failure to keep abreast of the rules…"

and

> "The Panel took into account that [the Respondent] had accepted that the misconduct took place, that he should continue as a member of the profession, there was no dishonesty but there was recklessness and there was no personal gain to him. It also took into account that he had shown full insight into his conduct and he had shown remorse and apologised."

68.8 The Tribunal considered the evidence including the oral evidence and the submissions for the Applicant and by the Respondent. The Tribunal strictly followed the wording of the allegation rather than the heading to the relevant paragraphs in the Rule 5 Statement which varied from it. The Tribunal found as a fact that until April 2013 the Respondent was acting in his own name but when he was challenged by Mr K and threatened with being reported to the Applicant, LEL made an appearance in the form of the 15 April 2013 letter. The Applicant relied on what it described as three contradictions. One of these included the different statements the Respondent gave to Mr K in his 23 May 2013 email and to Mr Bint in email of 28 August 2014 with his response to the s 44B questions about his employment status. In his email to Mr K, the Respondent referred to LEL as "My employers" and that information informed the s 44B questions. The statements he made to Mr K were very clear; the Respondent was paid directly by LEL and that no bills had ever been issued to the client or requests made for payment and that LEL offered a free legal service. (Mr K gave evidence that once he knew that the Respondent was not charging the client he felt that his position was improved and his concerns about a possible costs claim against him were resolved.) The Respondent said that Mr C had not made any payments whatsoever to LEL because of the free legal service. In his email dated 28 August 2014 to Mr Bint, the Respondent said that he was self-employed and had not received any wages or remuneration from LEL. The Tribunal did not accept the Respondent's evidence that both statements were true at the time they were made. The Tribunal found that it was true that he had not received any wages but this was not because he was self-employed but because LEL did not have the money to pay him; on his own evidence its funding efforts had failed not that this was relevant on the case before the Tribunal.

68.9 The key question for the Tribunal was whether the service LEL provided was free as the Respondent had told both Mr K and the Applicant. If the Respondent was not charging Mr C, the Respondent had to inform the other side in advance that he was working pro bono and serve notice about payment to LEL in order to obtain payment for LEL via an application for costs. He did not do so. That failure was not the subject of any allegation but was part of the context. Mr K asked the Respondent by email on 23 May 2013 at 19.02 if he intended to serve a costs schedule and at 00.23 on 24 May 2013 the Respondent emailed the two costs statements to Mr K for the hearings on 27 February 2013 and 24 May 2013 with the email. The Tribunal found Mr K to be a very competent and careful witness. He could not say the costs statements were the same as that which he testified the Respondent had tried to hand over to the District Judge. In his statement he said:

> "When he made his application for costs on 16th April 2013 Mr James attempted to hand up to the court a statement of costs which he claimed to the District Judge that he had lodged at court. There was no copy of it before the District Judge who did not accept the copy being presented by Mr James. I was not served with a copy of the statement of costs. Since the court was in the process of refusing to hear the costs application I saw no point in asking Mr James for a copy. It is my belief that that statement of costs did not mention [LEL]"

Mr K never took his evidence beyond what he could prove or overstated the case. The Tribunal found that this made what the s 44B notice was based on more compelling. The Respondent challenged Mr K's approach to his former client

regarding the length of time since the costs in question had become due to him. The Tribunal accepted Mr K's evidence that he was winding down his work and collecting long outstanding fees would form part of that.

68.10 In order to succeed in proving this allegation the Applicant had to prove that the Respondent had lied about the free legal service LEL was purportedly offering. The Tribunal noted that the statements of costs contained a declaration that they did not exceed what the party was liable to pay. When he was asked by the Tribunal the Respondent confirmed that he was familiar with the principle of indemnity costs. Whether or not the documents were actually put into the court they were court documents showing the name of the case and the Respondent signed them as a solicitor of LEL in the form of a signed PDF. When Mr K asked if a costs schedule was to be served, he was asking what if any was the liability of the client to the Respondent/LEL and the Respondent gave an unequivocal answer by way of the statements of costs. It could not be clearer that he was representing to Mr K for example that Mr C was liable to pay LEL at £192 an hour and that LEL was to be paid £4,704 net of counsel's fees for the February 2013 hearing and it followed that Mr C was being charged that amount. The costs schedule for 24 May 2013 included £2,000 for counsel whom the Respondent said was instructed by direct access. The Tribunal could not determine whether counsel had been instructed by direct access but there was evidence of a substantial costs liability against the client without it. The evidence of Mr K that the Respondent was trying to have a costs statement accepted in court supported the contention that he was charging the client. The Tribunal therefore rejected the Respondent's evidence that he was unclear about the costs position and that he had not looked at the certification at the foot of the statements of costs forms and had not approved them.

68.11 The s 44B notice had been issued to the Respondent with a schedule of questions. The Tribunal considered what the Respondent had told the Applicant and its consistency with his other statements about whether LEL provided a free legal service. The Applicant prepared the s 44B notice on the basis of what Mr K been told by the Respondent who then came back with a different explanation at the answers to questions 1 and 2 from that which he gave Mr K. The Respondent told Mr Bint in response to the s 44B notice that he acted in an advisory capacity i.e. that he was not acting for Mr C but that was not on all fours with the statements of costs that said he was acting. The Tribunal found the Respondent's answers to questions 4 and 5 to be evasive. The Respondent's reply to question 4 did not answer the question about details of costs incurred by him and only answered the part about bills (he said that no bills had been issued nor any requests made for payment). It was in any event at odds with the costs statements sent to Mr K in the context of active court proceedings. In answer to question 5 which asked for details of all monies paid to him by Mr C and the reasons for the payments, the Respondent said that no payments had been made by the client to LEL (he did not refer to payments to himself). He was ducking the question because he did not realise that the Applicant had obtained a copy of the bank statements showing the £3,000 payment. The Tribunal considered that if the loan explanation (see below) which the Respondent gave was true he would have included in his answers that there was a convoluted arrangement about loan repayment. Instead he just said that "No payments whatsoever was paid by Mr C to [LEL] who offer a free legal service." Why did he leave the explanation until his statement brought to

the Tribunal so late in the day? The Tribunal considered that the Respondent' answer to question 5 was designed to deflect attention away from himself.

68.12 The Respondent gave last minute evidence in his statement dated 4 January 2016 and during the hearing that the payment of £3,000 made to him by Mr C just before the May 2013 hearing constituted part repayment of a loan of £22,000 from Ms D to C for which the Respondent's brother had stood surety to Ms D. The Tribunal considered the documents which the Respondent provided, Ms D's bank statement and the agreement for security for the loan. These might show that there was a loan but they did not show repayments; the only evidence of that was a schedule which the Respondent accepted he had created. The Tribunal noted that the 22 May 2013 payment of £3,000 to the Respondent by Mr C took place during the period in which the Respondent represented Mr C in the Birmingham proceedings and found that it was a down payment towards the costs. In respect of the payment made on 21 November of £600 by the Respondent to Mr C the Tribunal found this to be inconsistent with the Respondent's explanation of the indirect repayment through him to his brother for payments the brother had made as guarantor of Mr C's loan. If the purpose of the £3,000 payment to the Respondent was indirectly to reimburse his brother for payments as a guarantor why would he then pay £600 back to Mr C in November 2013? The Respondent said nothing about the £600 payment save that he said he had made previous loans to Mr C but the Tribunal noted that Mr C had £2,600 left in the bank after he paid £3,000 to the Respondent in May 2013. Furthermore there was no evidence that the money was paid on to Ms D. The Tribunal found on the Respondent's own case that the money had not been paid as he said it was; that conclusion was supported by the proximity of the payment to the hearing in May 2013 and the Tribunal's general assessment of his credibility.

68.13 The Tribunal found that the Respondent's approach was riddled with inconsistency. The Tribunal considered that there were too many different explanations; each time a contradiction was introduced there was a different explanation for example when he was challenged about his authority to act, LEL made its appearance. The Applicant's letter of 13 October 2014 to the Respondent which informed him that the Applicant had decided to commence an investigation into his personal conduct pointed out that he explained that LEL was a non-commercial organisation in accordance with Rule 4.16 of the SRA Authorisation Rules however the letterhead on which he wrote whilst at LEL used his personal address, email and his personal Applicant number. Furthermore the Respondent described himself as employed and then he became self-employed; he said that he was paid direct but then he told the Tribunal that he had never been paid. Each individual explanation was not implausible but taken together as a series of explanations they were devoid of credibility. The Tribunal found that the Respondent was constantly trying to bring himself within the rules of which he was in breach and trying to adapt the facts having previously had the experience of being disciplined by ILEX for unauthorised practice. The Respondent appreciated that if he answered Mr Bint in any other way he would be admitting to practising contrary to Rule 1.1. In summary the Tribunal found that all the contradictions asserted by the Applicant in the Rule 5 Statement were established. They were evidence of providing a false explanation as set out in the allegation. The Tribunal determined that allegation 1.4.1 that the Respondent had failed to act with integrity contrary to Principle 2 was proved on the evidence to the required standard.

68.14 The Tribunal considered that it followed from its finding in respect of allegation 1.4.1 that in dealing with his regulator the Respondent was desperately trying and failing to make the facts fit the regulatory requirements. The Tribunal found that he had not been open. As to timeliness, the Tribunal noted that the email trail began on 5 August 2014 with the s 44B notice and the Respondent replied in four weeks but the response lacked openness and could not therefore be called co-operative. The Tribunal found that allegation 1.4.2 was proved on the evidence to the required standard.

68.15 Dishonesty was alleged in respect of allegation 1.4 and the Tribunal applied the two limbed test in the case of Twinsectra. As the Applicant asserted in its October 2014 letter to the Respondent LEL was utilised by the Respondent as a mechanism for him to practise as a solicitor without the required authorisation of the Applicant. The Tribunal considered that reasonable and honest people would consider the Respondent changing the facts to suit the regulations every time he was challenged and producing a discrete new explanation to bring himself within Rule 1.1 to be dishonest by their ordinary standards. The Tribunal further considered that the Respondent's proactivity in adapting his version of events showed that he knew that what he was doing was dishonest. The Tribunal found dishonesty proved in respect of allegation 1.4 on the evidence to the required standard.

69. **Allegation 1.5, Allegations 1.2 and 1.4 were made on the basis that the Respondent acted dishonestly, but it would be open to the Tribunal to find allegations 1.2 and 1.4 inclusive proved without finding dishonesty.**

(See allegations 1.2 and 1.4 above. The allegation of dishonesty in respect of allegation 1.2 was found not proved. The allegation of dishonesty in respect of allegation 1.4 was found proved.)

Non-attendance of the Respondent at the resumed hearing on 22 January 2016

70. The Tribunal was unable to complete its deliberations upon findings of fact and law in respect of the allegations in the two days allocated for the hearing on 6 and 7 January 2016. The hearing was therefore adjourned and reconvened on 22 January. The Respondent did not attend. For the Applicant, Mr O'Malley referred the Tribunal to Rule 16(2) of The Solicitors (Disciplinary Proceedings) Rules 2007 which provided:

> "If the Tribunal is satisfied that notice of the hearing was served on the respondent in accordance with these Rules, the Tribunal shall have power to hear and determine an application notwithstanding that the Respondent fails to attend in person or is not represented at the hearing."

Mr O'Malley submitted that discussions at the conclusion of the hearing on 7 January in which the Respondent was involved made him aware that the matter would be relisted in the very near future. Mr O'Malley referred the Tribunal to a small bundle of documents which he had prepared when it became apparent that the Respondent was not in attendance. These showed that the Tribunal office had written to the Respondent on 8 January 2016 proposing dates for the resumed hearing of 22 and 29 January and asking him to indicate his availability by 11 January. It further informed him that if he did not reply it would be assumed that both dates were

suitable and the matter would be listed without further reference. The letter was sent to the address in the Respondent's witness statement dated 4 January 2016 which he had confirmed at the hearing. An email in similar terms had been sent on the same day 8 January 2016 to the email address which he had asked the Tribunal to use. The Respondent replied on 11 January that either date would be suitable. On 12 January 2016, the Tribunal office wrote to notify that the hearing was listed to resume on 22 January at 10am parties not to arrive before 12 noon and again an email was sent on 12 January to the Respondent in those terms. When that email was sent the Respondent's address changed to a different email address automatically. The letter was not returned to the Tribunal office but the Royal Mail tracking system showed that it could not be delivered and a notification card had been left at the address. Mr O'Malley referred the Tribunal to the case of Hayward, Jones and Purvis [2001] EWCA Crim 168 which provided guidance on the criteria to be followed in determining whether to proceed in the absence of a respondent. He accepted that the Tribunal had to exercise its discretion with great care. He referred to the nature and circumstances of this case where the parties had been present for two days and the Respondent had asked for the matter to be relisted as soon as possible. Correspondence showed that he was certainly aware of the two possible return dates and had made no contact with the Tribunal since acknowledging the alternative dates. There was no evidence to indicate that adjourning the matter would ensure his attendance and in any event it was impossible to say how long any adjournment would have to be that would procure his attendance. Mr O'Malley submitted that all reasonable attempts have been made to notify the Respondent and that he had deliberately chosen to absent himself from the proceedings. Mr O'Malley also referred the Tribunal to Rule 19(1) which provided:

> "At any time before the filing of the Tribunal's Order with the Law Society under rule 17 or before the expiry of the period of 14 days beginning with the date of filing of the order, the respondent may apply to the Tribunal for a re-hearing on application if:
>
> (a) he neither attended in-person nor was represented at the hearing of the application in question; and
>
> (b) the Tribunal determined the application in his absence."

The Tribunal considered the facts. This was a case where both parties had presented and closed their case. The Respondent had given evidence. The Respondent knew what was outstanding in terms of the procedure. He had engaged in the process of selecting the adjournment date and then not for the first time he failed to communicate with the Tribunal office. He had confirmed his address and email during the last hearing and the letter sent to him at that address had not been collected and the email sent to his email address had apparently been re-directed. The Respondent had a history of non-engagement with the proceedings not having been in contact with the Applicant from May 2015 until 6 January 2016 when the hearing began. The Tribunal considered that the Respondent had been given every opportunity to participate in the resumed hearing but had chosen not to do so. The allegations in this matter were serious and dishonesty had been found proved against the Respondent. The Tribunal did not consider that it would be in the interests of justice for the matter to be adjourned without being satisfied that there was a reasonable prospect that this would

procure the attendance of the Respondent. The Tribunal had to consider the interests of the public and its overriding objective and it did not consider that it would be appropriate to delay sanction and the publication of its findings to an unspecified date in the future. The Tribunal determined that it would proceed and conclude the hearing in the absence of the Respondent.

Previous Disciplinary Matters

71. None.

Mitigation

72. The Respondent was not present and no mitigation was offered.

Sanction

73. The Tribunal had regard to guidance Note on Sanctions. The Tribunal considered the seriousness of the misconduct proved. In arriving at the appropriate sanction across all the allegations it bore in mind that allegation of 1.1 mirrored allegations which have been brought against the Respondent in the ILEX Disciplinary Tribunal and did not consider that an additional sanction would be appropriate given that the Respondent had recently been sanctioned by that regulatory body on the selfsame facts in respect of which he was paying off a fine and costs by instalments. The Tribunal considered that it was appropriate for the allegation to have been brought before it because the jurisdiction of the Tribunal and that of the other Disciplinary Tribunal were different and it was necessary to deal with the conduct relating to the Respondent as a solicitor as opposed to a legal executive. The Tribunal considered allegation 1.2 an almost technical breach given the Respondent's state of mind on the subject. Allegation 1.3 was much more serious involving breaches of Principles 1, 2, 4 and 6. The Respondent had chosen to undertake representation and was entirely culpable; no one else was involved. The Tribunal had found that he represented a client for money when he was not permitted to do so. The client and his opponent Mr K were entitled to trust the Respondent and he acted in breach of their trust. The Respondent was quite an experienced solicitor. In terms of harm, the Respondent disadvantaged Mr K both as a litigant and as a solicitor and his client was to receive a significant bill without deriving benefit. The Tribunal considered that the profession and the public would be seriously concerned by the Respondent's action and particularly to note that this was not the first time that he had practised unauthorised. He had undermined the judicial system and adversely impacted Mr K and the court. The Respondent was well aware of the harm that his actions would cause because he had already been through the disciplinary process of ILEX for something similar. The Tribunal found that the qualities set out in the case of Bolton v The Law Society [1994]1 WLR 512 of complete integrity, probity and trustworthiness expected of a solicitor were absent in the Respondent's conduct in holding himself out as a solicitor authorised to conduct litigation when he was not. There was concealment of his wrongdoing and this gave rise to allegation 1.4 which was the most serious of the allegations of giving a false explanation to the Applicant in response to a statutory notice. The Tribunal had found the Respondent dishonest in respect of this allegation. This was an aggravating factor. The dishonesty had taken place over a period from August 2014 and the Respondent had never resiled from it. He knew that what he was doing was in material breach of

his obligations to protect the public and the reputation of the legal profession. As to possible mitigating factors, the Tribunal was also concerned that the Respondent had shown no insight into his misconduct; he went ahead and did something similar in the LEL proceedings to what had occurred in the early County Court proceedings. He asserted that he had voluntarily notified the Applicant of the ILEX proceedings. It could not be said that he had made admissions at an early stage save that he had admitted allegation 1.1.1. The Guidance Note on Sanctions set out that the most serious misconduct involved dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty had been proved would almost invariably lead to striking off, save in exceptional circumstances. The Respondent had not submitted any truly compelling and exceptional personal mitigation that made strike off unjust indeed he had not submitted any mitigation at all or even attended the final day of the hearing when he would have had an opportunity to do so. It was set out in the case SRA v Sharma [2010] EWHC 2022 (Admin):

> "(b) There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances, see Salisbury. (c) In deciding whether or not a particular case falls into that category, relevant factors would include the nature, scope and extent of the dishonesty itself; whether it was momentary, such as Burrowes or over a lengthy period of time, such as Bultitude; whether it was a benefit to the solicitor Burrowes, and whether it had an adverse effect on others."

The Tribunal could not discern any exceptional circumstances in this case. The Respondent had presented a letter from his GP by way of medical evidence but it related to his attendance at the Tribunal and not to his misconduct. In the circumstances the Tribunal considered but dismissed all sanctions starting with the least but determined that strike off was the appropriate and proportionate sanction.

Costs

74. For the Applicant, Mr O'Malley applied for costs in the amount of £10,828.30. He referred the Tribunal to a hand amended costs schedule updating that which had been provided for the 6 and 7 January hearing dates. It was subject to a reduction as shown because one of the witnesses had chosen not to use hotel accommodation. Mr O'Malley also pointed out that costs had been separately awarded against the Respondent in respect of the second CMH in the amount of £257.20 because of his non engagement which had not yet been enforced. Mr O'Malley asked the Tribunal to make an immediately enforceable order in the full amount applied for regarding the substantive hearing. He acknowledged that some aspects of the allegations had not been proved but submitted that it had been appropriate for them to be brought. As to the ability of the Respondent to pay, the information provided by him had been limited and if he had been present Mr O'Malley might have taken issue with him about it. He had been provided with the case of SRA v Davis and McGlinchey [2011] EWHC 232 (Admin) and a personal financial statement form and warned about the importance of providing financial information. Mr O'Malley submitted that the onus was on the Respondent to demonstrate that he could not meet a costs order. As to the option of the Tribunal making an order not to be enforced without its permission, Mr O'Malley submitted that the Applicant had a very experienced costs recovery

team who daily engaged in negotiations with Respondents about the appropriate way to enforce orders including by way of payment plans. Mr O'Malley noted that the Respondent had indicated he was not seeking work because of the proceedings (this was one reason why he had wanted it to be resumed at the earliest possible opportunity).

75. The Tribunal considered that the costs applied for were reasonable and it noted that the schedule did not include any costs claim for Mr O'Malley's attendance at this hearing. It further considered whether it would be appropriate to make a reduction in the costs to be awarded to the Applicant because not all the allegations brought had been found proved on the basis of Broomhead v SRA [2014] EWHC 2772 (Admin). The Tribunal considered that the allegations had been reasonably brought and they were closely related. The allegation which had not been proved in the main allegation 1.2, did not materially add to the costs nor did the allegation relating to dishonesty attached to it. As to whether an immediately enforceable order should be made, the Tribunal noted that there was fairly compelling evidence that the Respondent had no significant assets or income, was not working and had said that he was in debt. He had provided a bank statement indicating an overdraft in the amount of almost £4,000 and made reference to credit card debts. He was also paying off his fine and costs to ILEX. The Tribunal had regard to the fact that by striking the Respondent off it was removing his ability to practise as a solicitor and that at his age, he might not easily find alternative employment. The Tribunal awarded costs in the sum sought but it would make an order that costs should not be enforced without leave of the Tribunal.

Statement of Full Order

76. The Tribunal Ordered that the Respondent, Hubert James, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,828.30, such costs not to be enforced without leave of the Tribunal.

Dated this 29th day of March 2016
On behalf of the Tribunal

J. C. Chesterton
Chairman