SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11897-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

PETER DAVID ASHCROFT Respondent

Before:

Ms A. E. Banks (in the chair)
Mr B. Forde
Mrs L. McMahon-Hathway

Date of Hearing: 21 and 22 January 2020

Appearances

Andrew Bullock, of counsel, of the Solicitors Regulation Authority, 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 made by the Applicant against the Respondent were set out in a Rule 5 Statement dated 27 November 2018 and Rule 7 Statement dated 3 September 2019 and were that:

1.1 He failed to comply with Court Orders dated 24 November 2014 and 24 March 2015 on behalf of his clients. In so doing he breached any or all of Principles 1, 2, 4, 5 and 6 of the SRA Principles 2011 ("the Principles") and failed to achieve Outcomes 1.5 and 5.3 of the SRA Code of Conduct 2011 ("the Code").

1.2 Between 2014 and 2015, he conducted litigation on behalf of his clients in insolvency proceedings in the name of Crown Chambers and/or AEL Law, when these entities were not authorised by the Applicant. In so doing, he breached any or all of Principles 2 and 7 of the Principles and Rule 1.1 of the SRA Practice Framework Rules 2011 ("the Practice Framework Rules").

1.3 On 19 July, 17 and 29 August 2017, he provided information to the Applicant which was misleading as he informed the Applicant that:

1.3.1 he had acted for the clients on a "family and friends basis" and/or as a "litigation friend" and received no remuneration when this was not true;

1.3.2 he did not undertake any reserved legal activity and was not on the Court record as acting for A and B when this was not true;

In so doing, he breached any or all of Principles 2 and 7 of the Principles.

1.4 Between August 2014 and July 2015 and on 20 June 2018, he sent correspondence which was misleading as it stated that Crown Chambers, AEL Law and Ashcroft Legal were authorised and regulated by the Applicant when this was not true. In so doing, he breached Principles 2 and 6 of the Principles and failed to achieve Outcomes 12.1 and 12.2 of the Code.

1.5 On 9 December 2014, he received a bank transfer for £2,000 from his client's company into his personal bank account for Counsel's fees in breach of Principle 10 of the Principles and Rules 1.2(a) and 14.1, of the SRA Accounts Rules 2011 ("the Accounts Rules").

1.6 He failed to act in the best interests of his clients A and B when acting for them in insolvency proceedings, as he did not have professional indemnity insurance in place. In so doing he breached any or all of Principle 4 of the Principles, Rule 4.1 of the SRA Indemnity Insurance Rules 2013 ("the Indemnity Insurance Rules") and failed to achieve Outcome 1.8 of the Code.

1.7 He failed to comply with Court Orders dated 1 June 2015 and 19 June 2015 on behalf of his clients. In so doing he breached any or all of Principles 1, 4, 5 and 6 of the Principles and failed to achieve Outcomes 1.5 and 5.3 of the Code.

1.8 Between 2015 and 2016 he conducted litigation on behalf of his clients in a claim for breach of contract and misrepresentation in the names of AEL Law, Ashcroft Law and Crown Chambers, when these entities were not authorised by the Applicant. In so doing, he breached any or all of Principles 2 and 7 of the Principles and Rule 1.1 of the Practice Framework Rules.

1.9 He failed to act in the best interests of his clients DN and HN when acting for them in a claim for breach of contract and misrepresentation, as he did not have professional indemnity insurance in place. In so doing he breached any or all of Principle 4 of the Principles and Rule 4.1 of the Indemnity Insurance Rules and failed to achieve Outcome 1.8 of the Code.

2. In addition, allegations 1.3 and 1.4 were advanced on the basis that the Respondent's conduct was dishonest. Dishonesty was alleged as an aggravating feature of the Respondent's misconduct but was submitted not to be an essential ingredient in proving the allegations.

Documents

3. The Tribunal considered all of the documents in the case which included:

Applicant

- Electronic trial bundle containing the applications, Rule 5 and Rule 7 Statements (including amended Rule 7 statement) and exhibits
- Witness statement of Michael Craggs dated 29 April 2019
- Witness statement of A dated 5 June 2019
- Civil Evidence Act Notice dated 20 December 2019
- Schedules of costs at issue dated 27 November 2018, at the filing of the Rule 7 Statement on 3 September 2019 and as at the date of the final hearing dated 14 January 2020
- Copies of all authorities relied upon
- A nine page "relevant correspondence" section of the electronic bundle
- A forty-four page "late submissions" section of the electronic bundle containing documents and correspondence from January 2020

Respondent

- Answer dated 9 January 2019
- Answer to the Rule 7 Statement dated 4 October 2019
- Statement of financial means and supporting documents dated 17 December 2019
- Correspondence submitted on 20 and 21 January 2020 relating to an application for an adjournment

Preliminary Matters

Respondent's application for an adjournment

4. By emails dated 20 January 2020 (the day before the hearing) the Respondent applied for an adjournment based on his ill-health. He first made his application at 4.18 p.m. through an email to the Applicant's representative, Ms Trench, copied to the Tribunal. He stated that he would be unable to travel to the Tribunal the following day for the hearing. He stated that he was ill at the weekend (without specifying the nature of his illness) and stated that he had consulted his physician Dr Murray on 20 January 2020. He stated that he made an appointment with her at 8.48 that morning and had a telephone consultation with her at 9.20 a.m. He stated that Dr Murray had prescribed the same treatment and medication that he had had previously. He stated that Ms Trench was authorised to check the authenticity of his account with Dr Murray and that he would provide consent for access to medical records. He stated that Dr Murray had given a prognosis that he would be fit again in seven days. The Tribunal's administrative office replied drawing the Respondent's attention to its Practice/Policy Note on Adjournments.

5. In response to an email from Ms Trench also referring him to the Tribunal's Practice/Policy Note on Adjournments, and in particular its provisions relating to supporting documentation, the Respondent stated that he could not obtain a formal detailed medical report at that stage (5.07 p.m.). He stated again that he consented to the relevant parties accessing his medical records and stated that he would submit to an independent medical examination.

6. In the same email the Respondent stated that as he was not undertaking any work as a solicitor there was no risk to the public in an adjournment being granted. He also stated that in the previous week he had received unsolicited contact from an individual who wished to provide evidence which discredited the character of one of the Applicant's witnesses. In response to a query from Ms Trench, he also stated that on the basis he was unable to attend the hearing due to ill-health there was no point in the Applicant's witnesses attending as he could not cross-examine them.

7. Ms Trench sent a further email to the Respondent at 5.25 p.m. on 20 January 2020 in which she stated:

> "*I appreciate that any application that you make for an adjournment will not be supported at this stage by a formal detailed report. However, in order to assist the Tribunal, it would be helpful if you could obtain a letter from your GP confirming:*
>
> - *your attendance at the GP's surgery today and telephone consultation*
> - *the nature of your condition and prognosis*
> - *treatment and medication*
>
> *Please also note that the Tribunal may proceed with the hearing in your absence if it does not receive satisfactory information and evidence regarding your medical condition.*"

8. At 9.26 a.m. on the morning of the hearing the Respondent replied, copying the Tribunal into his mail, stating that it was "wholly unacceptable ethically and in terms of GDPR" to request that his application for an adjournment should be supported by "sensitive personal data regarding my medical condition". At 10 a.m. when the hearing was due to begin the Respondent was not present. In light of the correspondence between the parties the Tribunal delayed the start time to 11 a.m. to allow further correspondence in the hope that may be constructive; this was communicated to the Respondent at 10.00 a.m. by email.

9. Mr Bullock, for the Applicant, opposed the application for an adjournment. By email to the Respondent timed at 10.15 a.m. he drew the cases of GMC v Hayat [2018] EWCA Civ 2796 (at [37]) and Levy v Ellis Carr [2012] EWHC 63 (Ch) per Norris at [36] to the Respondent's attention. He submitted that these cases provided authority for the quality of the medical evidence required to support an application for an adjournment of professional disciplinary proceedings on medical grounds.

10. In reply, in an email timed at 10.28 a.m., the Respondent stated that he was unsure what relevance GMC decisions had to Tribunal matters; he could only reiterate that further medical evidence could only be obtained in the "next few days"; he only sought a seven day adjournment and he submitted that it would be inequitable and unjust to refuse his request when he was ill and in any event not practising as a solicitor.

11. When the hearing resumed at 11.00 a.m. the Respondent was not present and he had sent no further communications. Mr Bullock set out the basis of the Applicant's opposition to the adjournment application. Relying on Hayat and Ellis Carr he submitted that the evidence submitted to date in support of the adjournment application was inadequate. In line with the Tribunal's own practice/policy note on adjournments, these cases were clear that a reasoned medical opinion was required. In the Respondent's case, no evidence whatsoever had been provided. The Tribunal had not even been told the nature of the illness, Mr Bullock submitted this was wholly inadequate and that the Tribunal would be erring in law were it to grant an adjournment on the basis of the supporting material.

12. Replying to the Respondent's indication that he may have additional evidence to produce as to one of the Applicant's witness' credibility, Mr Bullock submitted that standard directions in the case were given two years ago and the deadline for the provision of witness evidence had long since passed. He also submitted that the Respondent was not entitled to submit evidence which solely related to credibility based on unrelated conduct.

Applicant's application to proceed in the Respondent's absence

13. In addition to opposing to the Respondent's application to adjourn the hearing, Mr Bullock applied for the hearing to proceed in the Respondent's absence. Mr Bullock stated that the Respondent was clearly aware of the hearing date. He submitted that notwithstanding the Respondent's reported ill-health it would have been open to him to secure representation for the hearing. Given the complete absence of supporting evidence, Mr Bullock submitted that the hearing should continue in the Respondent's absence. As an alternative, Mr Bullock suggested that the Tribunal may

consider adjourning until 10 a.m. the next day to allow a final opportunity for the Respondent to obtain a letter from his G.P.

The Tribunal's Decision on both applications

14. Dealing first with the issue of potential new witness evidence, the Tribunal noted that the individual mentioned by the Respondent as having contacted him was named in the Rule 5 Statement and was known to the Respondent. There had been ample opportunity for the Respondent to have contacted this individual and for any relevant evidence to be put forward in compliance with directions. It was unacceptable and unpersuasive to raise this issue the day before the substantive hearing and it added nothing to the Respondent's application for an adjournment. The Tribunal similarly gave no weight to the submission from Mr Bullock that the Respondent could have obtained representation for the hearing. Shortly before a hearing in proceedings when the Respondent had otherwise participated and represented himself this was not a persuasive point.

15. There was no indication about what ill-health prevented the Respondent from attending. He had had seen his G.P. the day before the hearing and there would accordingly be some record of this consultation. The Tribunal did not accept that the Respondent would have been unable to provide at least some supporting evidence from his G.P. The Respondent was not seeking to cooperate with the Tribunal; he had failed to even state what condition was said to prevent his attendance. The Respondent had been made aware of the type of evidence required to support an application for an adjournment, and the legal basis for this. The Tribunal had regard to its Policy/Practice Note on Adjournments (dated 4 October 2002). The policy, to which the Respondent's attention had been drawn, was clear that where an application for an adjournment was sought on the basis of the Respondent's ill-health a reasoned opinion from an appropriate medical adviser was required. The policy stated that a G.P.'s certificate was unlikely to be sufficient. The Tribunal accepted the submission from Mr Bullock that this Tribunal policy reflected the position set out in the cases of Hayat and Ellis Carr. The Respondent's application was completely unsupported by any medical evidence whatsoever and the Tribunal did not accept that the Respondent could not have obtained some measure of supporting evidence. The Tribunal rejected the application as it did not begin to approach the threshold required as set out in the Tribunal's Policy/Practice Note on Adjournments.

16. Turning to the Applicant's application for the hearing to proceed in the Respondent's absence, the Tribunal was satisfied that the Respondent had had notice of the hearing. Accordingly the Tribunal had discretion under Rule 16(2) of The Solicitors (Disciplinary Procedure) Rules 2007 ("SDPR") to proceed in his absence if that was fair in all the circumstances. The Tribunal considered the factors set out in R v Jones [2002] UKHL 5 in respect of what should be considered when deciding whether or not to exercise the discretion to proceed in the absence of the Respondent. The Tribunal also considered the case of Adeogba [2018] EWHC 3058 (Admin) which applied the case of Jones in a regulatory context.

17. The Tribunal reminded itself of the judicial comment in both of the cases cited that the discretion to proceed in a Respondent's absence should be exercised with the utmost care and applied only in rare and exceptional cases. The Tribunal considered

the degree of the Respondent's lack of cooperation to be exceptional. Refusing to confirm the nature of the illness when an adjournment of Tribunal proceedings brought in the public interest was sought was obstructive conduct. Having consulted his G.P. the Tribunal considered that the Respondent had the opportunity to provide some degree of supporting material for his own application, and he had chosen not to do so. The Tribunal had no confidence that an adjournment would in fact secure the attendance of the Respondent at a reconvened hearing given this conduct.

18. The Respondent had provided Answers to the Rule 5 and Rule 7 allegations. The Tribunal was accordingly satisfied that it was able to fairly assess the Respondent's version of the key events. The Tribunal determined that it should exercise its power under rule 16(2) of SDPR to hear and determine the application in the Respondent's absence. The Tribunal concluded that the Respondent had voluntarily absented himself from the hearing and had failed, without explanation or reasonable excuse, to take the basic steps which were required to provide adequate (or any) evidence that he was unable to participate. The allegations were of serious misconduct and the Tribunal was satisfied that in all the circumstances it was appropriate and in the public interest for the hearing to proceed in the Respondent's absence. The Tribunal determined that the hearing would begin at 2 p.m.

Applicant's application to amend the pleadings and admit an additional document into evidence

19. The day before the hearing the Applicant had applied to amend allegations 1.2 and 1.4 in the Rule 5 Statement and allegation 1.8 in the Rule 7 Statement. Mr Bullock confirmed that the application had been copied to the Respondent. He stated that the proposed amendments were to the terms of the relevant allegations, and not to the factual matrix on which they were based. The proposed amendments were intended to avoid the possibility that the Tribunal would be satisfied that the Respondent had misconducted himself but not in the precise way described by the Applicant. In summary, the amendments to allegations 1.2 and 1.8 made reference to practising "otherwise than as permitted by Rule 1.1 of the Practice Framework Rules" rather than to practising "in the name of Grown-Chambers-and/or AEL Law". The amendment to allegation 1.4 was intended to remove ambiguity over whether the Respondent "caused to be sent" (as opposed to the narrower "sent") a particular letter; whether it "was potentially misleading" (as opposed to the narrower "was misleading") and "implied" that entities were authorised by the Applicant (as opposed to "stating" it). Mr Bullock submitted that there would be prejudice to the public interest if an allegation (of which the Respondent had had notice, and to which he had not indicated any objection) were to fail on a pleading rather than a substantive point.

20. The additional document that the Applicant sought to adduce into evidence was a print-out of "postcode address finder results" said to relate the narrow point of whether the Respondent's postal address was "Crown Chambers". Again Mr Bullock stated that the Respondent had had notice of the application and had made no objection. As an experienced litigator Mr Bullock submitted that the Respondent should have been able to set out the basis of any objection overnight.

21. The Respondent had not made any representations about either application. The Tribunal considered that the Respondent's focus had been on the correspondence he had sent about an adjournment. The proposed amendments were to the Respondent's detriment as they drew the allegations against him less narrowly. This was not the case he had answered in the documents he had submitted and he had only received notice of the application the day before the substantive hearing was due to start. The Tribunal noted that dishonesty was alleged in respect of one of the allegations where leave to amend was sought. In all the circumstances the Tribunal did not consider there was any adequate reason why the applications were made the day before the substantive hearing and considered it would be prejudicial to the Respondent for the amendments to be made and the additional document introduced at this late stage. Both applications were refused.

Factual Background

22. The Respondent was admitted to the Roll on 1 May 1984. At the date of the Rule 5 Statement the Respondent held a practising certificate for the year 2018/2019, which was free from conditions. Conditions were imposed on his practising certificate after the Rule 5 had been issued. The Applicant's records showed that the Respondent was an employee at AEL, Crown Chambers, Blackpool, from 19 November 2003 to 8 March 2006. AEL was not a recognised body.

Witnesses

23. There was no live evidence during the hearing. The written evidence of 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

24. 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.

25. **Allegation 1.1: The Respondent failed to comply with Court Orders dated 24 November 2014 and 24 March 2015 on behalf of his clients. In so doing he breached any or all of Principles 1, 2, 4, 5 and 6 of the Principles and failed to achieve Outcomes 1.5 and 5.3 of the Code.**

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

25.1 In early 2014 the Respondent consulted with clients A and B in connection with their company which was in administration. The Respondent had been recommended to these clients by a third party company ("EPL"). The allegation related to the Respondent's conduct of his clients' response to insolvency proceedings issued in the

Leeds District Registry of the High Court on 23 June 2014. "HKH Solicitors" were instructed to act for the Applicants.

25.2 On 7 August 2014, the Respondent sent an email to HKH Solicitors confirming he was instructed to act. On 7 August 2014 the Respondent sent a Notice of Acting to the Leeds District Registry of the High Court. The Notice of Acting confirmed that the Respondent, a solicitor of Crown Chambers, had been instructed on behalf of his clients A and B who were the Respondents in the insolvency proceedings. He also sent a Notice of Acting to HKH Solicitors on 26 September 2014.

25.3 In a letter dated 14 November 2014, HKH Solicitors confirmed receipt of the Respondent's clients' witness statements and noted that there were a number of items which were not exhibited. They asked the Respondent to clarify whether he or his clients retained any of the documents, or whether they had any other company books, papers or records in their possession or control. The Respondent acknowledged the letter on the same date and confirmed that he was sure his clients would "*co-operate in the provision of any specific relevant information, data or document in their possession or control on a proportionate search and discovery basis*".

25.4 On 24 November 2014, a District Judge ordered, amongst other things, that the Respondent's clients should file and serve Points of Defence, if advised, by 23 December 2014 and that each party shall give standard disclosure by exchange of list by 3 February 2015. In December 2014, the Respondent and his clients corresponded by email about the preparation of their Points of Defence, which the Respondent signed on behalf of his clients on 23 December 2014.

25.5 The Applicants in the insolvency proceedings gave disclosure by list on 3 February 2015. The Respondent's clients did not give disclosure as ordered by the Court and on 4 February 2015, the Respondent sent an email to his clients in which he stated: "*FYI – we also need to urgently action the request for disclosure from hlw raised November last year*". On 13 February 2015, the Applicants in the insolvency proceedings applied for an order requiring the Respondent's clients to give standard disclosure and also to carry out certain searches and provide specific disclosure.

25.6 The matter was listed for hearing on 9 March 2015. The Respondent and his clients did not attend the hearing. At the hearing a District Judge made various orders including relating to standard disclosure by list, searches for documents and the provision of specific disclosure of documents located during the searches and information about the location of documents, the last known persons with possession and the reasons why they parted with possession.

25.7 The Applicants in the insolvency proceedings subsequently applied for an "Unless Order". On 24 March 2015, a District Judge ordered that if the Respondent's clients failed to comply with the Order, their points of defence would be struck out as. If the claim were struck out, it was also ordered that Judgment would be entered against the defaulting party in the sum of £636,413.86 together with provision made for interest and costs. This Unless Order was received by the Respondent on 26 March 2015.

25.8 On 9 April 2015, upon being satisfied that the Respondent's clients had failed to comply with the Unless Order dated 24 March 2015, a District Judge ordered that their points of defence be struck out. It was also ordered that the Respondent's clients should jointly and severally pay the sum of £636,413.86 with interest in the sum of £51,331.57 within 14 days. The clients were ordered to pay costs.

25.9 On 27 April 2015, the Respondent instructed agents to file an Application Notice with the Court asking the Court to declare that the his clients had complied with their disclosure obligations; seeking relief from sanctions; seeking an immediate stay of execution and/or enforcement of the judgment; and seeking an order that the Applicants pay the costs of the application. The Respondent attached a witness statement to support his application. He stated that his clients had given disclosure as they had included all their documents in their respective witness statements. The Respondent explained that his clients had not received a copy of the ex-parte application for the Unless Order and were not aware at the time that any such application was before the Court. He accepted in his statement that the Unless Order provided his clients with an opportunity to apply to vary or set aside the Order within 7 days of service and that no such application was made. The application heard on 16 June 2015 and was dismissed with the Respondent's clients being ordered to pay the Applicants' costs.

25.10 The Applicant's case was that the Respondent appeared to have applied for permission to appeal on behalf of his clients (despite having received Counsel's advice that the judgment against them was "appeal proof"). On 13 July 2015, permission to appeal was refused on the papers. An application for an oral hearing was made and on 15 September 2015, permission to appeal was again refused and the Respondent's clients ordered to pay further costs.

25.11 On 20 July 2015, the Respondent's clients made applications to the County Court to set aside Statutory Demands dated 17 June 2015. The applications were signed by a solicitor at AEL Law. In a witness statement dated 14 September 2015, which the Respondent filed with the Court in support of his clients' application to appeal the refusal to set aside Judgment, the Respondent stated that he assumed full and complete responsibility for his non-compliance with the Civil Procedure Rules ("CPR") and specific Court Orders in the matter. The Respondent explained that various personal issues "*had a profound effect on my life and professional conduct during the early part of this year and so much so that I neglected a number of existing issues and cases…*". This was said by the Applicant to be the root cause of his failure to comply with the CPR and Orders made against his clients.

25.12 The Respondent's clients instructed a new legal representative in January 2016. The Applicants in the insolvency proceedings also instructed a new firm, "MDL". In an email dated 3 February 2016, MDL confirmed that as at that date, the Respondent's clients owed £791,086.01 plus the costs of the previous day's hearing.

25.13 In a letter dated 1 September 2016, A made a complaint to the Respondent about the service he had provided and suggested that, given the facts of the case, it may be simpler for the Respondent to forward her letter to his professional indemnity insurers. In his subsequent response to the Applicant dated 15 May 2018, the Respondent denied that he was responsible for his clients failing to produce, file and

serve the documents which were the subject of the Unless Order. The Respondent stated that his clients held a view that the documents were so incriminating that they were simply not prepared to disclose them. The Respondent also stated that he could not be held responsible for not disclosing something that he had never seen or had access to.

25.14 The Respondent was alleged to have breached Principles 1, 2, 4, 5 and 6 of the Principles. Principle 1 requires a solicitor to uphold the rule of law and the proper administration of justice; Principle 2 to act with integrity; Principle 4 to act in the best interests of each client; Principle 5 to provide a proper standard of service to their clients and Principle 6 to behave in a way which maintains the trust the public places in the solicitor and the provision of legal services. The Respondent was also alleged to have failed to achieve Outcomes 1.5 and 5.3 of the Code which require a solicitor to provide services in a competent and timely manner taking into account the clients' needs and circumstances and to comply with Court Orders which place obligations on them respectively.

25.15 The Court had ordered on 24 November 2014 that the Respondent's clients should give standard disclosure by exchange of list by 3 February 2015. The Respondent explained to his clients in his email of 4 February 2015 that they needed to urgently action the request for disclosure. In his witness statement dated 27 April 2015, the Respondent explained that his clients did not give disclosure by list, as they had included all their documents in their respective witness statements. This explanation provided to the Court was submitted to be inconsistent with the Respondent's email to his clients.

25.16 The Applicant submitted that the CPR makes clear that a party is required to disclose which would adversely affect their case. The Applicant submitted that even if the Respondent did not see or hold documents, his clients were still under a duty to disclose. He had provided no evidence that he explained the duty of disclosure to his clients. The Applicant submitted that had his clients refused to disclose documents in the way he described, the Respondent could have ceased acting, as he was required to do under Principle 1. Deliberately failing to disclose documents was submitted to be inconsistent with this duty. It was further submitted that a solicitor who failed to be open with the Court, as the Respondent was alleged to have failed, may be said to lack moral soundness, rectitude and a steady adherence to an ethical code so as to lack integrity in breach of Principle 2 of the Principles. Mr Bullock referred the Tribunal to the test for conduct lacking integrity set out in <u>Wingate v SRA</u> [2018] EWCA Civ 366.

25.17 The Respondent failed to comply with the Order dated 24 March 2015, which led to his clients' points of defence being struck out and a substantial monetary Judgment being entered against them. It was submitted that the Respondent could have explained to the Court either that his clients would not give disclosure by list because they had already included documents in their witness statements, or that they would not be disclosing any documents. Instead, the Respondent was alleged to have taken no steps to comply with the Order. The Respondent accepted in his statement dated 27 April 2015 that the Unless Order of 24 March 2015 provided his clients with an opportunity to apply to vary or set aside the Order within 7 days of service and that no such application was made. The Respondent's application for relief on behalf of his

clients had been dismissed as the Court did not consider it appropriate to grant relief given the substantial delay and disruption caused by the failures to comply over a four-month period.

25.18 In failing to comply with the Orders dated 24 November 2014 and 24 March 2015, the Respondent was submitted to have breached Principle 1 of the Principles and Outcome 5.3 of the Code. He was also required to act in the best interests of his clients and provide a proper standard of service, which it was submitted would include conducting their case with competence, skill and diligence, in a timely manner. The Respondent had stated that litigation was not his area, but he continued to act in the matter. The outcome of the case was said to have had severe consequences for his clients. It was submitted that failing to comply with Court Orders in a timely manner could not be said to be acting in the best interests of clients or providing a proper standard of service, particularly when those failures led to a substantial monetary judgment being made against his clients. The Respondent was submitted therefore to have breached Principles 4 and 5 of the Principles and to have failed to achieve Outcome 1.5 of the Code. These actions were also submitted to have placed him in breach of Principle 6 of the Principles on the basis he failed to maintain the trust the public placed in him and in the provision of legal services.

The Respondent's Case

25.19 The alleged breaches were denied whilst much of the factual background relied upon by the Applicant was accepted. In his Answer dated 9 January 2019 the Respondent admitted all but the final paragraph of paragraphs 6 to 40 of the Rule 5 Statement which was the factual summary on which allegation 1.1 was based.

25.20 With regards to disputed paragraph 40, this was admitted save the Respondent stated that the Applicant's summary of his clients' (A and B's) failure to cooperate was said to be incomplete. Specifically, the Respondent stated that his clients refused to produce certain documentation mainly of an accounting nature stating that the accounting "Sage stick" was corrupted, and when they were advised it could be recovered they stated it was lost. The Respondent stated that it was clear at the time to him (and Counsel) that his clients were being obstructive. He stated that this was because the accounting data would have been fatal to their case as he stated there was evidence of financial misfeasance.

25.21 The Respondent stated that he no longer held the paper work but specifically recalled a serious censure by one of the insolvency officers threatening his clients with proceedings and/or company director disqualification applications in relation to their conduct including a failure to produce relevant accounting data. The Respondent stated that he recalled some reconstruction of his clients' accounting records which he stated showed unlawful transactions in terms of drawings and misappropriation of funds from the business of the client and transfers and or payments on behalf of his clients' other business.

25.22 The Respondent accepted the Applicant's summary of the obligations imposed by the various Principles and Outcomes 1.5 and 5.3 of the Code.

25.23 The Respondent denied the allegation that his email of 4 February 2015 to his clients stating that they needed to "urgently action" the request for disclosure was inconsistent with him telling the Court and HKH solicitors (via his witness statement dated 27 April 2015) that his clients had not given disclosure by list on the basis that any documents they were prepared to produce were included as exhibits to their witness statements. The Respondent stated that this had been explained to the Applicant and indeed to the Court and that he was unclear what was said to be inconsistent. He had highlighted a need to respond to the request and, for their own reasons as set out above, his clients had refused to disclose anything beyond those documents exhibited to the witness statements. The failure to comply with the Court Orders was accepted but was due to the lack of co-operation from his clients. On that basis any breach of Principle 1 of the Principles and failure to achieve Outcome 5.3 were denied.

25.24 The allegation that the Respondent's actions lacked integrity, moral soundness, rectitude and failed to adhere to an ethical code in breach of Principle 2 of the Principles was vehemently denied. The Respondent stated that it was his honest belief that his clients were withholding documents but they denied this and so he was put in what he described as an invidious position. His choice was to continue to act or abandon his clients. This was said to be particularly difficult given that he stated he was dealing with the matter on an unremunerated basis.

25.25 The Respondent accepted the requirement to act in the best interests of his clients (Principle 4) and to provide a proper standard of service (Principle 5) would include conducting the case with competence, skill and diligence and in a timely manner, but submitted that his ability to do both was significantly affected by his clients' conduct. He submitted that the surrounding circumstances were exceptional given his client's conduct. He submitted that public confidence could be maintained by an analysis of his previous impeccable conduct over recent years. Accordingly, he denied the alleged breaches of Principles 4, 5 and 6 and that he had failed to achieve Outcome 1.5 and 5.3 of the Code.

<u>The Tribunal's Decision</u>

25.26 The two Court Orders in question (24 November 2014 and 24 March 2015) had not been complied with; this was common ground between the parties. The essence of the Respondent's position was that the principal default was his clients', and the consequences which flowed from their refusal to provide relevant evidence were more properly attributable to them than to him. The Tribunal considered that this position was contradicted by the Respondent's own statement made to the Court on 27 April 2015. In this statement the Respondent stated that his clients' had not given disclosure by list because they had included all their documents in their respective witness statements. The Tribunal considered that maintaining a different position before the Tribunal to that advanced to the Court inevitably undermined the Respondent's credibility. The Respondent had also stated in a witness statement dated 14 September 2015 that he took full and complete responsibility for the non-compliance which he stated was caused by issues in his personal life which meant that he "*neglected a number of existing issues and cases…*". The Tribunal considered that this contemporaneous document produced by the Respondent himself was compelling evidence as to the true cause of the non-compliance.

25.27 The Tribunal considered that the extent of non-compliance with directions and orders was very significant. The effect of the non-compliance on his clients was stark: their defence was struck out and judgment was entered against them for £636,413.86 together with interest and costs. The Respondent had not disputed the factual account of the failure to take action to comply with the original Orders. The Tribunal accepted the Applicant's submission that a solicitor faced with a client refusing to disclose relevant documents was obliged by Principle 1 of the Principles to cease to act. Deliberately failing to disclose the documents, or take any alternative steps, amounted to a failure to uphold the rule of law and the proper administration of justice. Failing to comply with the Court orders more generally constituted a similar failure. The Tribunal accordingly found beyond reasonable doubt that the Respondent had breached Principle 1 of the Principles. The Tribunal also found proved beyond reasonable doubt, for the same reasons, that the Respondent had failed to achieve Outcome 5.3 of the Code (which requires a solicitor to comply with Court Orders placing obligations on them).

25.28 The Tribunal had regard to the test for conduct lacking integrity (in breach of Principle 2) set out in Wingate. Rupert Jackson LJ stated in that case that integrity "*connotes adherence to the ethical standards of one's own profession*". The Tribunal accepted the submission that failing to make the disclosure required by Court Orders amounted to a failure to meet a basic ethical standard. Conversely, if the position the Respondent advanced before the Tribunal (but not before the Court) was correct, that his clients refused to disclose relevant material, then remaining on the Court record and taking no action also amounted to a failure to meet the basic ethical standards of the profession. The Tribunal found beyond reasonable doubt that the Respondent had accordingly breached Principle 2 of the Principles and that his conduct had lacked integrity.

25.29 Given the facts accepted by the Respondent, and the finding made above by the Tribunal that the Respondent was obliged to comply with the Orders or cease to act if his clients' conduct made that impossible, the Tribunal found proved beyond reasonable doubt that failing to do either with the effect that his clients' defence was struck out was neither in their interests nor constituted a proper standard of service. The Respondent's conduct of the case had had severe consequences for his clients. The Tribunal found proved beyond reasonable doubt that the Respondent had breached Principles 4 and 5 of the Principles. The Tribunal also found proved beyond reasonable doubt, for the same reasons, that the Respondent had failed to achieve Outcome 1.5 of the Code (which requires a solicitor to provide services in a competent and timely manner). The Tribunal also accepted the Applicant's submission that failing to comply with Court Orders, continuing to act if that was inappropriate and in breach of Principle 1, and failing to act in his client's interests or to provide a proper standard of service, would undermine the trust placed by the public in the Respondent and in the provision of legal services. The Tribunal accordingly found proved beyond reasonable doubt that the Respondent had breached Principle 6 of the Principles.

26. **Allegation 1.2: Between 2014 and 2015, the Respondent conducted litigation on behalf of his clients in insolvency proceedings in the name of Crown Chambers and/or AEL Law, when these entities were not authorised by the Applicant. In so doing, he breached any or all of Principles 2 and 7 of the Principles and Rule 1.1 of the Practice Framework Rules.**

The Applicant's Case

26.1 This second allegation arose out of the insolvency litigation with which allegation 1.1 was concerned. In the Notice of Acting sent by the Respondent to the Leeds District Registry of the High Court on 7 August 2014 he confirmed that he was a solicitor of Crown Court Chambers, after which was given what appeared to be a residential address in Blackpool, Lancashire.

26.2 The Respondent confirmed in an email to the Applicant on 26 May 2017 that he had been an "*in house solicitor for probably the last 30 years and have not during that time held PI insurance nor held client funds/had a client account*". The Respondent could not provide the precise date that his employment with AEL terminated but confirmed that he was "*first and foremost Company Secretary but always had Solicitor status within the group*". On the same day, the Applicant asked the Respondent to confirm how he was authorised to conduct litigation between 2014 to 2016 for his clients. On 19 July 2017, the Respondent confirmed that he dealt with the matter on a "*family and friends basis*" and received no remuneration.

26.3 In an email of 15 May 2018 to the Applicant, the Respondent stated that his relationship with EPL was on an ad-hoc basis and that his work primarily concerned commercial agreements. The Respondent also stated that EPL was a business consultancy dealing with turnarounds and distressed companies and that any payments he received from EPL would have been for commercial agreements/advice to EPL or its clients. The Respondent was said to have stated that he told his clients A and B that litigation was not really his area and as he was primarily an in-house solicitor, he could not conduct litigation on a fee-paying basis without the correct indemnity insurance and that he would be heavily reliant upon Counsel because of his lack of specialist knowledge.

26.4 In an email dated 15 June 2018 to the Applicant, the Respondent accepted that he had been on the Court record and had conducted reserved legal activities.

26.5 The conduct of litigation is a reserved legal activity under Section 12 (1) (b) of the Legal Services Act 2007. Schedule 2 of that act confirmed that the conduct of litigation consists of issuing proceedings before any court in England and Wales, the commencement, prosecution and defence of such proceedings and the performance of ancillary functions in relation to such proceedings (such as entering appearances to actions).

26.6 The Applicant's case was that Crown Court Chambers was not authorised by the Applicant to carry out reserved legal activities, nor was it regulated by the Applicant. Similarly, AEL law was said not to be a recognised body although the Respondent was its employee. The Applicant averred that Crown Chambers and AEL Law were

not authorised by any other approved regulator nor were they authorised to carry out reserved legal activities.

26.7 Mr Bullock referred the Tribunal to bank statements from the Respondent when responding to his suggestion that he was an in-house solicitor and company secretary who acted in this case on an unremunerated basis. Mr Bullock submitted that the erratic receipt of payments from EPL was indicative of these payments being fees relating to specific legal cases rather than resembling the salary payments which would characterise an in-house employment relationship. Mr Bullock stated that the bank statements revealed regular payments to the Respondent from the third party EPL which had referred A and B to the Respondent. Mr Bullock submitted that this "murky" arrangement undermined the Respondent's contention that he was simply an in-house solicitor working on an unremunerated basis. Mr Bullock invited the Tribunal to infer that the Respondent was being remunerated in this way for his practice. Mr Bullock referred the Tribunal to emails he submitted showed that the Respondent undertook other cases beyond the two with which the allegations were concerned and also that he instructed counsel. Mr Bullock submitted that taken together these factors indicated that the Respondent was practising as a solicitor (and not on an in-house basis).

26.8 Mr Bullock also invited the Tribunal to note that the Respondent's bank statements did not include "Crown Chambers" as part of his address. Mr Bullock submitted that this was relevant and significant to the Respondent's contention that "Crown Chambers" was part of his residential address. Mr Bullock submitted that were this the case then private correspondence, including in particular bank correspondence, would be expected to include this element of the address. Mr Bullock also submitted that it was significant that the address given in one application (to set aside a statutory demand, made in July 2015) included AEL Law and the residential address in Blackpool but omitted "Crown Chambers". Mr Bullock invited the Tribunal to conclude that the Respondent's intention was that the reader should think that Crown Chambers was the name of a firm.

26.9 Mr Bullock submitted that the Tribunal needed to adjudicate on whether the Respondent's contention that he could act on a "family and friends" basis was correct. The Applicant submitted it was not. This was because the Practice Framework Rules required that reserved activities could only be undertaken by a solicitor through a recognised or licenced entity. There was a friends and family exemption, in Rule 10.2 (c) of the Practice Framework Rules, which states that a solicitor would be exempt from the obligation for their practice to be a recognised sole practice if:

> *"your practice consists entirely of:*
>
> *(i) providing professional services without remuneration for friends, relatives, companies wholly owned by you or your family, or registered charities…"*

Mr Bullock submitted that this exemption was not available to an in-house solicitor (which was how the Respondent described himself). An in-house solicitor was authorised to work exclusively for his or her employer. Mr Bullock also submitted that the family and friends exemption did not assist the Respondent in any event as it was clear that the solicitor's entire practice needed to consist of unremunerated

services. The Applicant's position was that this did not reflect the Respondent's position and the Respondent's own description of himself as an in-house solicitor and the payments received from EPL, mentioned above, were relied upon in support of this submission.

26.10 The work undertaken by Crown Chambers and AEL Law in respect of the clients' matter involved conducting litigation, which is a reserved legal activity. The Respondent was submitted not to be authorised to undertake reserved legal activities as these entities were not authorised by the Applicant. In conducting litigation on behalf of his clients in the insolvency proceedings, the Respondent was submitted to have breached Rule 1.1 of the Practice Framework Rules. Principle 2 of the Principles requires a solicitor to act with integrity and Principle 7 requires a solicitor to comply with their legal and regulatory obligations. It was submitted that the Respondent knew that Crown Chambers and AEL were not authorised or recognised when he conducted litigation and that accordingly he had breached Principles 2 and 7 of the Principles.

The Respondent's Case

26.11 The allegation was denied. The Respondent again accepted almost all of the factual matters alleged by the Applicant. One exception was that the Respondent reiterated that whilst he was on the Court record and conducted reserved legal activities he was acting on an unremunerated basis.

26.12 A second exception was that whilst the Respondent accepted that neither Crown Chambers nor AEL Law were authorised by the Applicant or authorised to carry out reserved legal activities, he maintained that Crown Chambers was not a legal trading entity and never had been nor would be. The Respondent's case was that it was simply part of his postal address. He stated that this house name was a suggestion by Royal Mail to reduce misdirected post and that in response he had come up with something "creative and appropriate". The Respondent accepted that he was an employee of AEL law, and stated that AEL was an abbreviation for what he described as the last major in-house role he held as Company Secretary and Solicitor.

26.13 The alleged breaches were denied. The Respondent stressed that Crown Chambers was part of an address and AEL was an abbreviation. He did not rely on them being authorised by the Applicant. In essence, he maintained he was acting on an unremunerated basis and this was the reason why the Respondent submitted that the alleged breaches were not made out and he was entitled to conduct litigation in the way he did.

The Tribunal's Decision

26.14 The Tribunal reviewed the Application to Set Aside a Statutory Demand dated 20 July 2015 made on behalf of A and B in which "AEL Law" (followed by the Respondent's home address in Blackpool) was included underneath the solicitor signature. This was a Court form the Respondent had acknowledged was sent. He had acknowledged being heavily involved in the litigation. He had agreed that he had made an application to appeal on behalf of his clients at around the same time. The Tribunal considered that there was no reason to include "AEL Law" on this formal Court document in the way it was included other than to give the clear impression that AEL

Law was a legal practice. It was not consistent with someone genuinely acting on a "family and friends" basis. The Tribunal found beyond reasonable doubt that the Respondent was conducting the relevant litigation, caused or allowed AEL Law to be included in formal Court documentation and that this gave the impression that AEL Law was a legal practice in whose name he was conducting the litigation.

26.15 With regards to the allegation that the Respondent conducted litigation in the name of "Crown Chambers", the Tribunal was not satisfied that this had been proved to the requisite standard. Whilst the Tribunal was not wholly persuaded by the Respondent's account that Crown Chambers was part of his postal address, this was a contention which distinguished Crown Chambers from AEL Law and, more significantly, the Tribunal had not been directed to formal documentation in the insolvency litigation in which Crown Chambers had been unambiguously presented as the name of the law firm or practice. Accordingly the Tribunal had some doubt which meant that the allegations in respect of Crown Chambers were not proved.

26.16 The Tribunal rejected the Respondent's submission that he fell within the "family and friends" exemption within Rule 10.2 of the Practice Framework Rules. The Respondent described himself, to his regulator, as an in-house solicitor. The Respondent's bank statements confirmed that he had received significant sporadic payments from EPL (the company which had introduced him to his clients A and B according to the evidence of A). The Tribunal accepted the Applicant's submission that this was not an unremunerated friends and family scenario. It was neither unremunerated nor involved friends and family. A's evidence was that X (of EPL) recommended the Respondent to her as he "*was the solicitor that he recommended all of his clients to use*". The Tribunal accepted this evidence which demonstrated the basis of the Respondent's instruction. The Tribunal was also satisfied that the Respondent failed to meet the exclusivity requirement in the friends and family exemption. The Tribunal was satisfied beyond reasonable doubt from the evidence of A and the documents to which it had been referred that the Respondent's practice did not consist exclusively of unremunerated work for friends and family; indeed, the Respondent's own account was that he was an in-house solicitor.

26.17 Given that the friends and family exemption did not apply, and that the Tribunal had found that the Respondent had conducted litigation in the insolvency proceedings on behalf of A and B in the name of AEL Law, the Tribunal accepted the Applicant's submission that the Respondent was obliged by Rule 1.1 of the Practice Framework Rules to ensure that AEL Law was suitably authorised. The Respondent had accepted that AEL was not so authorised. Accordingly, the Tribunal found proved beyond reasonable doubt that he had breached that provision.

26.18 The Tribunal considered that compliance with the Practice Framework Rules, which provide the overarching regulatory framework within which all solicitors practice, was of critical importance for all solicitors. It was a necessary ethical requirement of the profession applicable to all members. By conducting litigation in the name of AEL Law, which was unregulated, when he was not entitled to do so, the Tribunal was satisfied beyond reasonable doubt that, applying the Wingate test, the Respondent's conduct had lacked integrity in breach of Principle 2 of the Principles. Principle 7 of the Principles required the Respondent comply with his legal and regulatory obligations. The Tribunal found beyond reasonable doubt that by practising in the

name of AEL Law when not permitted to do so, and breaching Rule 1.1 of the Practice Framework Rules, the Respondent had clearly breached Principle 7 of the Principles.

27. **Allegation 1.3: On 19 July, 17 and 29 August 2017, the Respondent provided information to the Applicant which was misleading as he informed the Applicant that:**

1.3.1 he had acted for the clients on a "family and friends basis" and/or as a "litigation friend" and received no remuneration when this was not true;

1.3.2 he did not undertake any reserved legal activity and was not on the Court record as acting for A and B when this was not true;

In so doing, he breached any or all of Principles 2 and 7 of the Principles.

The Applicant's Case

27.1 As stated above, the Respondent informed the Applicant in an email dated 19 July 2017 that he had acted for his clients A and B on a "family and friends" basis and received no remuneration. On 17 August 2017 the Respondent confirmed to a Supervisor at the Applicant that he had acted for the clients as a litigation friend and that this did not involve undertaking reserved legal activity. The Supervisor recorded in his contemporaneous telephone attendance note that the Respondent stated he was not on the Court record. On 29 August 2017, the Respondent stated in an email that no monies were received from his clients.

27.2 During a telephone conversation with the Supervisor, B confirmed that the Respondent was not a litigation friend. The Applicant's case was that in an email to the Applicant dated 15 June 2018, the Respondent admitted that he was in fact on the Court record and conducted reserved legal activities and asserted that he "never stated otherwise".

27.3 It was alleged that the Respondent informed the Applicant's Supervisor that he acted for the clients on a family and friends basis and as a litigation friend and that he was not undertaking a reserved legal activity. This was submitted not to be true, as he had sent a Notice of Acting to the Court confirming that he had been instructed to act on behalf of his clients A and B in the insolvency matter. The Respondent had also given notice of his intention to go on the Court record in the proceedings. Mr Bullock submitted that whilst the Respondent may have felt that he fell within the "family and friends" exemption within the Practice Framework Rules, had he read those rules carefully he would have realised that as an in-house solicitor this was an unsustainable position. Mr Bullock submitted that before taking a dogmatic position with his regulator the Respondent should have checked the position carefully and that his failure to do so was relevant to whether he had acted with integrity. As mentioned in the context of allegation 1.2, the Applicant also contended that the Respondent was paid for the work done for clients A and B, albeit in payment(s) made via EPL rather than directly from his clients, which it was submitted had the effect that the "family and friends" exemption could not apply for this additional reason.

27.4 The information which the Respondent provided to the Supervisor was submitted therefore to be untrue and misleading. The Respondent was under a regulatory obligation to deal with his Regulator in an open and co-operative manner and he was submitted to have failed to do so. It was submitted that the Respondent therefore failed to act with integrity in breach of Principle 2 of the Principles and failed to comply with his regulatory obligations in breach of Principle 7 of the Principles.

Dishonesty alleged in relation to allegation 1.3

27.5 The Respondent's actions were alleged to have been dishonest in accordance with the test for dishonesty laid down in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67. This was summarised by the Applicant as the fact-finding tribunal first ascertaining (subjectively) the actual state of the individual's knowledge or belief as to the facts. Once this actual state of mind as to knowledge or belief as to facts was established, the question whether the conduct was honest or dishonest was to be determined by the fact-finder by the applying the (objective) standards of ordinary decent people. There was no requirement that the individual must appreciate that what they have done was, by those standards, dishonest.

27.6 It was alleged that the Respondent acted dishonestly according to the standards of ordinary decent people. It was submitted that the Respondent must have known, when he informed the Applicant's Supervisor that he had acted for his clients A and B as a litigation friend and that this did not involve undertaking reserved legal activity, that this was not true, as he had sent a Notice of Acting to the Court. It was further submitted that the Respondent must have known, when he informed the Applicant's Supervisor that he was not on the Court record, that this was not true, as he had sent a Notice of Acting to the Court confirming that he had been instructed to act on behalf of his clients in the matter. Mr Bullock submitted that if the Respondent genuinely considered the "family and friends" exemption to apply, then he must have known that he had no certain basis for this belief (it being clear from the face of the exemption that it would not apply to the Respondent's circumstances for the reasons set out above) and so it was dishonest for the Respondent to have taken that line dogmatically with his regulator.

The Respondent's Case

27.7 The allegation was denied. The Respondent accepted that he had informed the Applicant by email that he had acted for his clients on a "family and friends" basis and received no remuneration. He stated that he did not, however, recall any conversation on 17 August 2017 with the Applicant's Senior Investigating Officer or being contacted by him on his mobile phone. The Respondent stated that on that date he was not working and was in a beer garden of his local pub with a friend. The Respondent stated that he could not precisely recall what he said to the Investigating Officer given all the circumstances but submitted that it would be at best disingenuous to say he was not on the Court record when this was "*a matter of fact filed and served*". He stated that in his Answer he was on the Court record and had no intention to mislead the Applicant.

27.8 The Respondent stated that his comment that he was not undertaking a reserved legal activity was qualified by the fact the litigation was being conducted on an unremunerated basis. His case was that, given the qualification that he was not being remunerated, there were no misleading statement to the Applicant. He submitted again that it would be at best disingenuous to make a statement which could clearly be proven to be inaccurate and the Respondent maintained that he did not do so.

Response to allegation of dishonesty in relation to allegation 1.3

27.9 The Respondent vehemently denied any dishonesty as alleged or at all. He averred that at worst ordinary decent people would find his conduct lax or cavalier and not dishonest.

27.10 The Respondent accepted that there may well have been confusion around the precise meaning of the terms. He stated he was acting on an unremunerated basis and there had never been any intention to mislead. Again he submitted that this would be disingenuous at best as the issues raised were documented and a matter of record. His case was that he did not recall stating that he was not on the Court record and, again, any such representation would at best be disingenuous.

The Tribunal's Decision

27.11 The Tribunal accepted that the contemporaneous file note made by the Applicant's Investigator on 17 August 2017 was an accurate record of their conversation. The Respondent denied having stated that he did not undertake a reserved legal activity as he was not on the Court record and that he had acted in a personal capacity as a litigation friend. The Investigator, Mr Michael Craggs, had produced a signed witness statement for the Tribunal proceedings. He had exhibited to his statement a screenshot which showed that the relevant electronic document had been created on the day of the conversation. Mr Craggs had no 'axe to grind' with the Respondent. The Tribunal was satisfied beyond reasonable doubt that his account of the conversation with the Respondent was accurate.

27.12 The note made by Mr Craggs stated that the Respondent had informed him that he was not on the Court record. The Tribunal had been taken to documents which clearly and unambiguously established this was incorrect. Indeed, the Respondent's position was that this was so obviously incorrect, and susceptible to repudiation, that it was not credible to suggest that he had said it. The Tribunal rejected the Respondent's account and submission. His own account, that he recalled a conversation but not its contents and would not have said something so inaccurate did not create doubt in the Tribunal's mind. The Tribunal did not consider it to be credible that litigation in which his clients' defence had been struck out for non-compliance with Court Orders and they had been ordered to pay over £600,000 would be something which could slip the Respondent's mind, particularly when he described himself as a non-litigator.

27.13 The Tribunal had been referred to Court documents, including the Notice of Acting, in which the Respondent confirmed that he had been instructed to act in the matter. The Tribunal accepted that by informing the Applicant that he was not undertaking any reserved legal activity, as set out above, the Respondent had provided misleading information.

27.14 The Tribunal also accepted Mr Bullock's submission that by dogmatically asserting to his regulator in emails that he was acting for his clients on a "family and friends" basis, when he was not entitled to rely on that exemption for the reasons set out in the Tribunal's decision on allegation 1.2, the Respondent also provided misleading information. The Tribunal accepted that if the Respondent did not believe that the exemption applied to him then his statement was plainly misleading and also that if he did genuinely believe that the exemption applied then he misled the Applicant by asserting something dogmatically which there were no coherent grounds to believe and about which he could not have made meaningful enquiries. In any event, as set out below in paragraph [27.19], the Tribunal found that the Respondent did not genuinely believe the exemption applied.

27.15 The Tribunal accepted the submission that it was a clear ethical requirement of the profession that a solicitor refrain from misleading the Applicant. Principle 7 of the Principles made this obvious and fundamental requirement explicit. The Tribunal had found beyond reasonable doubt that the Respondent had made misleading statements as set out above and accordingly found proved to the requisite standard that he had acted in breach of Principles 2 and 7 of the Principles.

The Tribunal's Decision on dishonesty alleged in relation to allegation 1.3

27.16 The Tribunal accepted the summary of the test for dishonesty provided by the Applicant. When considering the allegation of dishonesty, the Tribunal applied the test in Ivey. The test for dishonesty was set out at paragraph [74] of the judgment in that case, and accordingly the Tribunal adopted the following approach:

- firstly the Tribunal established the actual state of the Respondent's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held;

- secondly, once that was established, the Tribunal then considered whether this conduct would be thought to have been dishonest by the standards of ordinary decent people.

27.17 The Tribunal had found that the Respondent had told the Applicant's Investigator that he was not conducting a reserved legal activity or on the Court record when this was not the case. The Tribunal had rejected the possibility that the Respondent could have forgotten a case which was such an obvious shambles and in which his clients' defence had been struck out with judgment for over £600,000 given against them. Considering the first limb of the Ivey test, the Tribunal considered that the Respondent did not genuinely believe that he was not conducting a reserved legal activity and not on the Court record, but had nevertheless said this to a representative of the Applicant.

27.18 The Tribunal considered that the witness statement dated 14 September 2015, which the Respondent had submitted to the Court and in which he took full responsibility for the failure to comply with Court Orders (referred to in allegation 1.1 above), was a substantially more credible document that the Respondent's later denial that he had been conducting reserved legal activities. The Respondent had made several, belated and unsuccessful, efforts to reinstate his clients' case. Those actions were inconsistent

with his suggestion to the Applicant that he was not undertaking a reserved legal activity (litigation). The Tribunal considered this further demonstrated that the Respondent never genuinely believed that he was not conducting a reserved legal activity, or on the Court record.

27.19 The Tribunal also considered that the Respondent did not, and could not, have genuinely believed that the "family and friends" exemption applied to him. The Respondent was a very experienced solicitor. The Tribunal considered that his correspondence, Court documents and witness statements demonstrated a familiarity, as would be expected, with the distinction between what was reserved legal work and what was not. The Respondent's clients A and B had been introduced to him by X of EPL in order that he could provide legal assistance to them. He had not previously met them. He received payments from EPL. This was manifestly not a "family and friends" scenario. The Tribunal found beyond reasonable doubt that it was not credible that the Respondent genuinely believed that he was acting for A and B on a family and friends basis.

27.20 Turning to the second limb of Ivey, the Tribunal had no doubt that ordinary decent people would regard making such statements in such circumstances to be dishonest.

28. **Allegation 1.4: Between August 2014 and July 2015 and on 20 June 2018, the Respondent sent correspondence which was misleading as it stated that Crown Chambers, AEL Law and Ashcroft Legal were authorised and regulated by the Applicant when this was not true. In so doing, he breached Principles 2 and 6 of the Principles and failed to achieve Outcomes 12.1 and 12.2 of the Code**.

The Applicant's Case

28.1 The Respondent sent an email to HKH Solicitors on 7 August 2014 confirming that he was instructed to act for his clients A and B. On the same date, the Respondent sent a letter to the Leeds District Registry of the High Court of Justice, Chancery Division enclosing a Notice of Acting. The Notice of Acting and footer of the email gave the Respondent's address as Crown Chambers, followed by the same residential address in Blackpool mentioned above. This the Respondent's home address. The Respondent's individual SRA identification number also appeared on the letter and email. The email and letter contained the following:

> *"Authorised and regulated by the Solicitors Regulation Authority (SRA Number ...)".*

28.2 The covering letter which the Respondent sent to HKH Solicitors on 26 September 2014 bore the same address mentioned in the preceding paragraph. On 27 April 2015, the Respondent sent an Application Notice to the Court. The address to which documents about the application should be sent was also the same as that mentioned in the preceding paragraph. The Respondent used the same address in his witness statement dated 27 April 2015, which was also sent to the Court. The Respondent's clients' applications to set aside the Statutory Demands dated 20 July 2015 bore the address "AEL Law", followed by the same Blackpool residential address.

28.3 In his email to the Applicant on 15 May 2018, the Respondent stated that "Ashcroft Legal" was a limited company formed some time ago with a view to providing commercial legal advice which never materialised. The Respondent also stated that the last filed accounts were dormant company accounts and that he was not involved in the company, although it bore his surname. He also stated, as mentioned in previous allegations, that "Crown Chambers" was the name of his house and that it formed part of his postal address. The Respondent further stated that Crown Chambers was not a business and did not have employees.

28.4 On 22 June 2018, the Applicant received a complaint from "GQS Solicitors". They had received a letter from "Y" at Ashcroft Legal Limited dated 20 June 2018. The footer on the letter included the following:

> *"Peter David Ashcroft LLB. Hons Solicitor t/as AEL Legal … [full address redacted] Sheffield…"*
>
> …
>
> *Authorised and regulated by the Solicitors Regulation Authority [SRA NO: ...]".*

GQS Solicitors stated to the Applicant that they had undertaken checks and discussed the matter with the Applicant's Contact Centre but could not locate the SRA number quoted. On 14 August 2018, the Applicant sent a letter to the Respondent requesting his explanation of matters raised by GQS Solicitors. The Respondent did not reply.

28.5 Outcome 12.1 of the Code requires a solicitor to ensure that safeguards are in place to ensure that clients are clear about the extent to which the services that they and separate businesses provide are regulated. Outcome 12.2 states that solicitors should not represent, directly or indirectly that a separate business is regulated by the Applicant or that any of its services are regulated by the Applicant. It was alleged that the Respondent knew that Crown Chambers, Ashcroft Legal and AEL Law were not authorised by the Applicant or any other regulator. Whilst the Respondent himself is regulated as an individual solicitor by the Applicant, his emails and letters did not make this distinction clear. In addition, it was alleged that the letterhead for Ashcroft Legal bore a false SRA number. It was alleged that between August 2014 and July 2015 and on 20 June 2018, the Respondent sent correspondence, which was misleading as it stated that Crown Chambers, AEL Law and Ashcroft Legal were authorised and regulated by the Applicant when this was not true.

28.6 It was submitted that a solicitor sending correspondence which was misleading and untrue could be said to lack integrity in breach of Principle 2 of the Principles. The trust that the public placed in solicitors, and in the provision of legal services, was submitted to depend upon the reputation of the solicitors' profession as one in which every member may be trusted to the ends of the earth. Solicitors are required to discharge their professional duties with integrity, probity and trustworthiness. In sending correspondence which was misleading and untrue the Respondent was submitted to have breached Principle 6 of the Principles and failed to achieve Outcome 12.2 of the Code. The Applicant's case was that the Respondent did not make it clear to his clients that whilst he personally was authorised and regulated by

the Applicant, the named businesses were not. It was submitted that the Respondent's clients must have believed that they were instructing a business which had the safeguards afforded to a regulated practice, as one involved firm had requested details of the Respondent's insurers. It was submitted that the Respondent could not have made it clear to his clients the extent to which he was regulated but these businesses were not, and he thereby failed to achieve Outcome 12.1 of the Code.

Dishonesty alleged in relation to allegation 1.4

28.7 The Applicant relied on the same test for dishonest conduct from Ivey summarised in paragraph [27.5] above. Again it was alleged that the Respondent acted dishonestly according to the standards of ordinary decent people. This was on the basis that it was submitted that the Respondent must have known that Crown Chambers and AEL Law were not authorised or regulated by the Applicant when he sent correspondence which gave the misleading impression that they were. It was further submitted that the Respondent appreciated the distinction that he personally was regulated by the Applicant as his correspondence bore his individual SRA number. It was submitted that the Respondent could have made it clear on his correspondence that whilst he was regulated by the SRA, the businesses were not. It was submitted that the Respondent must have known that Ashcroft Legal was not authorised or regulated by the SRA when correspondence was sent from this business bearing a false SRA number.

The Respondent's Case

28.8 The allegation was denied. The underlying facts relating to the Respondent confirming to HKH Solicitors and the Court his instructions to act including the provision of his address as "Crown Chambers" followed by his home address were accepted. So too was the fact he had included his individual SRA number and stated he was authorised and regulated by the Applicant. He accepted sending an Application Notice to Court including these details in April 2015 as alleged.

28.9 However, the Respondent stated that the allegations derived from the letter from Y at Ashcroft Legal Limited and all related matters were completely unknown to him. He stated that the first awareness he had of such matters was from the Rule 5 Statement. He stated that the Applicant had not previously raised these issues with him. The Respondent submitted that it appeared that if the foundational matters alleged were true then it was "*a case of identity hijack and fraud which should be referred to the Police and not directed and [sic] the Respondent and should form the basis of a criminal investigation into those who in fact perpetrated such acts*". The Respondent submitted that if anything he was the victim and not the offender. He stated that he had never corresponded with the solicitors who had complained to the Applicant based on a letter from Y at Ashcroft Legal Limited and had, in fact, never heard of them.

28.10 The Respondent stated that he had no knowledge of the correspondence of 14 August 2014 that the Applicant stated was sent to him and no knowledge of the Sheffield address which was included in the footer of the letter sent from Y at Ashcroft Legal Limited.

28.11 The Respondent again stated that Crown Chambers was an address and not a trading entity and AEL was an abbreviation. He stated that he had no knowledge of the matters involving Ashcroft Legal Limited and submitted that the fact that a false SRA number had been used added to the serious criminality of those who had in his view perpetrated the manufacture and use of the Ashcroft Legal Limited correspondence. The Respondent submitted that the correspondence of which he had knowledge was not misleading, and accordingly he denied that he had breached Principles 2 and 6 of the Principles.

28.12 The Respondent's case was that his clients were fully aware of his status when he was acting and that this was made clear to them initially and on many occasions including social occasions over drinks. He stated that he had never received any correspondence from TW LLP. The alleged failure to achieve Outcomes 12.1 (ensure clients are clear about the extent to which services are regulated) and 12.2 (do not represent that separate businesses are regulated by the Applicant when they are not) were accordingly denied.

Response to allegation of dishonesty in relation to allegation 1.4

28.13 The Respondent again vehemently denied any dishonesty as alleged or at all. He submitted again that at worst ordinary decent people would find his conduct lax or cavalier and not dishonest. As stated in response to the previous allegations, the Respondent denied that he had dishonestly sent correspondence giving the impression that Crown Chambers and AEL Legal were authorised or regulated by the Applicant. His position was that Crown Chambers was part of a residential address and not a trading entity whilst AEL was an abbreviation. The Respondent did, however, accept in his Answer that he could have made it clear in his correspondence that his businesses were not authorised or regulated by the Applicant and that the SRA number quoted was his as an individual solicitor.

28.14 The Respondent stated that he had no knowledge of the activities of Ashcroft Legal which he stated he believed to be a commercial vehicle, legally and beneficially owned and controlled by X of EPL. The Respondent supplied copies of various Companies House documents in support of this statement. He submitted that Ashcroft Legal's activities appeared to constitute a serious criminal offence.

The Tribunal's Decision

28.15 The Respondent had accepted that he could have made it clearer that the SRA number quoted in his correspondence was his individual number. The Tribunal accepted that the Court documents and correspondence to which it had been referred gave the impression that Crown Chambers and AEL Law were regulated by the Applicant. The Respondent denied any knowledge of the correspondence from Ashcroft Legal, and considered that he had been the victim of a fraud by whoever had created those documents.

28.16 In any event, whilst the Tribunal considered that the documents and correspondence were misleading and created the impression that Crown Chambers, AEL Law and Ashcroft Legal were regulated by the Applicant, this was not the basis on which the allegation was pleaded. The allegation was that he sent correspondence which was

misleading because it "stated" that they were authorised and regulated by the Applicant. The Tribunal was not directed to any document in which this was unambiguously stated. The Tribunal could not be satisfied as a result that the allegation had been proved to the requisite standard. It followed that the aggravating allegation that the Respondent had acted dishonestly was also not proved.

29. **Allegation 1.5: On 9 December 2014, the Respondent received a bank transfer for £2,000 from his client's company into his personal bank account for Counsel's fees in breach of Principle 10 of the Principles and Rules 1.2(a) and 14.1, of the Accounts Rules.**

The Applicant's Case

29.1 Principle 10 of the Principles requires a solicitor to protect client money and assets and Rule 1.2(a) of the Accounts Rules requires a solicitor to keep other people's money separate from money belonging to the solicitor or his firm. Rule 14.1 of the Accounts Rules requires that client money must without delay be paid into a client account.

29.2 The Applicant's case was that on 9 December 2014, the Respondent's Client A transferred £2,000 to his bank account for payment on account of Counsel's fees. The Tribunal was referred to A's business bank statements which showed the transfer in support of this allegation. A confirmed in an email to the Applicant on 30 November 2017 that no other payments were made to the Respondent.

29.3 The relevant fee note for Counsel showed that a payment was made by the Respondent by BACs on 27 May 2015 and that £1,260 was outstanding for the Brief fee of the hearing on 16 June 2015. However, the Respondent's bank statements did not show any corresponding payment being made to Counsel. The Respondent confirmed in his email to the Applicant of 15 May 2018 that he was not in funds to pay Counsel's outstanding fees of £1,260 and that he would write to the clients to request payment. The Respondent explained that he thought the payment for £2,000 on 9 December 2014 was for earlier Counsel's fees but he could not be certain. The Respondent also confirmed that there was a small balance, which the client agreed he could use for travelling expenses. The Respondent further confirmed that there was no documentation in relation to the basis of acting.

29.4 The Applicant alleged on the above basis that the Respondent received client money for the payment of Counsel's fees into his personal bank account and did not keep this separate from his own money, which was submitted to be in breach of Rules 1.2 (a) and 14.1 of the SRA Accounts Rules 2011. It was further submitted that his actions also placed him in breach of Principle 10 of the Principles on the basis that he had thereby failed to protect client money.

The Respondent's Case

29.5 This allegation was admitted. The Respondent acknowledged receiving the payment of £2,000 relating to Counsel's fees into his personal bank account as set out above. He accepted that he had failed to keep the client money received to pay Counsel's fee separate from his own money and to pay it into a client account and that this

constituted a breach of Rules 1.2 (a) and 14.1 of the Accounts Rules. He also accepted that this failure amounted to a breach of Principle 10 of the Principles.

The Tribunal's Decision

29.6 The Respondent had admitted receiving the £2,000 payment into his personal account, failing to keep that client money separate from his own funds and failing to pay it promptly into a client account. He had acknowledged that this constituted a breach of Rules 1.2 (a) and 14.1 of the Accounts Rules and a breach of Principle 10 of the Principles. The Tribunal had been referred to the Respondent's personal bank statement which confirmed the receipt. The Tribunal considered the admissions to be properly made and found the allegations proved beyond reasonable doubt.

30. **Allegation 1.6: The Respondent failed to act in the best interests of his clients A and B when acting for them in insolvency proceedings, as he did not have professional indemnity insurance in place. In so doing he breached any or all of Principle 4 of the Principles, Rule 4.1 of the Indemnity Insurance Rules and failed to achieve Outcome 1.8 of the Code.**

The Applicant's Case

30.1 The Respondent was required, under Rule 4.1 of the Indemnity Insurance Rules, to take out and maintain qualifying insurance. Outcome 1.8 of the Code also required the Respondent to ensure that clients had the benefit of his compulsory professional indemnity insurance and that he did not exclude or attempt to exclude liability below the minimum level of cover required by the Indemnity Insurance Rules.

30.2 TW LLP (the solicitors who represented A and B after the Respondent) sent letters to the Respondent on 28 November 2016 and 5 December 2016 requesting details of his professional indemnity insurers during the period that he acted for A and B and confirmation that he had reported the matter to his insurers. TW LLP did not receive any response and reported the issue to the Applicant. The Respondent confirmed to the Applicant in May 2017 that he had been an "*in house solicitor for probably the last 30 years and have not during that time held PI insurance nor held client funds/had a client account*". During a telephone conversation with the Applicant's Supervisor on 17 August 2017 the Respondent stated that he did not receive any correspondence from TW LLP.

30.3 In his email of 15 May 2018 to the Applicant, the Respondent stated that he informed his clients A and B that he could not conduct litigation on a fee-paying basis without the correct professional indemnity insurance. It was submitted by the Applicant that the Respondent's clients must have believed that he had the benefit of insurance as their subsequent solicitors, TW LLP, had requested details of the Respondent's insurers. Mr Bullock submitted that the fact that, on the Applicant's case, the "family and friends" exemption did not apply to the Respondent inevitably meant that the Insurance Indemnity Rules were breached. In his submission, the limited exemption from these rules operated in the same way as the exemption to the Practice Framework Rules (summarised above under allegation 1.2).

30.4 It was alleged that the Respondent did not take out and maintain any insurance in breach of Rule 4.1 of the Indemnity Insurance Rules and that he also failed to achieve Outcome 1.8 of the Code. It was further submitted that in failing to take out and maintain qualifying insurance, the Respondent could not be said to have acted in the best interests of his clients, against whom a substantial monetary Judgment was entered due to the Respondent's failure to comply with Court Orders, placing him in breach of Principle 4 of the Principles (the duty to act in the best interests of the client).

The Respondent's Case

30.5 The allegation was denied. The Respondent stated that he had never received any correspondence from TW LLP (whether asking for details of his indemnity insurance or otherwise). He agreed that he had informed the Applicant that he had been an in-house solicitor for thirty years and had not held professional indemnity insurance during that time. He also accepted that he had informed clients that he could not conduct litigation on a fee-paying basis without holding the correct insurance. The Respondent's case was that he did not in fact do so – having acted on an unremunerated "family and friends" basis. He reiterated in his Answer that his clients were aware of his status when he acted and that he had no indemnity insurance. On that basis, there being no obligation to take out such insurance, and his clients being aware of his status and that he did not hold insurance, the alleged breaches were denied.

The Tribunal's Decision

30.6 The Tribunal had found in relation to allegation 1.2 that the "family and friends" exemption under which it was possible to conduct a reserved legal activity other than through a regulated entity did not apply to the Respondent. The Tribunal had also found in relation to allegation 1.3 that it was not credible that the Respondent genuinely believed that he was acting for A and B on a family and friends basis.

30.7 It was his submission that he was acting on this basis on which the Respondent's response to this allegation rested. As with the Practice Framework Rules, the Indemnity Insurance Rules included an exemption under which the requirement to maintain qualifying insurance did not apply providing the solicitor's practice consisted entirely of providing professional services to family and friends. The Tribunal found beyond reasonable doubt that this exemption did not apply to the Respondent, either generally or specifically with regards to the litigation he conducted for A and B (for the reasons why the exemption to the Practice Framework Rules did not apply, summarised under allegation 1.2 above). The Respondent acknowledged that he did not in fact maintain qualifying insurance. Given the clear requirement to do so under Rule 4.1 of the Indemnity Insurance Rules and Outcome 1.8 of the Code, and the finding that the exemption on which the Respondent relied in his response did not apply, the Tribunal found proved beyond reasonable doubt that the Respondent had breached those provisions.

30.8 The Tribunal also accepted the submission that maintaining appropriate professional indemnity insurance was plainly in his clients' interests. This was the rationale underpinning the Indemnity Insurance Rules and was a vitally important client

protection mechanism. The Tribunal found proved beyond reasonable doubt that by failing to maintain qualifying insurance the Respondent had not acted in his clients' best interests in breach of Principle 4 of the Principles.

31. **Allegation 1.7: The Respondent failed to comply with Court Orders dated 1 June 2015 and 19 June 2015 on behalf of his clients. In so doing he breached any or all of Principles 1, 4, 5 and 6 of the Principles and failed to achieve Outcomes 1.5 and 5.3 of the Code.**

The Applicant's Case

31.1 The Respondent acted for DN and HN who were traders in the motor vehicle industry. The Respondent was first instructed in 2014/2015. DN and HN were claimants in a claim for breach of contract and misrepresentation over the sale and purchase of a motor vehicle.

31.2 The Statement of Truth on the Claim Form issued on behalf of DN and HN sealed on 6 February 2015 bore the Respondent's name and the address "AEL Law, Crown Chambers" followed by the address in Blackpool mentioned above. The Statement of Truth was signed by the "Claimant's solicitor" in the Respondent's name. The Applicant contended that the Particulars of Claim also appeared to have been settled by the Respondent as it bore his address of "Crown Chambers" followed by the same Blackpool address. The email address on the Particulars of Claim included the Respondent's surname.

31.3 The Defendant's solicitors wrote to the Respondent requesting further information under Part 18 of the CPR by 10 April 2015. The Defendant's solicitors subsequently required the information by 17 April 2015. On 17 April 2015, the Respondent sent an email to the Defendant's solicitors in which he stated:

> *"I have the responses to your Part 18 request now together with supporting documentation. I wish to finally review the same before serving. I note that your request is that the same be served by 1600 hours today however as a result of a family funeral today I am not able to finally review – I trust that in the circumstances you will agree that these can be served on Monday morning…"*

The email footer bore the following details:

> *"Peter D Ashcroft LLB (Hons) Solicitor and Commissioner for Oaths Crown Chambers [full residential address redacted] Blackpool Authorised and Regulated by the Solicitors Regulation Authority (SRA No: 127826) www.SRA.ORG.UK"*.

The Applicant stated that the SRA number in the email footer was the Respondent's individual SRA identification number.

31.4 An unsigned and partially dated Reply to the Part 18 request for Further Information was provided to the Defendant's solicitors on 20 April 2015. The Defendant's solicitors noted in a letter to the Respondent dated 22 April 2015 that the Reply had

not been signed in accordance with CPR Part 18. The Defendant's solicitors also expressed their concern that the Reply failed to answer any of the questions raised in the Part 18 request. They stated that they required a full response by 1 May 2015 failing which an application to Court would be made. Having sent a chasing letter without reply, the Defendant's solicitors filed an Application Notice with the Court on 6 May 2015 (and sent a copy to the Respondent the following day).

31.5 On 1 June 2015, a District Judge ordered that the Respondent's clients must provide a response by 8 June 2015 and pay the Defendant's costs summarily assessed at £658. It was also recorded that any application for the Order to be set aside or varied must be made within seven days of the Order being served. The Defendant's solicitors wrote to the Respondent on 4 June 2015 conveying details of the Order and requesting payment of their client's costs by 15 June 2015. They sent a further letter on 16 June 2015 in response to the Respondent's failure to comply with the Order.

31.6 The Defendant's solicitors submitted a witness statement dated 15 June 2015 in support of an Application for an Unless Order. On 19 June 2015, a District Judge considered the application and Ordered that:

> *"1. Unless the Claimant files and serves a full response to the Defendant's Part 18 Request for Further Information dated 20 March 2015 by 4pm on 29 June 2015 the Claimant's claim shall be struck out and the Claimant shall pay the Defendant's costs incurred in these proceedings subject to detailed assessment if not agreed.*
>
> *2. The Claimant shall pay the Defendant's costs of this Application to be summarily assessed in the sum of £1115.00."*

The Order also contained a provision for the Court to set aside or vary the Order.

31.7 The Respondent failed to comply and his clients' claim was struck out as provided for in the Unless Order. An Application Notice dated 15 July 2015 and signed by the Respondent was filed with the Court. It stated that the Claimant (the Respondent's clients) sought relief from sanctions on the basis that "*there were only minor breaches of the response to the Defendants Part 18 request for further and better particulars of the Particulars of Claim*". On 26 August 2015, the District Judge dismissed the application for relief from sanctions. The claim remained struck out and the Respondent's clients were also ordered to pay the Defendant's further costs. No points of dispute were raised on the Defendant's bill of costs, which meant that the Defendant's costs were allowed in the sum of £20,190.52 and the Respondent's clients became liable to pay those costs from 14 November 2015.

31.8 A second Claim Form was issued on 12 January 2016 in which a new claim under the Misrepresentation Act 1967 was pleaded. The Clam Form and Particulars of Claim bore the Respondent's name, however, the signatures were different to those on the Claim Form in the first set of proceedings and the Application Notice dated 15 July 2015 mentioned directly above. It was stated in the Particulars of Claim that:

> *"1. …The claimants would like the Court the [sic] be aware that although asked by their acting solicitor for responses to Part 18 request (which they gave) they had no knowledge of his failure to fully deal with the PART 18 REQUEST or the subsequent consequences of an unless order. Their acting solicitor Mr Ashcroft did offer to accept responsibility for the same however Judge Bellamy did not consider Mr Ashcroft had made himself sufficiently available to the court in order to do so."*

31.9 In an Application Notice dated 11 February 2016, also bearing the Respondent's name and a signature that differed to that on the Claim Form in the first set of proceedings and the Application Notice dated 15 July 2015, a review of the District Judge's determination was sought on the grounds that:

> *"… the same was unilaterally determined without a hearing and with proviso that the same decision could be challenged on application. The outcome of the previous costs hearing was not seen by Mr N and he had no knowledge of the outcome. Neither Mt [sic] N or his representative have seen any breakdown of these costs which appear to be out of proportion. Our application request for a hearing in this matter was refused without any explanation".*

Leave to appeal the decision of the District Judge was also requested as an alternative to a review. It was further stated in the Application Notice that the Claimant and his wife had no knowledge of the default costs certificate as "*I have failed to inform them of costs orders*".

31.10 The second claim was struck out on 31 March 2016 as an abuse of process. The Respondent's clients were ordered to pay the Defendant's further costs and permission to appeal on the "Special Reasons" was also refused. As no points of dispute were raised on the Defendant's bill of costs, the Respondent's clients became liable to pay the Defendant's costs in the sum of £11,374.40 from 8 July 2016.

31.11 In emails to the Applicant sent on 16 May 2019, the Respondent's clients' new solicitors confirmed that they had paid all costs orders, including sums due under the Default Costs Certificates and that the friend who recommended them to the Respondent was X. The clients' new solicitors also confirmed that the clients did not "have any records of non-cash payments" and were "not provided with receipts for payments made". In an email sent to the Applicant on 16 May 2019, the Respondent stated that he did not issue proceedings and the signatures were not his. The Respondent clients' new solicitors had stated to the Applicant that the clients had "specifically instructed" the Respondent in the matter. The clients' new solicitors also stated that the Respondent had been recommended by a friend, X, who referred to the Respondent as "our in-house solicitor" and the clients did not have any knowledge of whether the Respondent was being instructed under the name of "AEL Law or any other name".

31.12 The Applicant alleged breaches of Principle 1 (uphold the rule of law and the proper administration of justice), Principle 4 (act in the best interests of each client), Principle 5 (provide a proper standard of service) and Principle 6 (behave in a way which maintains the trust the public places in the solicitor and the provision of legal services). It was also alleged that the Respondent had failed to achieve Outcomes 1.5

and 5.3 of the Code which require a solicitor to provide services in a competent and timely manner taking into account the clients' needs and circumstances and to comply with Court Orders which place obligations on them respectively.

31.13 The Applicant accepted that the Court Orders dated 1 June 2015, 19 June 2015, 26 August 2015, 31 March 2016 and 8 July 2016 did not bear the Respondent's address. However, the Applicant relied on Defendant's solicitors having written to the Respondent on 4 June 2015 and stating in a witness statement that they provided a copy of the Order dated 1 June 2015. The Defendant's solicitors also explained the terms of the Order to the Respondent. The Order dated 14 November 2015 was addressed to the Respondent at "…AEL Law, Crown Chambers" followed by what he accepted was his home address. As set out above, it was alleged that the Respondent took no steps to comply with the Court Order relating to the Defendant's Part 18 Request for Further Information or to apply for that Order to be set aside. The Respondent took no steps to comply with the Unless Order or to apply for it to be set aside in the 7 days available. This led to the Respondent's clients' claim being struck out and the clients paying the Defendant's costs.

31.14 The Applicant's case was that it was not until 15 July 2015 that the Respondent took steps to try to rectify his clients' position by making an application for relief from sanctions (which was unsuccessful). The Respondent did not seek a review of the District Judge's determination at this stage but waited until 11 February 2016 after allegedly issuing a second claim. It was acknowledged in the second claim issued on 15 January 2016 that the Respondent had failed to deal with the Part 18 Request and had offered to accept responsibility for the same. Whilst the Respondent told the Applicant that he did not issue proceedings and the signatures were not his, correspondence regarding the matter was sent to the Respondent's home address. The Applicant submitted that it was inconceivable that a solicitor who received a number of items of correspondence on a matter, in which he stated he did not issue proceedings, would not contact the sender of the correspondence, his clients or the Court and explain that he had not issued proceedings, or signed documents in the matter. Additionally, the Applicant relied upon the Respondent's client having stated (via their subsequent solicitors) that they had "specifically instructed" the Respondent in the matter as he had been recommended by a friend who referred to the Respondent as "our in-house solicitor".

31.15 As with allegation 1.1, it was submitted that compliance with Court Orders is an important feature of upholding the rule of law and administering justice and that the Respondent's failure to comply with them amounted to a breach of Principle 1 of the Principles and a failure to achieve Outcome 5.3 of the Code. It was also submitted that failing to comply with Court Orders in a timely manner could not be said to be acting in the best interests of his clients or providing a proper standard of service, particularly when those failures led to his clients' claim being struck out and costs Orders being made against them. No steps were taken to set aside or vary the Orders or raise any points of dispute on the Defendant's bill of costs, which it was again submitted could not be said to be acting in his clients' best interests or providing a proper standard of service to his clients. It was submitted that the Respondent had thereby breached Principles 4 and 5 of the Principles and failed to achieve Outcome 1.5 of the Code. It was further submitted that the Respondent's failures and lack of action also placed him in breach of Principle 6 of the Principles on the basis he

failed to maintain the trust the public places in him and in the provision of legal services.

The Respondent's Case

31.16 The allegation was denied. The Respondent's position was that the strike out of their claim was as a result of his clients DN and HN continually failing to provide full details of the claim via X in relation to the Defendant's request for further information under Part 18 of the CPR.

31.17 The Respondent strenuously denied issuing the Claim Form sealed on 6 February 2015 (the first of the two claims). He stated that the signature appearing on the Statement of Truth was not his and that he had referred the matter to the Police by way of formal complaint for investigation. He stated that it appeared that the Applicant had made no enquiry as to who actually issued the claim. He submitted that liaison with HMCTS would establish this in terms of documentation and payment of the court fee. He described the allegations he made as very serious and amounting to offences under the Fraud Act 2006 and Solicitors Act 1974. Accordingly, he accepted the description and observations made by the Applicant about the first Claim Form, but denied any involvement in issuing it.

31.18 The Respondent did not deny all involvement with all elements of the first claim. He accepted that he had sent an email to the Defendant's solicitors on 17 April 2015 about the Part 18 information request asking for additional time to review the relevant documents for personal reasons. He accepted that the footer to this email was as the Applicant had described above – it bore his name, included "Crown Chambers" and his residential address (as stated above, his position was that Crown Chambers was part of his residential address) and his individual SRA number. That a partial response to the Part 18 request was sent was accepted and as set out above the Respondent stated that this was due to his clients failing to provide the full details via X. The Respondent accepted that the Defendant's solicitors had chased for a full reply and made reference to making a formal application and the Respondent stated that the sole explanation for this was the lack of instructions via X from his clients.

31.19 The Respondent accepted the Applicant's account of subsequent events including the Order made by a District Judge on 1 June 2015 requiring the Respondent's clients to provide a response to the Part 18 request and to pay the Defendant's costs of the application. The Respondent accepted the Applicant's account of further subsequent events up to and including the making of the Unless Order on 19 June 2015 and the application dated 15 July 2015 for relief from sanctions on the basis that the breaches were minor. The Respondent accepted that this was rejected and that his clients' claim remained struck out and that they were liable for costs of £20,190.52 (in respect of which no points of dispute had been raised).

31.20 With regards to the second claim, issued on 12 January 2016, the Respondent stated that the Judge was made aware of serious personal issues by way of a private and confidential communication. The Respondent also stated that the application dated 11 February 2016 seeking a review of the District Judge's determination, in which reference was made to his clients being unaware of the outcome of the previous costs hearing and having had their request for a hearing refused without explanation, was

caused by liaison (or the lack of it) between his clients DN and HN via X. The Respondent acknowledged that he was involved in this aspect of the case, but maintained that the basis for the application was the failure of appropriate liaison via X.

31.21 In contrast, the Respondent stated that he had no knowledge of the Application Notice in which leave to appeal the District Judge's decision (as an alternative to the review) was sought. In response to what the Respondent described as the Applicant's emphasis that he allegedly stated *"I have failed to inform them of costs orders"* he stated that did not draft the Application Notice nor issue it and that he first became aware of it in the documentation contained in the Applicant's Rule 7 Statement. In his Answer he stated that he intended to refer this to the South Yorkshire Police for criminal investigation. He stated that he suspected that those responsible were X and Y. He stated that the Applicant had omitted from its allegations that X had (according to the Respondent) a very serious criminal record including a conviction under the Misuse of Drugs Act 1971 for which he received a custodial sentence. The Respondent submitted that this was relevant to the credibility of his comments and propensity to commit criminal acts.

31.22 With regards to the comments said by the Applicant to have been made by DN and HN's new solicitors, about the absence of any records of non-cash payments and not having been provided with receipts for payments made, the Respondent stated that he had never made any payments on behalf of nor received any payments from DN or HN. In his Answer the Respondent responded to the Applicant's comment that he had not clarified which signature was said not to be his. The Respondent's position was that neither of the signatures on either claim form were his. Notwithstanding his referral of this matter to the Police the Respondent invited the Applicant to refer the matter to a graphologist rather than taking his word for it.

31.23 The Respondent accepted the summary provided by the Applicant of the Defendant's solicitors writing to him in June 2015 about the 1 June 2015 Order, and the Court Order dated 14 November 2015 bearing his address as "AEL Law, Crown Chambers" followed by his residential address. He accepted the chronology of the litigation leading up to the making of the Unless Order, as set out above. He also accepted that it was not until 15 July 2015 that he took steps to seek to rectify his clients' position by making an application for relief from sanctions and that he waited until 11 February 2016 to seek a review of the District Judge's determination.

31.24 The Respondent denied issuing the second claim. He stated that he was unable to comment on who may have stated he was "their in-house Solicitor" as alleged. He stated that he was unaware by whom, when and where such representations were said to have been made. In any event, he stated that the comment was "patently untrue". He stated that, again, on becoming aware of the representation in the Applicant's Rule 7 Statement he intended to refer this matter to South Yorkshire Police.

31.25 Responding to the allegations that he breached various Principles by failing to comply with Court Orders in a timely fashion and failing to take steps to set aside or vary the Court Orders made or challenge the Defendant's bill of costs, the Respondent stated again that the lines of communication with his clients went via X. The position set out by the Respondent was the catalogue of failures, and the impact of those failures as

described by the Applicant, was caused substantially by DN and HN failing to provide full details via X, and by a failure of liaison via X. Coupled with the claim forms having been issued without his knowledge or involvement, and false statements made about which he had no knowledge, this was the basis of his denial of the alleged breaches. Specifically, he denied that there had been any breach of the trust the public placed in him or the profession (Principle 6) for the reasons summarised above which showed, in his submission, that the incidents were isolated and related to the activities of X.

The Tribunal's Decision

31.26 The Respondent contended that he knew nothing about the Claim Form sealed on 6 February 2015 or the Application Notice in which leave to appeal the District Judge's decision was sought. The Tribunal had previously found the Respondent's credibility was undermined by advancing a different position before the Tribunal to that he had taken in a witness statement submitted to Court as set out in paragraph [25.26] above. In any event, the Tribunal noted that the Respondent had accepted that he was involved in various aspects of the litigation conducted on behalf of DN and HN. He accepted, for example, corresponding with the Defendant's solicitors on 17 April 2015 about the Part 18 information request and asking for additional time to review the relevant documents. He had accepted that correspondence, including formal Court documents such as the Court Order dated 14 November 2015 bore his address as "AEL Law, Crown Chambers" followed by his residential address. The Respondent accepted that in 15 July 2015 that he took steps to seek to rectify his clients' position by making an application for relief from sanctions and on 11 February 2016 he sought a review of the District Judge's determination. The Court documents and correspondence to which the Tribunal had been referred bore the Respondent's home address and had, in at least some cases, been answered. Accordingly, the Tribunal was satisfied to the requisite standard that the Respondent was heavily involved in conducting major aspects of the litigation.

31.27 As with allegation 1.1, the Respondent did not contend that the Court Orders had been complied with. Instead he stated that there were aspects of the litigation with which he was uninvolved and of which he was unaware, but more fundamentally that the acknowledged failures to comply were the result of his clients failing to liaise with X adequately. The Tribunal did not accept that this was an adequate answer to the allegation. Even if the Respondent had not personally had any involvement with the first Claim Form, he conducted the subsequent litigation. The Tribunal considered it inconceivable that the Respondent, in those circumstances, was unaware that his name and contact details had been communicated to the Court as the "claimant's solicitor" or was unaware that he was on the Court record. The Tribunal found that on the Respondent's own case he was conducting the relevant litigation.

31.28 The extent of the non-compliance was significant, and the consequences were again very serious for the Respondent's clients. The Respondent had accepted a chronology of correspondence in which the potential consequences of failing to supply the response to the Part 18 request were set out to him in correspondence bearing his address. The Respondent had accepted that the response provided was inadequate by stating that a failure on the part of his clients and X was responsible. The Respondent took no steps to comply with the 1 June 2015 Order about which the Defendant's

solicitors had written to the Respondent. No efforts were taken to comply with (or vary or set aside) the resulting Unless Order (of 19 June 2015). In the second claim the Respondent had stated that the Judge was made aware of serious personal issues by way of a private and confidential communication which the Tribunal considered was consistent with the Respondent directing and conducting the litigation.

31.29 As with allegation 1.1, the Tribunal accepted the Applicant's submission that Principle 1 of the Principles, acting in a manner which upholds the rule of law and the administration of justice, required that Court Orders be complied with. In the event that a solicitor found themselves in the position the Respondent described, of no or inadequate instructions, it was not open to the solicitor simply to take no action. Principle 1 required that action be taken including, if necessary, that the solicitor ceasing to act. By failing to either comply with Court Orders or ceasing to act, with the effect that his clients' case was struck out and costs were awarded against them, the Tribunal was satisfied beyond reasonable doubt that the Respondent had failed to uphold the rule of law and administration of justice in breach of Principle 1 of the Principles. The Tribunal also found beyond reasonable doubt that the failure to comply with Court Orders amounted to a breach of Outcome 5.3 which required such compliance.

31.30 Breaches of Principles 4, 5 and 6 of the Principles were also alleged. These required a solicitor to act in the best interests of their client; provide a proper standard of service and maintain the trust placed in them and in the provision of legal services respectively. The Tribunal found beyond reasonable doubt that conducting litigation in which Court Orders were not complied with, with the effect that his clients' case was struck out and costs were awarded against them, with no steps being taken to dispute the costs, amounted to a clear failure by the Respondent to act in his clients' interests or to provide a proper service and that he had thereby breached Principles 4 and 5 of the Principles. It followed that the Tribunal found proved beyond reasonable doubt that the Respondent had failed to achieve Outcome 1.5 of the Code which required him to provide services in a competent and timely manner. As with allegation 1.1., the Tribunal accepted the submission that such failures, coupled with the failure to uphold the rule of law and the administration of justice amounted to a failure to uphold the trust placed by the public in him and in the provision of legal services. The Tribunal found proved beyond reasonable doubt that the Respondent had thereby breached Principle 6 of the Principles.

32. **Allegation 1.8: Between 2015 and 2016 the Respondent conducted litigation on behalf of his clients in a claim for breach of contract and misrepresentation in the names of AEL Law, Ashcroft Law and Crown Chambers, when these entities were not authorised by the Applicant. In so doing, he breached any or all of Principles 2 and 7 of the Principles and Rule 1.1 of the Practice Framework Rules.**

The Applicant's Case

32.1 As stated above, the Respondent's clients' new solicitors stated that DN and HN had "specifically instructed" the Respondent in the matter. They also stated that that the Respondent had been recommended by a friend who referred to the Respondent as "our in-house solicitor" and the clients did not have any knowledge of whether the

Respondent was being instructed under the name of "AEL Law or any other name". They further stated that DN and HN were not friends of the Respondent prior to their instructions, were not related and did not possess any invoices from the Respondent.

32.2 The Rule 5 Statement contained a table showing the name and firm name that appeared on six formal Court documents. The Respondent's name appeared on five. As to the firm name, one contained "AEL Law" (followed by the Respondent's home address; two contained "Crown Chambers" (followed by the Respondent's home address); two contained no details and one contained "Ashcroft Law" (followed by an address in Sheffield). The Default Costs Certificate dated 14 November 2015 issued by the Court was addressed to the Respondent at "Crown Chambers" followed by his home address. The Defendant's solicitors also addressed their correspondence to the Respondent at "AEL Law, Crown Chambers" followed by his home address. An email address including "ashcroftlaw" had also featured on one document.

32.3 In his email to the Applicant of 15 May 2018 the Respondent stated that Ashcroft Legal, a limited company was formed some time ago with a view to providing commercial legal advice but that never materialised and that he was not involved in the company although it bore his surname. As stated above the Respondent also stated that Crown Chambers was the name of his house and that it formed part of his postal address. On 14 January 2019, the Respondent sent an email to his clients' new solicitor in which he stated:

> *"As your client is fully aware I have no PI cover – I am and was essentially and [sic] in house Solicitor and Company Secretary who assisted your client on an unremunerated basis."*

32.4 On 4 March 2019, Y from "Ashcroft Law" stated to the Applicant that Ashcroft Law had: *"an association with Peter Ashcroft who is an authorised solicitor. Whenever proceedings develop beyond pre-action then we engage Mr Ashcroft or another solicitor…"* Y subsequently stated that Ashcroft Law only used the Respondent's name "*when he is he solicitor on record*" and that DN and HN's litigation was "*entirely within the control and managed by Peter Ashcroft as Ashcroft Law*". Y further stated:

> *"Mr Ashcroft had for several years acted on cases referred to him by [X], director and shareholder of Ashcroft Legal Limited. [X] has been concerned that whilst Peter Ashcroft has acted very well in terms of legal advice, issues within the administration and court filings were tardy and the agreement to form Ashcroft Legal Limited was to address those issues and improve efficiency for clients."*

32.5 The Applicant's record showed that the Respondent was an employee at AEL, Crown Chambers (recorded at his home address in Blackpool) from 19 November 2003 to 8 March 2006. AEL was not a recognised body and the Respondent was its sole director and an employee. Crown Chambers was not a recognised body. Crown Chambers and AEL Law were not authorised by any other approved regulator and were therefore not authorised to carry out reserved legal activities. Ashcroft Law was also not authorised by the Applicant or any other approved regulator. The Applicant relied on documents exhibited by the Respondent to his Answer which showed that

Ashcroft Legal Limited was incorporated in 2016 and its registered office was the address in Sheffield recorded on the second Claim Form dated 15 January 2016 and the Application Notice dated 11 February 2016. The director of the company was said to be X. The Applicant relied on the proceedings having been conducted in the name of "Ashcroft Law", "AEL Law" and "Crown Chambers" with the majority of documents and correspondence bearing the Respondent's home address.

32.6 The Applicant also relied on the Respondent having told DN and HN's new representatives that he was an in-house solicitor and company secretary who assisted them on an unremunerated basis. The Applicant submitted that the Respondent would only be permitted to act for his employer under Rule 4 of the SRA Practice Framework Rules 2011 if the relevant requirements were fulfilled. DN and HN were not the Respondent's employer and the matter did not relate to or arise out of work for anyone associated with his company.

32.7 The Applicant thus alleged that the Respondent conducted litigation in the name of AEL Law, Ashcroft Law and Crown Chambers when those entities were not authorised by the Applicant. It was submitted that the Respondent was not exempt from the obligation for his "practice" to be a recognised sole practice, as he did not fall within the exemptions under Rule 10.2 of the Practice Framework Rules. Mr Bullock repeated the submissions he had made about the non-applicability of the "family and friends" exemption in relation to allegation 1.2. As the Respondent was allegedly not so exempt it was submitted that he was only permitted to practise and carry out reserved legal activities for a body authorised by the Applicant or other approved regulator. In conducting litigation for entities which were not authorised it was submitted that the Respondent breached Rule 1.1 of the Practice Framework Rules. Based on the matters summarised above it was alleged that the Respondent knew that AEL Law, Ashcroft Law and Crown Chambers were not authorised or recognised when he conducted litigation from his home address in those names, and it was submitted that he thereby breached Principles 2 (act with integrity) and 7 (comply with legal and regulatory obligations) of the Principles.

The Respondent's Case

32.8 The allegation was denied. The Respondent's over-arching position was that he was conducting the litigation on a "family and friends" basis and received no remuneration. Accordingly, his position was that he was entitled to conduct litigation in the way and to the extent that he did. He stated that he received no remuneration at all for any of the matters dealt with via X. The Respondent described having been "endeared" into friendship with these clients, with whom he engaged on a social basis, by X. His position was that in the light of the matters raised by the Applicant "*it now transpires that the who [sic] arrangement was a sham to financially benefit [X]*".

32.9 Again the Respondent accepted the Applicant's summary of the correspondence which was sent to him (and that it was sent to "Crown Chambers" and in one case "AEL Law, Crown Chambers" followed by the remainder of his residential address). The Respondent repeated his assertion that that Crown Chambers was the name of his house and not an entity required to be recognised by the Applicant. He stated that his local postal worker (a neighbour) suggested that giving his house a name would reduce misdirected post on what is a complex and confusingly numbered estate. The

Respondent accepted (which he maintained was accurate) that he had told the Applicant that the sole purpose of the incorporation of Ashcroft Legal Limited was providing legal advice, which never materialised, and that he was not involved in the company despite it bearing his name.

32.10 The Respondent agreed that he wrote to his clients' new solicitors and stated that he had no indemnity insurance and that his clients had been fully aware of this. He stated that he could not comment on what Y was reported by the Applicant as saying but the Rule 7 Statement was the first time he had heard about the alleged "association" with Ashcroft Law relating to him being instructed when proceedings developed beyond pre-action. He further stated that as far as he was aware Ashcroft Legal Limited had never traded. The Respondent stated that he never had any cases referred to him by Ashcroft Legal Limited and he considered Y's reported statements to be untrue and unsubstantiated. The sole purpose of Ashcroft Legal Limited had been to conduct unreserved work and the Respondent's understanding was that it had never conducted any work. The Respondent stated that, in any event, he was unaware of any and he reiterated that whist the corporate body bore his surname, he had no control or involvement with it (and his suspicion was that X was again responsible). The company had a registered office at an address with which he was unfamiliar. The Respondent considered that that the activities of Ashcroft Legal Limited should also be investigated.

32.11 The Respondent stated that contrary to what was alleged by the Applicant, AEL was simply a trading name and not a limited company. He further stated that he was not its director and shareholder (it having neither). He also repeated that he had had no involvement in Ashcroft Legal Limited on a proprietorship or operational basis. He stated that it was a vehicle of X's. He stated that his understanding was that the residential address in Sheffield cited by the Applicant as the registered address of Ashcroft Legal Limited was associated with Y. He stated that he had never attended nor used the address for correspondence and stated that Y was the personal assistant of X.

32.12 The Respondent accepted, and still maintained as accurate, the account he had given to the Applicant that he was an in-house solicitor who assisted DN and HN on an unremunerated basis. His position was that it was made abundantly clear on all of his correspondence, including with the Applicant, that AEL was simply a trading name for himself. No one was misled, and he had been entitled to conduct litigation on an unremunerated friends and family basis in the way he did. He denied the breach of the Practice Framework Rules and Principle 2 (acting with integrity) and Principle 7 (complying with legal and regulatory obligations) on this basis.

The Tribunal's Decision

32.13 The Tribunal had been referred to the completed Claim Form on which the claimant's solicitor was stated to be AEL Law. The Respondent's name and status as a solicitor was included. His personal address (including Crown Chambers) had been included on the form. The particulars of claim also included the Respondent's name and home address (including Crown Chambers). The Respondent had denied any knowledge of or involvement in the production or filing of this form. However, as stated in the Tribunal's decision on allegation 1.7, the Respondent had conducted the relevant

litigation subsequently, including his acknowledged response to the Defendant's solicitors in which he stated he was reviewing and intended to file the Part 18 response. The Tribunal had found in relation to allegation 1.7 that it was not plausible that the Respondent was unaware of the contents of this Claim Form. The details included in the Claim Form for DN and HN was consistent with those the Respondent had included in the litigation he conducted for A and B with which allegation 1.2 was concerned.

32.14 The Tribunal was satisfied to the requisite standard that the Respondent either completed the Claim Form which included "AEL Law" or was aware that it had been so completed. It was not credible that when conducting the litigation subsequently, the Respondent's own account, he was unaware of the contents of this formal Court document. As with allegation 1.2, the Tribunal did not consider that "AEL Law" could have been included as the name of the solicitor's firm for any reason other than to give the clear impression that AEL Law was a legal practice. The Tribunal found beyond reasonable doubt that the Respondent was conducting the relevant litigation, caused or allowed AEL Law to be included in formal Court documentation and that this gave the impression that AEL Law was a legal practice in whose name he was conducting the litigation.

32.15 Again, as with allegation 1.2, with regards to the allegation that the Respondent conducted litigation in the name of "Crown Chambers", the Tribunal was not satisfied that this had been proved to the requisite standard. Whilst the Tribunal remained unconvinced by the Respondent's account that Crown Chambers was part of his postal address, on the basis that the Tribunal had not been directed to formal documentation in the litigation he conducted for DN and HN in which Crown Chambers had been unambiguously presented as the name of the law firm or practice, the Tribunal had some doubt which meant that the allegations in respect of Crown Chambers were not proved. The allegation in respect of Ashcroft Law was found not proved for the same reason.

32.16 The Tribunal had rejected the Respondent's submission that he fell within the "family and friends" exemption within Rule 10.2 of the Practice Framework Rules in its decision on allegation 1.2 for the reasons summarised in paragraph [26.16] above. The same reasoning applied with regards to the litigation conducted for DN and HN. The Tribunal again accepted the Applicant's submission that this was not an unremunerated family and friends scenario. DN and HN's new solicitors stated that they had "specifically instructed" the Respondent and that they were not friends, or family, of his prior to him being recommended to them as "our in-house solicitor". The Tribunal accepted this evidence which demonstrated the basis of the instruction. As recorded in the decision on allegation 1.2, the Tribunal was also satisfied that the Respondent failed to meet the exclusivity requirement in the friends and family exemption. The Tribunal was satisfied beyond reasonable doubt that the Respondent's practice did not consist exclusively of unremunerated work for friends and family; again, the Tribunal noted that the Respondent's own account that he was an in-house solicitor was inconsistent with this exemption applying.

32.17 Given that the friends and family exemption did not apply, and the Tribunal had found that the Respondent had conducted litigation for DN and HN in the name of AEL Law, the Tribunal accepted the Applicant's submission that the Respondent was

obliged by Rule 1.1 of the Practice Framework Rules to ensure that AEL Law was suitably authorised. The Respondent had accepted that AEL Law was not so authorised. Accordingly, the Tribunal found proved beyond reasonable doubt that he had breached that provision in relation to AEL Law only. The allegation was found not proved in relation to Crown Chambers and Ashcroft Law.

32.18 Given this finding, the Tribunal's conclusions summarised in paragraph [26.18] above applied again. The Tribunal considered that compliance with the Practice Framework Rules, which provided the overarching regulatory framework within which all solicitors practice, was of critical importance for all solicitors. It was a necessary ethical requirement of the profession applicable to all members. By conducting litigation in the name of AEL Law, which was unregulated, when he was not entitled to do so, the Tribunal was satisfied beyond reasonable doubt that, applying the Wingate test, the Respondent's conduct had lacked integrity in breach of Principle 2 of the Principles. Principle 7 of the Principles required that the Respondent comply with his legal and regulatory obligations. The Tribunal found beyond reasonable doubt that by practising in the name of AEL Law when he was not permitted to do so, and breaching Rule 1.1 of the Practice Framework Rules, the Respondent had clearly breached Principle 7 of the Principles.

33. **Allegation 1.9: The Respondent failed to act in the best interests of his clients DN and HN when acting for them in a claim for breach of contract and misrepresentation, as he did not have professional indemnity insurance in place. In so doing he breached any or all of Principle 4 of the Principles and Rule 4.1 of the Indemnity Insurance Rules and failed to achieve Outcome 1.8 of the Code.**

The Applicant's Case

33.1 As stated above, on 14 January 2019, the Respondent sent an email to DN and HN's new solicitor in which he stated that his client was fully aware that he had no PI cover (and stated that he was an in-house solicitor and company secretary acting on an unremunerated basis). It was submitted that the Respondent was required, under Rule 4.1 of the Indemnity Insurance Rules, to take out and maintain qualifying insurance under those Rules. Outcome 1.8 of the Code also required the Respondent to ensure that clients had the benefit of his compulsory professional indemnity insurance and that he did not exclude or attempt to exclude liability below the minimum level of cover required by those rules. It was further submitted that the Respondent's clients DN and HN must have believed that the Respondent had the benefit of insurance, as their subsequent solicitors requested details of the Respondent's insurers.

33.2 The Applicant submitted that if, as the Respondent asserted, work was carried out on an unremunerated basis, he would only have been permitted to carry out such work if covered by an indemnity reasonably equivalent to that required under the Indemnity Insurance Rules. This was on the basis that the Applicant submitted that the "family and friends" exemption did not apply for the reasons summarised above. The Respondent had stated that he had no indemnity insurance in place. It was submitted that by not taking out and maintaining any insurance the Respondent had breached Rule 4.1 of the Indemnity Insurance Rules. It was submitted that by failing to take out and maintain qualifying insurance the Respondent could not be said to have acted in

the best interests of his clients, particularly as the Respondent was alleged to be responsible for his clients' claim being struck out and costs orders being made against his clients due to his failure to comply with Court Orders or take timely action to challenge the Defendant's costs. It was submitted that in failing to act in his clients' best interests, the Respondent breached Principle 4 of the Principles. Finally, as the Respondent's clients did not have the benefit of his compulsory professional indemnity insurance it was submitted that he therefore failed to achieve Outcome 1.8 of the Code.

The Respondent's Case

33.3 The Respondent agreed that he had told DN and HN's new solicitors that he had no professional indemnity insurance. He also agreed that he had told them that his clients had been fully aware of this. As in his response to allegation 1.6 above, the Respondent's case was that having acted on an unremunerated "family and friends" basis, of which his clients were aware, there was no obligation to take out such insurance. On this basis, and given that he stated that his clients were aware of his status, and that he did not hold insurance, the alleged breaches were denied.

The Tribunal's Decision

33.4 The Tribunal had found that the "friends and family" exemption under which it may be possible to conduct a reserved legal activity other than through a regulated entity did not apply to the Respondent. The Tribunal had also found in relation to allegation 1.8 that it was not credible that the Respondent genuinely believed that he was acting for DN and HN on a family and friends basis.

33.5 As with allegation 1.6 (which related to A's and B's litigation) it was the Respondent's submission that he was acting on this basis on which the Respondent's denial of this allegation rested. As previously stated, the Indemnity Insurance Rules included an exemption under which the requirement to maintain qualifying insurance did not apply providing the solicitor's practice consisted entirely of providing professional services to family and friends. The Tribunal again found beyond reasonable doubt that this exemption did not apply to the Respondent, either generally or specifically with regards to the litigation he conducted for DN and HN (again, for the reasons why the exemption to the Practice Framework Rules did not apply, summarised under allegation 1.2). The Respondent acknowledged that he did not maintain qualifying insurance. Given the clear requirement to do so under Rule 4.1 of the Indemnity Insurance Rules, and Outcome 1.8 of the Code, and the finding that the exemption on which the Respondent relied in his response did not apply, the Tribunal found proved beyond reasonable doubt that the Respondent had breached those provisions.

33.6 The Tribunal also again accepted the submission that maintaining appropriate professional indemnity insurance was plainly in the Respondent's clients' interests for the reasons summarised in relation to allegation 1.6. The Tribunal found proved beyond reasonable doubt that by failing to maintain qualifying insurance the Respondent had not acted in his clients' best interests in breach of Principle 4 of the Principles.

Previous Disciplinary Matters

34. There were two previous Tribunal disciplinary findings. Both dated from the 1980s. This Tribunal determined that in all the circumstances, primarily the age of the previous findings, they would disregard these previous findings from their deliberations on sanction.

Mitigation

35. In the Respondent's absence at the hearing the Tribunal considered the points he had made in his pleadings and correspondence on or related to the subject of mitigation. In his Answer to the Rule 5 Statement, the Respondent had made reference to what he described as an invidious position where his clients had failed to provide him with the information to respond to the Part 18 requests. Whilst the Tribunal had found his response to that position, if it existed, to be inadequate and in breach of various Principles and Outcomes, the Respondent nevertheless maintained that he was placed in a very difficult position professionally.

36. Similarly, the Respondent maintained consistently and vehemently that he acted for the clients with whom the allegations were concerned on an unremunerated family and friend's basis. The Tribunal had rejected this account, but the Respondent maintained it consistently and openly.

37. The Respondent evidently considered himself the victim of a fraud by third parties who had used his name in formal documents without his knowledge. As set out in the Tribunal's findings, this did not, in the Tribunal's assessment, amount to an adequate answer to the allegations or create reasonable doubt as to the allegations found proved, but the Respondent again maintained consistently that third parties had conducted themselves in a way which made the Respondent's position substantially worse. The Respondent had invited the Applicant to engage a handwriting expert rather than take his word that various signatures were not his and it may be submitted this was consistent with a genuine belief in the account he provided to the Applicant and the Tribunal.

38. The Respondent had set out in his witness statement dated 14 September 2015, submitted to Court in support of an attempt to appeal decisions taken in the insolvency litigation, details of various significant personal issues which had affected his performance at the time. He had made reference to these personal issues having "*a profound effect on my life and professional conduct during the early part of this year and so much so that I have neglected a number of existing issues and cases…*"

39. The Respondent also made reference to around 20 years of what he described as impeccable conduct (he acknowledged the historic referrals to the Tribunal in the 1980s but highlighted the lack of any issues in the time since).

Sanction

40. The Tribunal referred to its Guidance Note on Sanctions (7th Edition) when considering sanction. The Tribunal assessed the seriousness of the misconduct by considering the level of the Respondent's culpability and the harm caused, together

with any aggravating or mitigating factors. The Tribunal had found eight of the nine allegations proved, at least in part, including one finding that the Respondent had dishonestly provided misleading information to the Applicant. In assessing culpability, the Tribunal found that the motivation for the Respondent's main conduct with which the allegations were concerned was financial. The Tribunal considered that the arrangements he had made for his practice were designed to allow him to continue to earn money for the cases that were referred to him whilst incurring minimal expense in terms of regulation. He had maintained the position in his dealings with his regulator to seek to avoid the consequences of his unregulated practice arrangements. The Tribunal did not consider that the misconduct could be described as spontaneous. Referral arrangements had been maintained with a third party which required planning and were not a one-off. The Tribunal considered that the fact that the Respondent had persisted with an account (in the case of the finding of dishonestly providing misleading information to the Applicant) it had found the Respondent did not genuinely believe was a further demonstration that the misconduct was not spontaneous. The Respondent had had direct control of the circumstances giving rise to his misconduct. Even if it was true that he did not receive the full information he required, he controlled his response to that. The Tribunal considered that the Respondent was in a position of some trust as one of the affected clients was very ill, and so had a greater degree of vulnerability and reliance on the Respondent than may otherwise be the case. The Respondent was a very experienced solicitor and must have been aware his actions were unacceptable. To make arrangements for his practice which failed to comply with basic elements of the Practice Framework Rules, fail to ensure appropriate indemnity insurance was in place and fail to uphold the rule of law and administration of justice was to fail to meet even the most basic standards applicable to every member of the profession. The Tribunal assessed the Respondent's culpability as high.

41. The Tribunal then turned to assess the harm caused by the misconduct. The Tribunal had been referred to witness evidence which described the effect of the Respondent's conduct of A and B's case on A's health and livelihood. Both sets of clients had had their cases struck out and been left with adverse costs awards. This was a profound and serious failure with harmful financial and other consequences. The Tribunal had also found that the Respondent had dishonestly provided misleading information to the Applicant. The Tribunal considered that such misconduct must inevitably cause harm to the reputation of the profession and risked causing mistrust on the part of the public. Dishonest conduct undermining the reputation of the profession in this way would always cause significant harm.

42. The misconduct found to be proved was aggravated by the fact that the allegations included dishonest conduct and the fact that the Respondent knew, or ought to have known, that conduct including failing to comply with Court Orders was potentially very harmful to the reputation of the legal profession. Much of the conduct was repeated as demonstrated by the two sets of clients affected. The Tribunal also considered it to be self-serving. The extent of the impact on the affected clients was also an aggravating factor.

43. The Respondent had in both proceedings made belated (and unsuccessful) attempts to make good the damage caused by his conduct after his clients' cases had been struck out. The Tribunal took into account the twenty year period of unblemished practice

prior to the current allegations. The Tribunal was also conscious of the personal circumstances relating to his family that the Respondent had outlined in his 14 September 2015 witness statement. These were taken into account as mitigating factors.

44. Having found that the Respondent acted dishonestly the Tribunal did not consider that a reprimand, fine or suspension were adequate sanctions. The Tribunal had regard to the observation of Sir Thomas Bingham MR in Bolton v Law Society [1994] 1 WLR 512 that the fundamental purpose of sanctions against solicitors was:

> *"to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth".*

Even without the dishonesty, the Tribunal had found that the Respondent had acted without integrity on multiple allegations and had failed to uphold the rule of law and administration of justice in fundamental and basic requirements such as complying with Court Orders and practising in an authorised manner. The seriousness of the conduct meant that a fine would be an inadequate sanction and restrictions or suspension would fail to adequately deal with the reputational harm caused to the profession.

45. The Tribunal had regard to the case of SRA v Sharma [2010] EWHC 2022 (HC), and the comment of Coulson J that, save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck of the Roll. The Tribunal considered the nature, scope and extent of the dishonesty and whether it was momentary, of benefit or had an adverse effect on others. The nature of the dishonesty was that the Respondent had provided misleading material to the regulator, and the extent was that on three occasions responses provided to the Applicant had been inaccurate and misleading. The misconduct was not momentary. The Tribunal considered that whilst there was no direct and immediate financial benefit to the Respondent, the provision of misleading information had the intention of relieving pressure on him and allowing his practising arrangements under which he received referrals from EPL to continue. He therefore had an indirect financial interest when providing the misleading information. In addition, the other findings relating to his failure to arrange insurance and practise in an authorised manner did have a more direct financial benefit to the Respondent.

46. The Tribunal had not been expressly invited to consider that exceptional circumstances existed such that the Respondent should not be struck off. The Tribunal noted that following SRA v James et al [2018] EWHC 3058 (Admin) the exceptional circumstances must relate in some way to the dishonesty. The Respondent had not raised any health issues said to exist at the time of the misconduct. Whilst the Tribunal recognised the force of the personal circumstances he described in his witness statement of 14 September 2015 produced for the Court, this was quite removed from and extraneous to the dishonest conduct which focused on the provision of information to the Applicant in August 2017. The Tribunal was not persuaded that any exceptional circumstances satisfying the requirements of Sharma and James existed. Accordingly, the Tribunal determined that the findings against the Respondent including dishonesty required that the appropriate sanction was strike off from the Roll.

Costs

47. The total costs claimed in the Applicant's schedule of costs dated 14 January 2020 was £15,879.65. Mr Bullock invited the Tribunal to reduce this amount to reflect the fact that one additional day, and overnight costs, had been anticipated for him as advocate. He also invited the Tribunal to discount the costs included for the travel and accommodation of witnesses on the basis that they had not been required to attend. He invited the Tribunal to make an order for costs as otherwise claimed.

48. The Respondent provided what he described as a Statement of Means. He made no submission about the costs claimed, but stated that he was suffering financial difficulties relevant to any fine or costs award. He stated that he had very little equity in his property and had arrears on his mortgage (as well as with other bills and utilities). He stated that he had very limited financial means and annexed recent bank statements which he described as self-explanatory. He described his recent income as minimal and stated this was demonstrated by his tax returns (which were not supplied).

49. The Tribunal assessed the costs for the hearing. The Tribunal had heard the case and considered all of the evidence. The Tribunal accepted that it was appropriate to reduce the figure claimed to reflect the fact the hearing had concluded in two rather than three days and the Applicant's witnesses had not been required to attend. The Tribunal determined that this amounted to a reduction of £1,313. The Tribunal considered that having regard to the level of documentation and the work necessarily involved in the Application, the remaining costs claimed were reasonable in all the circumstances. The Tribunal reviewed the Statement of Means provided by the Respondent. He had not provided evidence to substantiate the statements he had made about his financial means. He had not provided comprehensive or evidenced information to inform the Tribunal's decision. In line with its Standard Directions, of which the Respondent had received a copy, the Tribunal consequently proceeded without regard to the Respondent's means. The Tribunal ordered the Respondent to pay the Applicant's costs of and incidental to this application fixed in the sum of £14,566.

Statement of Full Order

50. The Tribunal ORDERED that the Respondent, Peter David Ashcroft, 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 £14,566.00.

Dated this 16th day of April 2020
On behalf of the Tribunal

A. E. Banks
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
17 APR 2020