SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11688-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

NICHOLAS JOHN PETERKEN — Respondent

Before:

Ms N. Lucking (in the chair)
Mr P. Lewis
Mr S. Howe

Date of Hearing: 18 January 2018

Appearances

Shaun Moran, solicitor of Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent made by the Applicant were set out in a Rule 5 Statement dated 18 July 2017. The allegations were that he:

1.1 Acted as a solicitor carrying out reserved legal activities between October 2011 and October 2014 when he was not authorised to do so in breach of Rule 1.1 of the SRA Practice Framework Rules ("SPFR") and Principle 7 of the SRA Principles 2011 ("the Principles").

1.2 Provided misleading information to SRA Investigation Officers on or about 7 February 2012 and 11 May 2015 by incorrectly and disingenuously stating that he was not conducting reserved legal activities in breach of Principle 2, 6 and 7 of the Principles.

1.3 Provided misleading information to an SRA Supervisor in a telephone call on 21 August 2014 by falsely stating that his company was not involved in providing reserved legal work in breach of Principles 2, 6 and 7 of the Principles.

2. Dishonesty was alleged in respect of Allegation 1.2 and 1.3 but dishonesty was not an essential ingredient necessary to prove these allegations.

Documents

3. The Tribunal reviewed all of the documents submitted which included:

Applicant

- Application and Rule 5(2) Statement dated 18 July 2017 with exhibit "SM1"
- Forensic Investigation Report dated 22 February 2016
- Witness Statement of Ms MB dated 2 February 2016
- Email confirming the conversation between the Applicant and Ms DD at Leeds County Court dated 8 February 2014
- Witness Statement of Carolann Shimmin (undated)
- Applicant's Schedule of Costs dated 18 July 2017 and 12 January 2018

Respondent

- The Respondent's Answer dated 14 September 2017
- The Respondent's Answer-Addendum (undated)
- The Respondent's Further Answer (undated)
- The Respondent's Application for an Adjournment made by email dated 12 January 2018
- Letter from Professor Skinner dated 10 January 2018

Preliminary Matters

4. On 12 January 2018 the Respondent had emailed the Tribunal stating:

"With regard to the forthcoming tribunal I'm afraid to say I am not in a good place at this moment in time to attend the tribunal still less to deal with it. This is compounded by the fact I have only relatively recently received all the documents in issue due to various problems with service. I have never seen the hard copies of many of them, but I assume they are all included in the bundle which has recently been emailed to me. Further although I have now received them I have not as yet been able to focus on them and give them the attention they require - it is I can assure you a quite disorienting thing to have a career come to an end, and I would struggle to put into words my feelings on no longer being in the profession. I attach a copy of a brief report from Professor Skinner, consultant clinical psychologist for your information.

The upshot of this is that in short I am not able to attend the tribunal on 18th/19th January and I do apologise for any inconvenience caused by this to any of the parties concerned. I believe (though I cannot be sure of this) that I will be in a position to deal with it by the end of February.
The options it therefore seems to me are:

1. You deal with the matter in my absence. I do not think this would be fair given the issues surrounding service and the report of professor (sic) Skinner, but if you do decide to pursue that course then I urge on you the following mitigation;

2. (i) I believe I have always tried my best for my clients and I do not believe any client of mine would say I had ever been dishonest. In any event I have no intention to ever practise as a solicitor again even were the opportunity to present itself.

   (ii) Whatever mistakes I have or have not made, no member of the public has suffered, or complained about me.

   (iii) The issues raised are all from quite a long time ago

   (iv) Prior to this I have had no disciplinary issues.

3. The matter is adjourned until 1st March at which time I hope to be in a better place to deal with it."

5. The Tribunal refused the Application for an Adjournment on 16 January 2018. Its decision recorded that the Respondent was seeking an adjournment on two grounds. The first was lack of preparation on his part, as he had only received some of the papers recently due to problems with service. He had refused to provide a postal address and service had been by e-mail, but this appeared to have been effective and the Respondent had had ample opportunity to provide an address for postal service or personal service and had refused to do so.

6. The second ground for the application was medical. It was supported by a handwritten note but it was clear that the note had been provided by a friend and although there was an indication that the friend had a qualification, the note had not been provided on a professional basis and was insufficient to support an adjournment on the grounds

of the Respondent's health. The Respondent was told that the hearing would proceed as scheduled on 18 January 2018. If he wished the Tribunal to consider an application for an adjournment, on the 18th, on medical grounds, then he should provide the Tribunal with medical evidence in accordance with its Policy and Practice Note on Adjournments. The Respondent did not make any further applications.

7. On 18 January 2018 the Respondent did not attend the hearing and the Applicant invited the Tribunal to proceed in the Respondent's absence. It was submitted that the Tribunal could and should do so in accordance with Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR"). The Respondent had been served with the proceedings and served with notice of the hearing date. The Respondent was aware of the date of the hearing. In the circumstances, the Respondent was voluntarily absenting himself.

8. Mr Moran referred the Tribunal to the case of R v Hayward [2001] EWCA Crim 168 and the factors that needed to be considered when deciding whether or not to proceed in the Respondent's absence in a criminal law context. The decision to proceed in the Respondent's absence was one that should be exercised with great care and it was only in rare and exceptional circumstances that it should be exercised in favour of the hearing continuing in the absence of the Respondent.

9. In addition he referred the Tribunal to the case of General Medical Council v. Adeogba [2016] EWCA Civ 162 which set out each of the factors that needed to be considered when deciding whether or not to proceed in absence in a regulatory context. Adeogba stated:

> "18. It goes without saying that fairness fully encompasses fairness to the affected medical practitioner (a feature of prime importance) but it also involves fairness to the GMC (described in this context as the prosecution in *Hayward* at [22(5)]). In that regard, it is important that the analogy between criminal prosecution and regulatory proceedings is not taken too far. Steps can be taken to enforce attendance by a defendant; he can be arrested and brought to court. No such remedy is available to a regulator.
>
> 19. There are other differences too. First, the GMC represent the public interest in relation to standards of healthcare. It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage in the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed.
>
> 20. Second, there is a burden on medical practitioners, as there is with all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they sign up when being admitted to the profession.

23. Thus, the first question which must be addressed in any case such as these is whether all reasonable efforts have been taken to serve the practitioner with notice. That must be considered against the background of the requirement on the part of the practitioner to provide an address for the purposes of registration along with the methods used by the practitioner to communicate with the GMC and the relevant tribunal during the investigative and interlocutory phases of the case. Assuming that the Panel is satisfied about notice, discretion whether or not to proceed must then be exercised having regard to all the circumstances of which the Panel is aware with fairness to the practitioner being a prime consideration but fairness to the GMC and the interests of the public also taken into account; the criteria for criminal cases must be considered in the context of the different circumstances and different responsibilities of both the GMC and the practitioner."

10. Mr Moran submitted that there needed to be fairness both to the Applicant and the Respondent. There was a public interest in the matter proceeding. The allegations were serious and the Respondent was accused of dishonesty. The Applicant had a statutory obligation to ensure public protection. It could not force the Respondent to attend. If the matter was adjourned there would be delay and additional costs would be incurred.

11. The Applicant had emailed the Respondent all of the documents in the case. This email had been sent by way of a PDF attachment. It was sent by a paralegal at the SRA to both the Respondent and Mr Moran. Mr Moran had received the email with the attachment and been able to open it. The Applicant had requested a read receipt from the Respondent but this had not been provided.

12. The Tribunal considered the application to proceed in the Respondent's absence and in doing so took into account the submissions he had made in his email dated 12 January 2018 and the guidance in Hayward and Adeogba. The Respondent was clearly aware of the hearing. The difficulties with service had been due to the Respondent's refusal to provide an address. The Tribunal had emailed documents to the Respondent in summer 2017. The Tribunal was aware that initially the Respondent had had some difficulties with his computer in accessing the Rule 5 documents but he had expected those to be resolved. The contents of the Respondent's Answer made it clear that he was aware of the allegations against him.

13. The medical evidence provided by the Respondent had not been sufficient for the Tribunal to grant an adjournment. The information available as to the Respondent's health was not such that the hearing could not proceed on medical grounds. The Respondent had known about these proceedings for some months. There was no evidence to support his assertion that he would be in a better position to address them after 1 March 2018. If the hearing was adjourned there would be delay. It was in the public interest for cases to be determined as soon as possible, particularly those involving allegations of dishonesty. Dishonesty was alleged against the Respondent and, whilst acknowledging that he did not hold a current Practising Certificate, it was important that the proceedings were dealt with in a timely manner. The Tribunal was satisfied that the Respondent had voluntarily absented himself.

14. The Tribunal was satisfied that notice of the hearing was served on the Respondent in accordance with the SDPR and the Tribunal decided, in accordance with Rule 16 (2) of the SDPR that it would hear and determine the application notwithstanding that the Respondent had failed to attend and was not represented at the hearing.

Factual Background

15. The Respondent was born in April 1960 and he was admitted as a solicitor in England and Wales on 1 August 1991. As at the date of the hearing his name remained on the Roll but he did not hold a Practising Certificate.

16. The Respondent formed 'Nick Peterken Solicitor' which operated between 11 September 2003 and 30 September 2011. Before its closure this firm was in the Assigned Risk Pool ("ARP") for the period 2010/2011 because of the non-payment of its professional indemnity insurance premium. After the closure of his firm the Respondent established Nick Peterken Limited (trading as Nick Peterken Law) which was not authorised or regulated by the SRA.

17. On 11 May 2015 an inspection of the Respondent's practice commenced when Ms Carolann Shimmin, an SRA Forensic Investigation Officer ("FIO"), attended at the offices of Nick Peterken Limited. Although the firm was not regulated by the SRA the Respondent was on the Roll of Solicitors, had held a PC since 1991 and was therefore regulated by the SRA. The Respondent disputed the SRA's authority to inspect the books and documents held by him and his unregulated firm Nick Peterken Limited. The FIO served a Notice on the Respondent issued pursuant to S.44B of the Solicitors Act 1974 (as amended) dated 8 May 2015. The Respondent did not comply with the Notice.

18. The Respondent entered into an Individual Voluntary Arrangement ("IVA") with his creditors on 2 February 2012 which was due to last for five years. The sum owed as at 8 January 2012 was £178,879.00. The Respondent informed the FIO on 11 May 2015 that he could not afford the monthly payments of £500.00 and after a few months the IVA failed. As a result of the IVA the SRA placed conditions on the Respondent's Practising Certificate (for the years 2012/2013 and 2013/2014) which included:-

- If he wished to become a manager or owner of an authorised body, he was required to make an application to the SRA for approval of these roles;
- He was not to be sole signatory to any client or office account cheques;
- He must not have sole responsibility for client or office account or sole responsibility for authorising client or office account transfers, electronic or otherwise.

19. Conditions imposed on the Respondent's 2014/2015 Practising Certificate were the same aside from the condition in respect of the operation of client or office account which was removed. The Respondent was also required to inform any relevant authorised body's authorised signatory and/or organisation contact of these conditions and the reasons for their imposition.

20. The Respondent failed to inform the SRA and update his SRA records that he had begun to work as a fee-earner at Peterken Solicitors, Bradford, from 1 December 2014. During interview on 1 June 2015, the Respondent's son, Mr Edward Peterken of Peterken Solicitors, informed the FIO that he was not aware of the Respondent's Practising Certificate conditions. The Respondent later updated his 'MySRA' account to record that he was a Consultant at Peterken Solicitors from 1 December 2014 to 14 June 2015 when he left following Peterken Solicitors relocating to an address in Bristol.

21. The Respondent was interviewed by the FIO on 11 May 2015. A Forensic Investigation Report ("the FIR") was produced at the conclusion of the investigation and was dated 22 February 2016. On 6 April 2016 an Explanation with Warning letter was sent to the Respondent by the SRA Supervisor requesting an explanation and warning him as to the prospect of disciplinary proceedings. The Respondent did not reply to that letter.

Witnesses

22. No witnesses gave evidence before the Tribunal. The written evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read or consider that evidence.

Findings of Fact and Law

23. 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.

24. **Allegation 1.1 – The Respondent acted as a solicitor carrying out reserved legal activities between October 2011 and October 2014 when he was not authorised to do so in breach of Rule 1.1 of the SPFR and Principle 7 of the Principles 2011**

The Applicant's Case

24.1 The relevant legal framework was:

> "SRA Practice Framework Rules 2011 - Rule 1: Solicitors Practice from an office in England and Wales
>
> 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;

(b) as a solicitor exempted under Rule 10.2 from the obligation for the solicitor's practice to be a recognised sole practice;

(c) as a manager, employee, member or interest holder of an authorised body provided that all work you do is:

(i) of a sort the body is authorised by the SRA to carry out; or

(ii) done for the body itself, or falls within Rule 4.1 to 4.11, and where this sub-paragraph applies, references in Rule 4 to "employer" shall be construed as referring to that body, accordingly;

(d) as a manager, employee, member or interest holder of an authorised non-SRA firm, provided that all work you do is:

(i) reserved legal activity of a sort the firm is authorised by the firm's approved regulator to carry out or any other activity that is not precluded by the terms of your authorisation from the firm's approved regulator; or

(ii) done for the firm itself, or falls within Rule 4.1 to 4.11, and where this sub-paragraph applies, references in Rule 4 to "employer" shall be construed as referring to that firm, accordingly;

(e) as the employee of another person, business or organisation, provided that you undertake work only for your employer, or as permitted by Rule 4 (In-house practice)."

24.2 Principle 7 requires a solicitor to comply with their legal and regulatory obligations and deal with their regulators and ombudsmen in an open, timely and co-operative manner.

24.3 The purpose of the FIO's inspection, commenced on 11 May 2015, was to establish whether the Respondent was practising without requisite authorisation and specifically whether he was performing reserved legal activities. During interview on 11 May 2015 the Respondent informed the FIO that he had worked for his son's firm, Peterken Solicitors, since it had started in "November/December 2014". The Respondent said he did not realise that he or his son had to inform the SRA that he was working at Peterken Solicitors.

24.4 The Respondent said that he supervised Peterken Solicitors when his son was not there and did not believe he was in breach of his Practising Certificate conditions. The Respondent confirmed that all the Peterken Solicitors' client files were dealt with by him as the fee-earner. He also completed the banking records, cash books and client ledgers for Peterken Solicitors. The Respondent said his son supervised his work and managed the firm but that his son was working in Bristol on contract work in the financial services sector as "Edward had to earn money where he could as it was early days regarding the setting up of his new law firm".

24.5 The Respondent informed the FIO that he only carried out unreserved legal activities through his firm Nick Peterken Law, where he provided legal advice and drafting documents such as leases and wills. The Respondent said he would give advice regarding personal injury matters and write to insurers and if necessary obtain medical reports. He said if the claim did not settle then the matter would be referred to solicitors. If it settled then damages would be paid directly to the client. In respect of litigation work, he said he did not issue court proceedings. The client would either do it themselves and he would continue to advise the client if they wanted or the client would instruct a firm of solicitors.

24.6 The Respondent said Nick Peterken Law had approximately thirty to forty open client files and a bank account with Barclays, which he would use for clients only if an insurance company made payment directly to Nick Peterken Law to include the client's damages following settlement of a personal injury claim. The Respondent said he only advised the client and dealt with pre-issue work. The Respondent said that if he needed to issue court proceedings then he referred his client to a firm of solicitors which would be Peterken Solicitors moving forward.

24.7 Peterken Solicitors and Nick Peterken Law both operated from 17 North Parade, Bradford, which the FIO noted was a ground floor open plan office with four desks. A small private office was also available to the rear of the open plan office. The Respondent said that he saw people as soon as they entered the office and with new clients he would ascertain what they required. If it was advice, drafting or guiding through the legal process he would recommend they instruct Nick Peterken Law as "the costs are more reasonable." If the instructions involved reserved legal activity work then the Respondent would recommend that Peterken Solicitors were instructed. The Respondent informed the FIO that he did not have professional indemnity insurance ("PII") at Nick Peterken Law. He also informed the FIO that clients of Nick Peterken Law were made fully aware that they did not have the protection afforded by PII, in comparison to using a regulated law practice.

24.8 As the Respondent disputed the S.44B Notice and specifically whether the SRA had jurisdiction to review and require production of information pertaining to Nick Peterken Law, the FIO wrote to the Respondent on 29 June 2015 and stated:-

> "Further to my visit on Monday 11 May 2015 when I served you with a Notice issued pursuant to S.44B Solicitors Act 1974 (as amended) dated 8 May 2015 ("the Notice") (copy attached), I have now taken legal advice regarding this matter, which confirmed that the contents of the Notice were proportionate and lawful and you must now provide the information and documents as requested. The Notice requires you to provide material which would tend to prove whether or not you have undertaken reserved legal activities through your firm Nick Peterken Law. The documents requested in the Notice are considered to be relevant information in this regard."

24.9 A further visit to Mr Peterken was arranged by the FIO for her to attend (and review documents and information referred to in the S.44B Notice) on 6 July 2015 but was subsequently rearranged for 21 July 2015 as Mr Peterken said he would be on holiday between 6 and 19 July 2015. On 19 July 2015 the Respondent sent an email to the FIO to cancel the planned visit and said this was due to his family commitments. He

also said that he intended to close Nick Peterken Law. The FIO wrote to the Respondent on 23 July 2015 to remind him that he needed to comply with the S.44B Notice otherwise the SRA would pursue enforcement action and/or report non-cooperation.

24.10 A new visit date was arranged for 6 August 2015. The Respondent sent an email to the FIO on 5 August 2015 and said he could not be available and said "I recently had to see the doc who has promptly signed me off sick and advised me to have a complete rest & de–stress." The SRA wrote to the Respondent by email on 1 September 2015 requesting him to confirm whether he would cooperate with the S.44B Notice and if so, provide proposed dates for the FIO's next visit. The Respondent replied on 2 September 2015 stating that his doctor had advised him to take a complete rest. He attached a copy of two medical certificates which covered him for the period 3 August 2015 to 1 October 2015. The Respondent ultimately did not comply and enable the FIO's inspection of the material stated in the S.44B Notice.

24.11 Reserved instrument activities are stated to be a "reserved legal activity" under Section 12 of the Legal Services Act 2007 (LSA):-

> "12 Meaning of "reserved legal activity"
>
> (1) In this Act "reserved legal activity" means—
>
> (a) the exercise of a right of audience;
> (b) the conduct of litigation;
> (c) reserved instrument activities;
> (d) probate activities;
> (e) notarial activities;
> (f) the administration of oaths.
>
> (2) Schedule 2 makes provision about what constitutes each of those activities.
>
> Reserved instrument activities are defined at Schedule 2 of the LSA:-
>
> 5(1) Reserved instrument activities means –
>
> (a) preparing any instrument of transfer or charge for the purposes of the Land Registration Act 2002
> (b) making an application or lodging a document for registration under that Act
> (c) preparing any other instrument relating to real or personal estate for the purposes of the law of England and Wales or instrument relating to court proceedings in England and Wales"

24.12 Following the closure of Nick Peterken Solicitor (an SRA regulated firm) on 30 September 2011 the Respondent continued to hold a Practising Certificate but was not authorised by the SRA to carry out reserved legal work on his own account after

that date. The SPFR commenced on 6 October 2011 and applied to the Respondent's practice and conduct thereafter.

24.13 In September 2015 Her Majesty's Land Registry ("HMLR") provided the SRA with evidence of registration applications made by the Respondent. The FIO prepared a schedule detailing these applications. Two examples of reserved instrument activities undertaken by the Respondent were exemplified in the Rule 5 Statement.

24.14 In respect of Title No. CE****** the Respondent confirmed to HMLR that he was carrying out a reserved instrument activity by placing a "X" in the box "I am a conveyancer and I have completed Panel 13". The form stated "Conveyancer is defined in rule 217A, Land Registration Rules 2003 and includes persons authorised under the Legal Services Act 2007 to provide reserved legal services relating to land registration and includes solicitors and licensed conveyancers". The Respondent stated that the conveyancer's name and address was "N.J. Peterken Solicitor". The Respondent signed the AP1 application form as Nicholas John Peterken on 15 November 2013.

24.15 In respect of Title No. WYK****** the Respondent confirmed to HMLR that he was carrying out a reserved instrument activity by placing a "X" in the box "I am a conveyancer and I have completed Panel 13". The Respondent stated the conveyancer's name and address as being "Nick Peterken, Nick Peterken Solicitor, 49 North Parade, Bradford, BD1 3JH ". The Respondent signed the AP1 as Nicholas John Peterken on 30 November 2013.

24.16 Ms MB, an Assistant Land Registrar at HMLR, provided a witness statement dated 2 February 2016, which had been prepared for the purposes of an investigation into whether the Respondent had carried out reserved legal activities contrary to the SRA's rules and the provisions of the LSA. Ms MB stated that HMLR's Finance Group had identified two key number accounts relating to "Nicholas John Peterken" and these were:-

- Key number account 5*****7 (a credit account) which was opened on 4 October 2005 for Nick Peterken Law. There were nine applications submitted under this key number during the period 1 October 2011 to 31 January 2012. All were stated to have been submitted by Nick Peterken Solicitor.

- Key number account 7*****9 (a direct debit account), which was opened for Nick Peterken Solicitor on 8 December 2010. There were thirty applications submitted under this key number during the period 1 October 2011 to 31 January 2012. All were stated to have been submitted by Nick Peterken Solicitor.

24.17 Ms MB stated that additionally other applications were also lodged by the Respondent without the use of a key number account. She identified that during the period 1 October 2011 to 31 January 2012 sixteen applications were made in the name of "Nick Peterken" or variations of that name. These comprised nine in the name "Nick Peterken Law", one under "Nick Peterken Solicitor" and six under "Nick Peterken". For the period 1 February 2012 to 30 November 2014, ninety nine substantive applications were made in the name of Nick Peterken or variations of

that name without the use of a key number. This included fifty seven dealings of whole title in the name of "Nick Peterken Law".

24.18 The exercise of a right of audience is included within the definition of "reserved legal activity" under Section 12 of the LSA. Following the closure of Nick Peterken Solicitor (SRA regulated firm) on 30 September 2011 the Respondent continued to hold a Practising Certificate but was not authorised by the SRA to carry out reserved legal work on his own account after this date.

24.19 On 8 February 2014 Ms DD of Leeds County Court contacted the SRA to report that the Respondent had appeared before his Honourable District Judge Lord on 9 July 2013 at a hearing at 'Leeds Family Courts' and represented his client Ms M, who was the respondent in those proceedings. At the hearing the Judge noted the parties' representatives and there was a pro-forma hearing document which stated their identities. The document indicated that the Respondent appeared at the hearing on behalf of Ms M and exercised a right of audience.

24.20 The Ms M client file was required for production under the S.44B notice which was served on the Respondent by the FIO on 11 May 2015. The Respondent informed the FIO that he did not have the file, he stated that the matter was a long time ago but that he would check and revert as soon as possible. The Respondent failed to provide the file (or to comply with the S.44B Notice generally). The Respondent failed to provide an explanation for acting in the Ms M matter notwithstanding that the allegation of appearing at Leeds County Court (on the Ms M matter) was put to him in the SRA's Explanation with Warning letter dated 6 April 2016. The Respondent accepted that he had represented Ms M at Leeds County Court.

24.21 By representing his client Ms M before his Honourable District Judge Lord at Leeds County Court, the Respondent exercised a right of audience. The Respondent therefore undertook reserved legal activity at a time when he was not authorised to do so under the SPFR 2011 and failed to uphold his regulatory obligations contrary to Principle 7.

24.22 "S" Solicitors (who were representing a lender in a residential conveyancing transaction) reported a matter to the SRA on 10 October 2014. The Respondent was purportedly acting for client S who was gifting property to his son. As a condition of the lender's offer of loan facilities to the son, S was required to attend a solicitor's office to provide a Statutory Declaration setting out the circumstances of the transfer. The Statutory Declaration was completed before the Respondent on 7 October 2014. There was a covering letter to "S" Solicitors signed by the Respondent as a solicitor and on Nick Peterken Law headed notepaper. There was also a copy of client S' passport, certified by the Respondent with his signature and dated 8 October 2014. By allowing client S to make a Statutory Declaration before him on 7 October 2014 the Respondent was undertaking reserved work as a solicitor at a time when he was not authorised to do so under Rule 1 of the SPFR.

24.23 The Tribunal asked Mr Moran to address why the Applicant said that the making of a Statutory Declaration was not permitted due to the fact that the Respondent was not authorised to undertake reserved legal activities and administer oaths. Mr Moran accepted that Schedule 2 of the LSA stated:

"Administration of oaths

8. The "administration of oaths" means the exercise of the powers conferred on a commissioner for oaths by—

(a) the Commissioners for Oaths Act 1889 (c 10);
(b) the Commissioners for Oaths Act 1891 (c 50);
(c) section 24 of the Stamp Duties Management Act 1891 (c 38)."

24.24 This list did not include the Statutory Declarations Act 1835 which had been introduced to provide an alternative to swearing an oath. On reflection Mr Moran considered that the issue with the statutory declaration was that it was an instrument relating to real estate for the purposes of the law of England and Wales and was therefore a reserved legal activity

24.25 After 30 September 2011 the Respondent was not permitted under the SPFR to carry out reserved legal work on his own account. The facts and matters reported above demonstrated that notwithstanding these rules prohibiting such conduct by the Respondent, he nevertheless undertook significant, prolonged and numerous pieces of reserved work on behalf of clients without proper entitlement. The SPFR regime ensured public protection and the Respondent's disregard for the rules during the period in question was pronounced and prolonged.

24.26 The Respondent had stated that the guidance on the Law Society website stated that a solicitor with a Practising Certificate could administer an oath. The chairman was aware of this statement from her own practice and asked Mr Moran to address this point. Mr Moran said that if the website did state this then there was a discrepancy between the Law Society's advice and the way in which the SRA interpreted the LSA.

24.27 The Respondent was under a duty by virtue of Principle 7 of the SRA Principles to comply with his legal and regulatory obligations The Respondent failed to do so by continuing to carry out reserved work over a long period without the entitlement to do so.

<u>The Respondent's Case</u>

24.28 The Respondent denied the allegation. He had made certain factual admissions in that he accepted that he had attended Leeds County Court. He had not disputed that the Statutory Declaration had been made before him but did dispute that he was not entitled to do so.

24.29 In his Answer dated 14 September 2017 the Respondent stated that he was quite sure that the vast majority of work done was non-regulated. With regard to specific instances raised, firstly with regard to swearing an oath, he was still far from clear whether or not this was something he was not entitled to do. If one looked at the Law Society website it states that 'as long as you are a solicitor with a current practising certificate then you are entitled to administer an oath'. The Respondent was a solicitor with a current practising certificate, so therefore according to the

Law Society he was entitled to administer oaths. The Respondent was open to advice on this, but he did not believe the LSA was clear on the point.

24.30 With regard to his attendance at Leeds County Court with Ms M, this was a specific and very difficult instance. He had previously been in a relationship with Ms M and she approached him in a distraught state following the breakdown of her then relationship which had ended in acrimony with her former partner taking their child. She was in an extreme state of distress and came to the Respondent because he was both a friend and someone with some legal knowledge. The Respondent helped her entirely free of charge and mainly because she was not at that time in a fit state to consult a solicitor. Following the one attendance with her at Leeds County Court, she then on the Respondent's insistence instructed an independent firm of solicitors. The Respondent repeated that he did not charge her one penny. His motive for getting involved was to help her.

24.31 In his Further Answer (undated but received on 16 October 2017) the Respondent stated:

> "1. I specifically deny attesting an oath, or to be more accurate I deny that I was not entitled to do this. I have not found any prohibition against it in the Legal Services Act, although if the SRA can point to the relevant statute then I am prepared to reconsider. As I've said, the Law Society website states that a solicitor with a practising certificate can swear affidavits.
>
> 2. I deny any wrongdoing concerning Ms M. I assisted her at court on one occasion without charge."

The Tribunal's Decision

24.32 The Respondent had submitted numerous applications to HMLR in the period after 1 October 2011. The SPFR came into force on 6 October 2011. The Tribunal did not know how many applications the Respondent had made in the period after 6 October 2011. Matters falling between 1 and 5 October 2011 were irrelevant for the purposes of the allegation. The Tribunal did know that for the period 1 February 2012 to 30 November 2014 ninety nine substantive applications were made in the name of Nick Peterken or variations of that name without the use of a key number. This included fifty seven dealings of whole title in the name of "Nick Peterken Law". An application to register the dealing of whole title was a reserved activity. The Respondent was not authorised to do this work. In doing so he had not complied with Rule 1.1 of the SPFR. Complying with the SPFR was part of the Respondent's regulatory obligations and he had not done so. He had failed to comply with Principle 7 which required him to comply with his legal and regulatory obligations and this part of Allegation 1.1 was proved beyond reasonable doubt.

24.33 The Respondent admitted that he attended Leeds County Court and represented Ms M. He sought to justify his actions by stating that he did not charge Ms M and that she had sought his help because they had previously been in a relationship and he had legal knowledge. The Respondent had exercised a right of audience which was a reserved activity without having authorisation from the SRA to undertake reserved

activities. This was clearly not in accordance with Rule 1.1 of the SPFR. Complying with the SPFR was part of the Respondent's regulatory obligations and he had not done so. He had failed to comply with Principle 7 which required him to comply with his legal and regulatory obligations and this part of Allegation 1.1 was proved beyond reasonable doubt.

24.34 The Tribunal was not satisfied that the completion of the statutory declaration was the same as administering an oath. Schedule 2 to the LSA was unhelpful in this respect and the Tribunal was not able to gain assistance from it. Whilst Mr Moran had assumed that the statutory declaration fell within the definition of an instrument relating to real estate for the purposes of the law of England and Wales and was therefore a reserved legal activity, the Tribunal could not be certain. It was conscious that this was not how the allegation had been pleaded. The Tribunal did not find this aspect of Allegation 1.1 proved factually so did not proceed to consider whether or not Rule 1.1 of the SPFR or Principle 7 had been breached.

24.35 As an aside it was unhelpful for solicitors if on the face of the advice on the Law Society's website, the Law Society and SRA were not in agreement as to whether or not a solicitor with a practicing certificate could administer an oath. It would be of assistance if the Law Society's guidance could be reviewed and this issue resolved between the Law Society and the SRA.

24.36 Allegation 1.1 was proved in part, and beyond reasonable doubt, on the basis of the applications to HMLR and the hearing at Leeds County Court both of which were in in breach of Rule 1.1 of the SPFR and Principle 7. Allegation 1.1 was not proved beyond reasonable doubt in respect of the completion of the statutory declaration.

25. **Allegation 1.2 – The Respondent provided misleading information to SRA Investigation Officers on or about 7 February 2012 and 11 May 2015 by incorrectly and disingenuously stating that he was not conducting reserved legal activities in breach of Principle 2, 6 and 7 of the Principles.**

The Applicant's Case

25.1 Principle 2 requires a solicitor to act with integrity. Mr Moran submitted that the Tribunal should apply the test for want of integrity as set out in Scott v Solicitors Regulation Authority [2016] EWHC 1256 (Admin). In that case Sharp LJ endorsed what Davis LJ had said in SRA v Chan and ors [2015] EWHC 2659 namely:

> "As to want of integrity, there have been a number of decisions commenting on the import this word as used in various regulations. In my view, it serves no purpose to expatiate on its meaning. Want of integrity is capable of being identified as present or not, as the case may be, by an informed tribunal or court by reference to the facts of a particular case."

25.2 If the Tribunal found that the Respondent lacked integrity it did not have to find that he was dishonest. Contrary to the decision in Malins v SRA [2017] EWHC 835 (Admin); [2017] 4 WLR 85, in Mr Moran's submission dishonesty and lack of

integrity were not synonymous. However in this case the Applicant's position was that the Respondent both lacked integrity and had been dishonest.

25.3 Principle 6 requires a solicitor to behave in a way that maintains the trust the public places in them and in the provision of legal services. Principle 7 states that solicitors must comply with their legal and regulatory obligations and deal with their regulators and ombudsmen in an open, timely and co-operative manner.

25.4 On 7 February 2012 Miss Stephanie Young, ("the First FIO"), visited the closed firm of Nick Peterken Solicitor and interviewed the Respondent at his then office address. The Respondent informed the First FIO that he had set up Nick Peterken Law on 3 January 2012 and he was the sole Director. He said the type of work carried out by Nick Peterken Law was immigration, personal injury and civil litigation but not conveyancing. The Respondent confirmed that he was not carrying out any "regulated activities" and said he was therefore not obliged to discuss the business of Nick Peterken Law.

25.5 The witness statement of Ms MB of HMLR confirmed that there were nine applications submitted under a key reference number operated by the Respondent during the period 1 October 2011 to 31 January 2012. Therefore when the Respondent told the Second FIO, Ms Young, that he was not carrying out any "regulated activities" on 7 February 2012 this was disingenuous and misleading.

25.6 During his interview with the FIO on 11 May 2015 the Respondent was asked for "an account of what work was undertaken after 30 September 2011 following closure of the firm Nick Peterken Solicitor". The FIO recorded his response as: "NP said anything for example general legal advice, drafting leases, wills and dealing with PPI claims." The Respondent was asked for an account of any reserved legal activities carried out by him after 30 September 2011. The Respondent said that there were none under Nick Peterken Law.

25.7 The Respondent was also asked by the FIO what type of work he undertook. The Respondent had said that he was careful not to do reserved work. In his application for a Practising Certificate for 2014/15 he had stated conveyancing residential; family; litigation general; and personal injury.

25.8 The Respondent was told that HMLR had contacted the SRA to identify the status of Nick Peterken and Nick Peterken Law as they had received various applications from the Respondent. He said that Nick Peterken Law and Nick Peterken had not applied to HMLR but may have assisted clients. The Respondent could not give examples but said that he would have to check his records.

25.9 In relation to HMLR, the FIO asked the Respondent "Are you carrying out conveyancing work? If so what are you actually doing?" The FIO recorded his response as: "NP said only advice; he knows the rules on reserved activities"

25.10 The Respondent's conveyancing work was evident from the information and supporting documents provided by HMLR. The Respondent would certainly have been aware that by signing numerous official HMLR documents on behalf of his clients pursuant to their conveyancing matters, he was conducting reserved

instrument activities. In his answers to the FIO he acknowledged that he was not permitted to undertake such activities without authorisation. By misrepresenting to the FIO that he had not undertaken such work when in fact he had, the Respondent sought to mislead her. By denying that he had undertaken reserved legal work to the FIO on 11 May 2015 the Respondent's answers were disingenuous and misleading as he had a exercised a right of audience at Leeds County Court on 9 July 2013 on behalf of his client Ms M and had also allowed client S to make a Statutory Declaration before him on 7 October 2014.

25.11 Mr Moran in his submissions had referred to the Respondent being disingenuous and misleading. He clarified that he meant the words as one and the same. It was factual that the statements were incorrect. The Respondent must have known they were incorrect and this was disingenuous and misleading.

The Respondent's Case

25.12 The Respondent denied the allegation.

The Tribunal's Decision

25.13 The Respondent was well aware of what he was and was not allowed to do. The Respondent was well aware of what work he was doing. The Respondent knew when he told the FIO that he had not undertaken reserved instrument activities when he had that he had not given her the correct information.

25.14 In 2012 the Respondent also knew that when he told the First FIO that he was not carrying out conveyancing work that this was not right. The number of applications submitted to HMLR by the Respondent in the period between 1 October 2011 and the First FIO's visit on 7 February 2012 was overwhelming evidence that the Respondent was undertaking conveyancing work at that time.

25.15 The Tribunal was sure that factually the Respondent had provided misleading information to the two FIOs (on or about 7 February 2012 and 11 May 2015) by incorrectly and disingenuously stating that he was not conducting reserved legal activities. The Respondent was required to comply with his legal and regulatory obligations. By providing this misleading information he was clearly in breach of his regulatory obligations and in breach of Principle 7 of the Principles.

25.16 The public would not expect a solicitor to undertake work that they were not allowed to undertake. Nor would the public expect a solicitor to provide misleading information to his regulator. The Respondent had done both of these things. The Tribunal was certain that he had not behaved in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6 of the Principles.

25.17 The Tribunal considered the guidance in Scott as to whether or not the Respondent had lacked integrity. Looking at the particular facts of Allegation 1.2 the Tribunal was sure that the Respondent had not acted with integrity. A solicitor acting with integrity would not provide misleading information to the FIOs.

25.18 Allegation 1.2 was proved in full, beyond reasonable doubt, including the breaches of Principles 2, 6 and 7 of the Principles.

26. **Allegation 1.3 – The Respondent provided misleading information to an SRA Supervisor in a telephone call on 21 August 2014 by falsely stating that his company was not involved in providing reserved legal work in breach of Principles 2, 6 and 7 of the Principles.**

The Applicant's Case

26.1 On 21 August 2014 an SRA Supervisor contacted the Respondent by telephone to discuss a report made to the SRA by the Legal Ombudsman regarding his company Nick Peterken Law. The Respondent confirmed that since the closure of his firm, Nick Peterken Solicitors in 2011, he had established a new company called Nick Peterken Law. He explained that his company was not involved in providing any reserved legal advice to members of the public and that was why the company did not require SRA authorisation. The Respondent informed the Supervisor that he made it clear to clients that he was not able to provide any reserved legal advice or provide any representation in litigation matters being conducted in court.

26.2 In providing the SRA Supervisor with these assurances the Respondent would have been fully aware of the numerous pieces of reserved legal work he had conducted as detailed above. The Respondent acknowledged that he was not able to provide reserved legal services during this telephone call however he had done so frequently in the years after his firm had closed in 2011. Therefore he would have been aware that he was misleading the SRA Supervisor when he provided the assurances on 21 August 2014. By misleading the SRA Supervisor the Respondent acted without integrity, failed to maintain public trust and failed to comply with his regulatory obligations in breach of Principles 2, 6 and 7.

The Respondent's Case

26.3 The Respondent denied the allegation.

The Tribunal's Decision

26.4 The Tribunal considered the evidence before it. The Supervisor had made an attendance note of the telephone call. Whilst the Respondent had denied the allegation he had not challenged the contents of the attendance note. On the basis of the factual findings that the Tribunal had made in respect of Allegation 1.1 the Tribunal was sure that the Respondent had provided false information to the Supervisor when he stated that his company did not conduct reserved legal activities. His company clearly did, in particular it conducted conveyancing on numerous occasions.

26.5 The Tribunal was sure that factually the Respondent had provided misleading information to the Supervisor on 21 August 2014 by falsely stating that his company did not conduct reserved legal activities. The Respondent was required to comply with his legal and regulatory obligations. By providing this misleading information he was clearly in breach of his regulatory obligations and in breach of Principle 7 of the Principles.

26.6 The public would not expect a solicitor to provide misleading information to his regulator. The Respondent had done just that. The Tribunal was certain that he had not behaved in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6 of the Principles.

26.7 The Tribunal considered the guidance in Scott as to whether or not the Respondent had lacked integrity. Looking at the particular facts of Allegation 1.3 the Tribunal was sure that the Respondent had not acted with integrity. A solicitor acting with integrity would not provide misleading information to an SRA Supervisor.

26.8 Allegation 1.3 was proved in full, beyond reasonable doubt, including the breaches of Principles 2, 6 and 7 of the Principles.

27. **Allegation 2 - Dishonesty in respect of Allegation 1.2 and 1.3.**

The Applicant's Case

27.1 The Applicant alleged that the Respondent was dishonest in respect of Allegations 1.2 and 1.3. Dishonesty was pleaded in the Rule 5 Statement on the basis that the Respondent's actions were dishonest according to the combined test laid down in Twinsectra Ltd v Yardley and Others (2012) UKHL12 which required that a person had acted dishonestly by the ordinary standards of reasonable and honest people and that he realised that by those standards he was acting dishonestly. By the time of the hearing the decision of the Supreme Court decision in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 had been handed down and the test for dishonesty test in regulatory proceedings was:

> "When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

27.2 The Applicant submitted that this was the test to be applied by the Tribunal in considering the allegation of dishonesty. In a letter to the Respondent dated 19 December 2017 Mr Moran had advised the Respondent that the Applicant would be submitting at the hearing that the test to be applied by the Tribunal was the test in Ivey.

27.3 In terms of the Respondent's state of knowledge or belief as to the facts during his interview with the FIO on 11 May 2015 the Respondent acknowledged that he knew it was prohibited for him to conduct reserved legal activities. During his telephone call with the SRA Supervisor on 21 August 2014 the Respondent again acknowledged that he was not entitled to undertake reserved legal activities. In fact, during this call

he specifically referenced exercising a right of audience as something he could not legitimately do. Notwithstanding his categorical and clear understanding of the prohibition on him performing reserved legal activities he frequently undertook such work and was the subject of several notifications by third parties to the SRA concerning his practice of undertaking reserved legal work without entitlement.

27.4 Ms MB, an Assistant Land Registrar at HMLR, informed the SRA that Key number account 7*****9 was opened for Nick Peterken Solicitor on 8 December 2010. This firm closed on 30 September 2011. Ms MB reported that there were thirty applications submitted under this key number during the period 1 October 2011 to 31 January 2012. The Respondent therefore continued to use this key number account to carry out reserved instrument activity after the closure of his firm in circumstances where he knew he should not be doing so and must have known that it was wrong. The Respondent mislead the SRA by denying his activities despite having used his former firm's key number account in this way.

27.5 For the period 1 February 2012 to 30 November 2014 ninety nine substantive applications were made in the name of Nick Peterken or variations of that name without the use of a key number. This included fifty seven dealings of whole title in the name of "Nick Peterken Law".

27.6 The Respondent's conduct occurred over some years and was done so at all times in the knowledge that he was not entitled to perform reserved activities. The Respondent must have known that it was wrong to mislead two separate FIOs and an SRA Supervisor by informing them that he was not undertaking reserved work when this was not true. The Respondent had the benefit of fees generated from clients on whose behalf he had undertaken reserved legal activities. This was undoubtedly the Respondent's motivation for misleading the FIO and the SRA Supervisor.

27.7 Ordinary decent people would consider it to be dishonest for a solicitor to mislead two SRA FIOs and an SRA Supervisor by denying that he had undertaken reserved legal work when in fact the opposite was true.

The Respondent's Case

27.8 In his Further Answer the Respondent denied all allegations of dishonesty.

The Tribunal's Decision

27.9 Applying the test for dishonesty as set out in Ivey the Tribunal's first task was to ascertain (subjectively) the actual state of the Respondent's knowledge or belief as to the facts. The Respondent knew that he had set Nick Peterken Law up to undertake non-regulated work. The Respondent knew that he was not regulated by the SRA. He cited this as his reason for not complying with the S.44B Notice. The Respondent knew he was not allowed to undertake reserved activities. The Respondent denied that he had undertaken reserved work when he knew he had undertaken such work. The Respondent gave misleading information to the two FIOs and the Supervisor. The Respondent would have known that the information was misleading as it was his firm, he was doing the work and he knew what he was and was not allowed to do under the auspices of Nick Peterken Law. The Tribunal was sure that this was the

Respondent's state of knowledge and his genuinely held belief. At no point had he sought to say that he was confused about what he was or was not allowed to do. In his Answer dated 14 September 2017 the Respondent stated that he was quite sure that the vast majority of work done was non-regulated. That being the case this was confirmation that the Respondent knew that some of the work he had done was regulated work.

27.10 The Tribunal then had to ask itself the question as to whether his conduct was honest or dishonest. This question was to be determined by the Tribunal by applying the (objective) standards of ordinary decent people. The Tribunal found that the Respondent was clearly dishonest by the standards of ordinary decent people. Ordinary decent people would not consider it honest to provide misleading information to two FIOs and a SRA Supervisor. Dishonesty had been alleged in respect of Allegations 1.2 and 1.3 and the Tribunal found dishonesty proved, beyond reasonable doubt, in respect of Allegations 1.2 and 1.3.

Previous Disciplinary Matters

28. There were no previous matters before the Tribunal.

Mitigation

29. In his Answer dated 14 September 2017 the Respondent set out by way of background information that he practised as Nick Peterken Solicitor from 2003 until 2011. He pointed out that in all that time, so far as he was aware there had been no complaints about him. No client of his had ever said that he was anything other than fair and honest.

30. In about 2007/2008 shortly before the financial crash he was approached by some clients who were buying six new build flats in Birmingham. The flats were being developed by a national builder, who was offering a 'vendor gifted deposit' of 10% from the price of each flat. A national firm of solicitors (referred to as "E") were acting for the developers. E forwarded draft transfers which stated the purchase price as the gross price prior to the 10% deduction. The Respondent personally wrote to E on several occasions stating that the price in the transfer ought to be the net figure, but they ultimately wrote to him and said that the transfer supplied was their standard document and that his clients could either sign it or forget the purchase. The clients and Respondent reluctantly proceeded with the transfer document. Following the purchase, the financial crash hit, the flats slumped in value, and the clients turned out to be worthless, and did not maintain their mortgage commitments. The mortgagees were, the Respondent believed, fully aware of the 10% deduction – all the hundreds of flats on the development were being sold in the same way, but they maintained that the Respondent had not specifically informed them of it, and it was not reflected in the transfer and therefore in the certificate of title and ultimately his firm ended up liable to them for all losses, which were extremely large. This led, eventually, to it being impossible for the Respondent to get indemnity insurance. In hindsight, at that point the Respondent should have wound the firm up, but he felt a degree of responsibility towards employees, and so he struggled on for a period in the ARP. Again, following a period in the ARP, with the wisdom of hindsight he should then definitely have closed the firm down and simply taken an employed position, but still

the Respondent felt responsibility to people around him, and a friend who was now sadly dead, suggested the Respondent should run a firm doing non regulated work. This was the basis on which the Respondent set up 'Nick Peterken Law'.

31. This period was however generally an extremely difficult time for the Respondent. The IVA was not in fact anything to do with his former legal practice but was the result of an entirely separate and disastrous business venture he had entered into with a former friend which had ended up costing him a small fortune. The Respondent informed the SRA that he had entered an IVA (as he was required to do), and they immediately slapped extremely punitive conditions on his practising certificate. All in all however the point he wished to make was that this was a difficult time, and he accepted that it was very possible that on occasion he may not have been paying sufficient attention to his actions. For this he entirely and unreservedly apologised and the Respondent assured the Tribunal there would be no repetition of it.

32. In his Answer-Addendum (undated but received on 18 September 2017) the Respondent stated that he did not in any way mean to excuse or minimise any findings which may ultimately be made against him, but he did feel that he had been harshly treated by the SRA. It was not unheard of for solicitors to get into financial difficulty and he named but a few firms which went down owing hundreds of millions. The SRA's response was as far as the Respondent could see, to facilitate pre pack administrations which ensured creditors got close to nothing and none of those partners he was quite sure got any restrictions on their practising certificates simply by virtue of being in debt, allowing them happily to get new jobs. After the Respondent informed the SRA that he had gone into an IVA its immediate response was to put extremely onerous conditions on his practising certificate to the effect that he could not be involved in the management of a law firm or with client funds. Anybody can see the effect this would have on employment prospects – in fact the Respondent tried to get work with a long standing friend, who very much wanted to give him a job but could not in view of the SRA's stipulations against him.

33. The Respondent entirely understood that the SRA want to protect the public, and he therefore assumed that given the draconian nature of the restrictions placed on his practising certificate, the SRA must have comprehensive evidence that entering an IVA is a major risk factor. The Respondent would like to see that evidence, because it must be compelling evidence when balanced against the harm done to employment prospects. The Respondent took this matter up on numerous occasions with a young person at the SRA, but it just hit a brick wall. Assuming the SRA had evidence to support the notion that an IVA is a risk factor the Respondent questioned why the approach was not applied equally. Partners in the large firms mentioned which went down would only have received restrictions on their practising certificates in the event that they were in some way culpable. The Respondent got them without any consideration of the facts, merely for being in an IVA. He was not trying to suggest the partners in certain firms should have got sanctions nor was he being nit picking. This was a serious point. The SRA did not treat him equally with how it treated partners in big firms, and if the SRA could not apply rules in an equal way then what hope was there for anyone.

34. In 2014 the Respondent's son set up Peterken Solicitors. The SRA launched an investigation into Peterken Solicitors based solely on its connection with the Respondent. There had been no complaints from anyone, and nothing to suggest any need for an investigation other than its connection with him. They found nothing untoward, but the fact that they were investigating made it impossible for his son to renew his PI insurance. Repeated requests were made for them to conclude their investigation in time for PI to be obtained but it would not. The result was that the firm had to be closed down at great expense. The end result of all this was that Nick Peterken Law has closed, Peterken Solicitors had closed, the Respondent's practising certificate was shot to pieces and as of September 2017 he was unemployed. The Respondent asked "And just exactly how many clients have complained about me, or Peterken Solicitors?"

35. In an email dated 18 January 2018 the Respondent stated:

> "(i) I believe I have always tried my best for my clients and I do not believe any client of mine would say I had ever been dishonest. In any event I have no intention to ever practise as a solicitor again even were the opportunity to present itself.
>
> (ii) Whatever mistakes I have or have not made, no member of the public has suffered, or complained about me.
>
> (iii) The issues raised are all from quite a long time ago
>
> (iv) Prior to this I have had no disciplinary issues."

36. Taking these factors into account he submitted that an indefinite suspension would be an adequate remedy.

Sanction

37. The Tribunal referred to its Guidance Note on Sanctions (Fifth Edition-December 2016) when considering sanction.

38. The Tribunal assessed the seriousness of the Respondent's misconduct. In terms of his level of culpability his motivation for the misconduct appeared to be financial. His misconduct was planned, he knew he should not be undertaking reserved activities but did so anyway. The Respondent was a solicitor and an officer of the court, he exercised a right of audience when he did not have one and acted for clients in matters involving reserved legal activities when he was not allowed to do so. This was in breach of a position of trust. He had direct control of the circumstances giving rise to the misconduct. He was an experienced solicitor who knew what he was and was not allowed to do without authorisation. He had chosen to set up a firm to do non-regulated work but then undertook regulated work anyway. He deliberately misled the regulator. His actions will have harmed the reputation of the profession. His culpability was high.

39. The Tribunal had not been told that anybody had suffered financial loss or that any of the clients had not received the service that they thought that they were receiving. There was mention of the Legal Ombudsman but no information as to why the Ombudsman had been involved. In terms of direct harm to individuals the Tribunal was not aware of any. In terms of indirect harm to the reputation of the profession and the public's perception of solicitors these would both have been harmed by the Respondent's conduct. If you instruct a solicitor you do so on the basis that that solicitor is allowed to undertake the work and has the requisite insurance. If you then find out that that solicitor did something that they were not allowed to do and did not have PII in place this will inevitably impact negatively on how you view that solicitor and on the reputation of the legal profession. The Respondent must reasonably have foreseen that there was a potential for harm to be caused.

40. As to aggravating factors dishonesty was alleged and proved. The misconduct was deliberate, calculated and repeated. It continued over a period of time. The Respondent concealed his wrong doing and he knew that his conduct was in material breach of his obligations to protect the public and the reputation of the profession. He misled his regulator because he knew he was not allowed to do what he was doing. There were no mitigating factors. The seriousness of the misconduct was significant.

41. The most serious misconduct involving dishonesty will almost invariably lead to striking off. In this case two allegations of dishonesty had been found proved. Although the Tribunal started with consideration of the lowest possible sanction, namely No Order, this was clearly insufficient. The Tribunal considered a Reprimand, Fine, Restriction Order and Suspension but concluded that none of these was sufficient sanction both in terms of the seriousness of the misconduct and the need to protect the public and the reputation of the profession. The Tribunal concluded that the appropriate sanction was for the Respondent's name to be struck off the Roll of Solicitors.

42. Having reached this conclusion the Tribunal took into account what the Respondent had said by way of mitigation and considered whether there were any exceptional circumstances which meant that sanction should be reduced (Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin)). The Tribunal concluded that there were no exceptional circumstances. There was no medical evidence that at the time the misconduct arose the Respondent was affected by physical or mental ill-health that affected his ability to conduct himself to the standards of the reasonable solicitor. The only appropriate sanction was for the Respondent's name to be struck-off the Roll of Solicitors.

Costs

43. The Applicant applied for its costs in the sum of £17,566.38 as set out in a Costs Schedule date 12 January 2018. Mr Moran submitted that this sum needed to be reduced as the hearing had not lasted for the two days for which it was listed. The revised sum claimed was £16,116.38. The Schedule of Costs included a claim for the costs of the enquiry agent that had had to be instructed to try and personally serve the Respondent. These costs were in the sum of £644.64. They had only been incurred because of the Respondent's lack of co-operation.

44. The Tribunal decided to assess costs. The case was comparatively straight forward and it was appropriate for the Tribunal to proceed in this manner. Although one of the underlying examples in Allegation 1.1 had not been found proved factually this had not added to the length of the hearing and would have had a minimal impact on the preparation of and response to the Rule 5 allegations. No reduction in costs was required for this factor.

45. The Tribunal had no information as to the Respondent's means. He had not filed a Statement of Means. The Tribunal was aware that the Respondent had said that personal service was unnecessary as he had provided an address where the papers could be sent for him to collect. However, this was not the Respondent's address and the Tribunal was satisfied that the use of the enquiry agent had been appropriate and the costs of this should be allowed.

46. The costs claimed included SRA Supervision costs of £1,837.50 and the Forensic Investigation costs in the sum of £7,984.24. The Tribunal considered that the overall costs claimed were reasonable and that no reductions were required. The Tribunal ordered that the Respondent do pay the costs of and incidental to the application and enquiry fixed in the sum of £16,116.38

Statement of Full Order

47. The Tribunal Ordered that the Respondent, NICHOLAS JOHN PETERKEN 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 £16,116.38.

Dated this 29th day of January 2018
On behalf of the Tribunal

Nicola Lucking

N. Lucking
Chair

Judgment filed
with the Law Society
on 29 JAN 2018