On 15 May 2023 Farbey J ordered that the application by the Respondent for the appeal be struck out. The Tribunal's Order dated 30 July 2021 remains in force.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12177-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD Applicant

and

VICTOR STOCKINGER Respondent

Before:

Mr P S L Housego (in the chair)
Mr R Nicholas
Mr P Hurley

Date of Hearing:
26 to 30 July 2021

Appearances

Nimi Bruce, barrister, of Capsticks Solicitors LLP, 1 St. Georges Road, London SW19 4DR for the Applicant

The Respondent represented himself

JUDGMENT

Allegations

1. The allegations made against the Respondent were set out in a Rule 12 Statement dated 10 March 2021 and were that he:

1.1 Failed to comply within the stipulated timeframes set out in, or at all with, Orders made in proceedings in the:

1.1.1. Central London County Court on 9 February 2017; and/or;

1.1.2. Wandsworth County Court on 10 January 2019,

requiring him to make costs payments to other parties, and by reason of such failure breached Principle 6 of the SRA Principles 2011 ("the Principles") and/or failed to achieve Outcome 5.3 of the SRA Code of Conduct 2011 ("the Code").

1.2 On or about 12 June 2019, at a function taking place after a lecture organised by the Solicitors' Association of Higher Court Advocates ("SAHCA") and attended by members and their guests, made any or all of the statements set out below in circumstances in which such conduct amounted to a breach of one or more of Principle 2, Principle 6 and Principle 9 of the Principles:

1.2.1. Telling Person A (a Muslim solicitor of Afghani origin) words to the effect that she was "wasting her time" practising in the field of human rights in the UK and/or she could return to Afghanistan to educate the Taliban on terrorism;

1.2.2 Stating to Person B words to the effect of:

1.2.2.1 "so you think you're Jewish" and/or

1.2.2.2 asking Person B if she was "playing the religion or race card";

1.2.3. Stating to and in the presence of various persons including Person B and Person C words to the effect that:

1.2.3.1 the definition of a successful woman is one who can spend her husband's money without having to think; and/or

1.2.3.2 the definition of a successful man is being able to afford such a woman; and/or

1.2.3.3 asking if their male partners paid towards their lifestyles.

1.2.4. Stating to various persons including Person C (a person of Congolese heritage) words to the effect that:

1.2.4.1 Africans were never any good at business, nor will they be; and/or
1.2.4.2 that they (Africans) could never get it right; and/or
1.2.4.3 how Indians and Europeans made the Belgian Congolese civil.

1.3 The conduct described at 1.2.1 and 1.2.2 and 1.2.4 above or any of them was alleged to be racially and/or ethnically and/or religiously motivated, but racial and/or ethnic and/or religious motivation was not a necessary ingredient to allegations 1.2.1, 1.2.2 and 1.2.4 including sub-paragraphs or any of them being found proved.

1.4 Between August 2019 and September 2020, failed to co-operate with the investigation conducted by and on behalf of the Applicant in that he:

1.4.1 Provided inaccurate and/or misleading information to an officer of the Applicant which he knew or ought to have known was inaccurate and/or misleading in that he stated that he had applied for a stay in civil proceedings when he had not done so;

1.4.2 Provided inaccurate and/or misleading information to an officer of the Applicant which he knew or ought to have known was inaccurate and misleading in that he stated that he had appealed an order in civil proceedings when he had not done so;

1.4.3 Provided information to an officer of the Applicant which he knew or ought to have known was inaccurate and misleading in that he stated that

> *"..The retired Metropolitan Police inspector who introduced me to [Client B] has been active in mediating a settlement with [Client B], and he has acknowledged developments as part of this. I have therefore responded to [Client B] through him…."*

when this was not correct and there was no such request for or communication about any mediation or settlement;

1.4.4 Failed to reply promptly or at all to requests for information made by or on behalf of the Applicant, including Notices served under Section 44B of the Solicitors Act 1974;

1.4.5 Failed to provide a complete response to requests for information made by or on behalf of the Applicant, including Notices served under Section 44B of the Solicitors Act 1974;

and by reason of the matters set out at 1.4.1 to 1.4.5 above or any of them breached one or more of Principles 2 and 7 of the Principles and/or failed to achieve one or more of Outcomes 10.6, 10.8 and 10.9 of the Code prior to 25 November 2019 and one or more of Principles 7.3 and 7.4 of the SRA Code of Conduct for Solicitors thereafter;

1.5 By reason of the conduct referred to at one or more of allegations 1.4.1, 1.4.2 and 1.4.3 above the Respondent acted:

1.5.1 dishonestly, but dishonesty was not a necessary ingredient to allegations 1.4.1, 1.4.2 and 1.4.3 being found proved;

1.5.2 in the alternative to allegation 1.5.1 above, recklessly, but recklessness was not a necessary ingredient to allegations 1.4.1, 1.4.2 and 1.4.3 being found proved.

Documents

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

Applicant

- Application and Rule 12 Statement dated 10 March 2021 with exhibits
- Reply dated 10 June 2021 and additional documents
- Statements of costs dated 10 March 2021 and 13 July 2021
- A "relevant correspondence" section comprising 71 pages

Respondent

- Answer (undated) with draft responses, letter to the Applicant dated 19 March 2021 and supporting documents
- Respondent's bundle comprising 614 pages

Preliminary Matters

3. Ms Bruce, for the Applicant, sought permission to amend a typographical error in the Rule 12 Statement. Person C was incorrectly referred to as Person B in one of the allegations. The Respondent did not object and the Tribunal granted permission for this minor amendment to be made. The summary of the allegations, above, includes this correction.

Factual Background

4. The Respondent was admitted to the Roll of Solicitors on 2 April 1990. He was a recognised Sole Practitioner at Stockinger, a recognised sole practitioner law practice.

5. The allegations arose from the Applicant's investigation of three reports received relating to the Respondent's conduct, and also from the Respondent's co-operation with the Applicant during its investigation of those reports.

Witnesses

6. The written and oral 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 and made notes of the oral evidence of all witnesses. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence. The following witnesses gave oral evidence:

- Rebecca Cobb, solicitor who acted for Client A, a former client of the Respondent
- Client B, former client of the Respondent
- Person A, attendee at the SAHCA event
- Person B, attendee at the SAHCA event
- Person C, attendee at the SAHCA event
- Person G, SAHCA office holder and attendee at the event
- Person H, SAHCA office holder who did not attend the event
- Person I, former Metropolitan Police inspector
- Debra George, Applicant's Forensic Investigation Officer ("FIO")
- The Respondent

Findings of Fact and Law

7. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations on the balance of probabilities. The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with 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.

8. **Allegation 1.1 – The Respondent failed to comply within the stipulated timeframes set out in, or at all with, Orders made in proceedings in the:**

1.1.1. Central London County Court on 9 February 2017; and/or;
1.1.2. Wandsworth County Court on 10 January 2019,

requiring him to make costs payments to other parties, and by reason of such failure breached Principle 6 of the Principles and/or failed to achieve Outcome 5.3 of the Code.

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

8.1 Ms Bruce submitted that the Applicant's case was very simple: the Respondent had failed to comply with two Court Orders made against him for legal costs. She invited the Tribunal not to be diverted by overcomplication of what was a straightforward matter. She submitted that a "lien" (a right to keep possession of property belonging to another until a debt owed by that person is discharged) had no application in this case.

The Court Order dated 9 February 2017

8.2 The Respondent had represented Client A in a trust dispute in or around May 2009. Client A then instructed an alternative solicitor. The Respondent forwarded an invoice for his fees to Client A's new solicitors in October 2009. The invoice was not paid on the basis that Client A contended there had never been any agreement to pay such fees and he had not received the service he was entitled to expect.

8.3 The Respondent issued proceedings in the Central London County Court against Client A for recovery of the fees invoiced (around £20,000) plus interest. Ms Cobb represented Client A in defending those proceedings. The trial took place on 9 February 2017. The claim was dismissed and the Respondent was ordered to pay Client A's legal costs of £9,180 by 9 March 2017. Interest was payable on this sum in the event of failure to pay by the deadline.

8.4 The Respondent did not comply with the Order. No payment was made or attempted by the Respondent until 10 September 2018. On that date he unilaterally sought to make a part-payment of £5,500. This payment was returned on the basis that part-payment or instalments had not been agreed between the Respondent and Client A.

8.5 On 1 April 2020 Ms Cobb wrote to the Respondent seeking payment and explaining that a further statutory demand would be forthcoming (the first having expired) along with a report to the Applicant. On 23 April 2020, no response having been received, Ms Cobb confirmed that that a report to the Applicant had been made. On the same day the Respondent wrote to Ms Cobb and stated:

- He did not have access to his office (due to Covid-19) and could not provide a substantive reply; and

- That Client A's wife had an obligation to him, and that the trial judge had stated this to be the case, proposing that he would not pursue Client A's wife if Client A did not pursue the costs order.

8.6 Steps were taken on behalf of Client A to effect service of a second statutory demand. On 28 August 2020 the Respondent made a unilateral part-payment of £5,500 followed by further payments of £2,000 on 10 November and £1,680 on 17 November 2020. This amounted to repayment of the principal sum owed under the Order dated 9 February 2017 but did not include payment of the interest claimed. The interest incurred at the date on which the principal sum was paid was £2,538.63.

8.7 Payment of the principal sum due under the costs order was therefore not made until some 3 years and 8 months after the deadline for payment. A significant sum of interest remained unpaid such that the Respondent had failed to satisfy the order.

The Court Order dated 10 January 2019

8.8 Client B reported a concern to the Applicant stating that the Respondent had "caused irreparable loss and damages to me" and had failed to pay a judgment issued by Wandsworth County Court on 10 January 2019, despite numerous demands and had not filed any application for relief or a stay. Client B stated that the Respondent had failed to respond to him on numerous occasions and had failed to respond to Client B's solicitor.

8.9 By an email to the Applicant of 11 October 2019 the Respondent confirmed that he had commenced a civil claim against Client B for recovery of his fees, having been disinstructed by Client B, and that his claim had been dismissed on a summary judgment application by Client B. The Respondent stated that he had appealed and

was arranging for a transcript of proceedings against which to prepare a skeleton argument. The Respondent had also stated:

> *"Subject to S.R.A. direction, I intend to pay [Client B] nothing in the meantime, on the basis (from knowledge of his business habits) that I will have extreme difficulty recovering anything from him should my appeal be successful. Indeed, I expect to have extreme difficulty recovering anything from [Client B] should my claim for fees be successful, but I am having to pursue fees recovery because indemnity insurers are lax to deal with legal practices that have a casual view to bad debt recovery."*

8.10 By further email on 11 October 2019 the Respondent stated that he had appealed against the outstanding costs Order and had sought a stay. He stated that the retired Metropolitan Police inspector who introduced him to Client B had been active in mediating a settlement with Client B, and he had therefore responded to Client B through him.

8.11 On 16 January 2020 the Applicant's FIO spoke to the Court officer of Wandsworth County Court. The Court confirmed that no further documents had been received by the Court since the Respondent had lodged grounds of appeal.

8.12 On 26 June 2020 Client B confirmed to the Applicant by email that he continued to take steps to enforce the Court Order, and that his attorney had made payment requests to which the Respondent had never replied, necessitating a request for bailiffs to attend. Bailiffs had not at that stage attended on the Respondent due to Covid-19 restrictions. As at the date of the Rule 12 Statement, the Respondent was said to remain in breach of the order to pay costs to Client B.

Breaches of the Principles and the Code

8.13 Principle 6 required solicitors to behave in a way that maintained the trust the public placed in them and in the provision of legal services. The effective operation of the legal profession was submitted to depend on the public being able to place its trust in legal services and the people who work in the legal sector. The Respondent was twice ordered by the Court to pay legal costs. The Respondent was alleged to have prioritised his own interests over his duty to comply with those Orders and the interests of his clients. His conduct led to Clients A and B incurring additional costs in taking enforcement action. By his conduct in avoiding and/or delaying payment of the costs awards it was alleged that the Respondent had breached Principle 6.

8.14 Outcome 5.3 of the Code required solicitors to comply with Court Orders that placed obligations on them. Both the costs Orders made in the proceedings against Clients A and B placed obligations upon the Respondent (personally as claimant in those proceedings) to make payment of the summarily assessed costs. The Respondent failed to make payment in compliance with the Orders and was submitted to have thereby failed to achieve Outcome 5.3.

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

8.15 The allegation was denied.

8.16 In respect of both Court Orders, the Respondent maintained that he was his own client. The purpose of the claims he brought was in both cases to recover unpaid legal fees from Clients A and B; he was not acting for a client other than himself. He submitted that accordingly there was no breach of duty towards himself as client at the material times.

8.17 The Respondent referred the Tribunal to an extract from Halsbury's "Laws of England", vol. 66 (2020), at paragraph [615]:

> *"A solicitor who is ordered to pay costs as an unsuccessful litigant is not subject to the summary jurisdiction of the court."*

Both Client A and Client B had disinstructed the Respondent before trial, but after he had undertaken substantial work for them. The Respondent considered that this was done in both cases with a view to avoiding paying for his work. He stressed that neither client had made any complaint about the professional work he undertook.

8.18 The Respondent's case was that in both cases, after the respective Court Orders, both clients still owed him for his unpaid legal fees, and also for additional matters not covered directly as legal fees. He therefore exercised a lien over the money that was the subject of the costs in each respective Order. The Respondent again referred the Tribunal to Halsbury's "Laws of England", vol. 66 (2020), and paragraph [720-745]:

> *"At common law a solicitor has two rights which are termed lien…"*

He submitted that a solicitor's lien was well known and was not usually the product of a court order. In other words, his understanding was that he did not have to apply to court to impose the lien. He applied a solicitor's lien to the costs that he was ordered to pay to the opposing parties (Clients A and B). He stated that he did so as he had never had any other asset from either client to which he could have applied a lien. The Respondent stated that he believed he was entitled to do this under the circumstances and stated that if he was wrong on the law, he apologised for the error.

8.19 The Respondent explained that his business model in litigation was not to ask his clients for money on account. Accordingly, he did not have a client account. Consequently, he was exposed to clients who contrived not to pay for legal services rendered. He stated that he had been paid nothing, at any time, by either Client A or Client B and his belief was that they had behaved dishonestly. His view was that he had no other recourse at the relevant time.

8.20 The Respondent stated that, for the avoidance of doubt, both of the costs Orders with which the allegation was concerned had been paid. He admitted that they were paid well beyond the usual 14 or 28 days. His confirmation was made in relation to the principal sum due and not the accrued interest.

8.21 In relation to the Court Order obtained by Client A, the Respondent also referred the Tribunal to his letter of 13 March 2017 to Ms Cobb in which he set out the issue of services-in-kind to be provided in lieu of fees. He stated that he specifically referred Ms Cobb to the Judge's determination of Client A's liability to him to provide services-in-kind. He stated that Ms Cobb made no substantive reply to this and took

no active steps to satisfy what he described as the outstanding deficiencies of her clients. The Respondent's position was that Client A had continued to decline to take any steps to honour their commitment in providing the agreed services and his regulator had been unable to offer any constructive advice on how to resolve this.

8.22 As regards the lien relating to Client B's Court Order, the Respondent also relied on an arrangement he stated was reached when he started work for Client B that he would receive a copy of Rodin's "The Thinker" and other selected castings as part of their agreement. Client B was said by the Respondent to have declined to honour this part of the agreement between them.

8.23 The Respondent submitted that he believed he had complied with Principle 6 insofar as it was intelligible and applicable to these circumstances in which he sought to recover fees from clients who have paid nothing at all towards the legal services received by them. He accepted whilst it appeared on the face of it that he had not complied with the costs payments required by the Orders he believed that the use of the solicitor's lien under the given circumstances justified his action (or late action). Again, he stated that if he was wrong on his interpretation and application of the Principles and the Code he apologised unreservedly.

The Tribunal's Decision

8.24 The existence and terms of the Court Orders was not in issue between the parties.

8.25 The Respondent claimed there were arrangements for payment-in-kind for his services alongside the legal fees for which he invoiced Clients A and Client B. His case was that these provided for the construction of a website by Client A's wife and for a copy Rodin statue to be provided by Client B. The Tribunal noted the Respondent's evidence that both of these were sought for others: an international charity concerned with access to legal resources (the website) and the Respondent's school (the copy statue). The Respondent's position was that these arrangements were not pleaded in his claims for payment of his legal fees, and accordingly the Judges made no finding on them (despite the Judge making reference to the arrangements in relation to Client A).

8.26 The Respondent had stated, in essence, that it was unfair for him to be required to pay the money in circumstances when he considered that his clients had taken advantage of him and failed to honour collateral agreements. The Tribunal considered that whatever may have been discussed and agreed between the Respondent and his former clients did not alter the fact that the judgments had been made against him and that he owed his former clients money as a result of the costs Orders.

8.27 The Respondent had said in his evidence that he had done his research into the issue of a lien and that it seemed to him to be a legitimate option and so he applied this. The money represented by the costs Orders represented an asset of the clients over which he exercised a lien. The Tribunal considered the lien argument to be inventive, but the Tribunal did not accept that a lien had any place when the "asset" in question was money owed under a court order. The Court Orders created obligations upon him, and were not assets of the clients upon which a lien could be exercised. In any event, the Tribunal considered that as an equitable remedy, it was not plausible that a lien could

"trump" a court order. The Respondent had been ordered by the Courts to pay these costs having failed in his claim for the very costs he now told the Tribunal were owed to him. The asserted collateral obligations could not justify his actions. Only another Court Order could remove the obligations imposed by a Court Order. The assertion that Client A was in breach of an obligation to require his wife to prepare a website and that justified non-payment was unsustainable. Further, it was not pleaded in that Court case. The Court had not made any finding that there was such an obligation in its judgment against the Respondent.

8.28 The Tribunal agreed with Ms Bruce's submission; this was at heart a simple factual situation and allegation. The Respondent had been ordered to pay costs under two separate Court Orders. He did not progress appeals against those Orders. He did not comply with the terms of the Orders.

8.29 The Tribunal accepted Ms Cobb's account of why she did not accept partial payment on behalf of Client A. The part payment would reduce the amount owed to a level which precluded some effective enforcement methods. She had taken full advice within her firm before so deciding. Client A was not obliged to do so. In any event, by the date of the hearing the Respondent had still not paid the interest due under the Orders; he remained in default. The fact that he considered there was a collateral agreement for services-in-kind did not change the position. Nor did the fact he considered that his clients had taken advantage of him by using the fruits of his labours without payment and then instructing someone else.

8.30 As a solicitor the Respondent was an officer of the Court. He was obliged to comply, (in the absence of a pursued appeal, stay or other agreed arrangements for varied compliance). The Respondent's evidence betrayed a clear sense of injustice. However, his business model, which he considered had been exploited, did not vitiate the need to comply with a court order.

8.31 The Tribunal accepted the submission that it was important for public trust that solicitors could be relied upon to respect and comply with judgments and orders made by the courts and tribunals. Principle 6 required that the Respondent's conduct must maintain the trust placed by the public in him and in the provision of legal services. By failing to comply with the two Court Orders as set out above, the Tribunal found proved to the requisite standard that the Respondent had breached Principle 6.

8.32 The Respondent had submitted that Outcome 5.3 of the Code did not apply as he was his own client in the actions for his fees. The Tribunal rejected this argument. Outcome 5.3 stated simply that he must "comply with court orders placing obligations on him". He did not do so as set out above. The Tribunal found the alleged failure to achieve Outcome 5.3 proved to the requisite standard.

9. **Allegation 1.2: In or about 12 June 2019, at a function taking place after a lecture organised by SAHCA and attended by members and their guests, the Respondent made any or all of the statements set out below in circumstances in which such conduct amounted to a breach of one or more of Principles 2, 6 and 9 of the Principles:**

1.2.1. Telling Person A (a Muslim solicitor of Afghani origin) words to the effect that she was "wasting her time" practising in the field of human rights in the UK and/or she could return to Afghanistan to educate the Taliban on terrorism;

1.2.2 Stating to Person B words to the effect of:

1.2.2.1 "so you think you're Jewish" and/or
1.2.2.2 asking Person B if she was "playing the religion or race card";

1.2.3. Stating to and in the presence of various persons including Person B and Person C words to the effect that:

1.2.3.1 the definition of a successful woman is one who can spend her husband's money without having to think; and/or
1.2.3.2 the definition of a successful man is being able to afford such a women; and/or
1.2.3.3 asking if their male partners paid towards their lifestyles.

1.2.4. Stating to various persons including Person C (a person of Congolese heritage) words to the effect that:

1.2.4.1 Africans were never any good at business, nor will they be; and/or
1.2.4.2 that they (Africans) could never get it right; and/or
1.2.4.3 how Indians and Europeans made the Belgian Congolese civil.

Allegation 1.3: The conduct described at 1.2.1 and 1.2.2 and 1.2.4 above or any of them was alleged to be racially and/or ethnically and/or religiously motivated, but racial and/or ethnic and/or religious motivation was not a necessary ingredient to allegations 1.2.1, 1.2.2 and 1.2.4 including sub-paragraphs or any of them being found proved.

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

9.1 The Respondent was a member of SAHCA and held a role on the SAHCA Committee. On 12 June 2019, SAHCA hosted a lecture and thereafter a reception and networking event. The Respondent attended both. The attendees included solicitors and non-solicitor guests. During the course of the event, concerns about the Respondent's conduct at the event were raised with Person G who also held a role on the SAHCA Committee.

9.2 On 16 June 2019, an email of complaint was sent to SAHCA by Person C who had attended the event. She was the partner of Person G. The email included the following:

> *"Unfortunately, during the post lecture networking, the spirit of diversity, inclusion and even professionalism of [SAHCA] was made void by one of your members; Victor Stockinger. There were a large group of us (some of whom are included in this email), of which the majority are women and/or people of*

> *colour, who were very offended and appalled by Victor's sexism, racism and overall deplorable behaviour";* and
>
> *"These are just a few examples that I made sure to note and investigate further during the night, but there was widespread acceptance throughout the whole group that Victor's behaviour was incredibly offensive, bigoted, sexist, racist and just morally repugnant Personally speaking, I have never encounter [sic] such vitriolic views in one person before, and hope that I never have to again."*

An internal investigation was conducted by SAHCA during which the Respondent was asked to but did not provide a substantive response to the complaints.

9.3 Person C's evidence was that she had spoken to others towards the end of the event and discussed what had happened. She agreed to, and did, take notes of what she described as the key things which had happened during the event. She stated that these notes informed her emailed complaint. Person H, who was responsible for SAHCA's investigation, stated that she received six complaints from five individuals. The primary complaint email from Person C, copied to the other complainants, of 16 June 2019, was consistent with the allegations as set out in the Rule 12 Statement and the evidence provided by the various complainants who gave live evidence during the hearing.

Allegation 1.2.1: Statements to Person A

9.4 Person A was a legal executive who described herself as Muslim and as originating from Afghanistan. She had not met the Respondent prior to the event.

9.5 Following introductions, the Respondent asked Person A where she was from and what language she spoke. Person A told the Respondent she was from Afghanistan and spoke Dari/Farsi. In response the Respondent stated that she (Person A) was wrong and that she in fact spoke Tajik. Person A stated that she was certain that she knew what language she spoke. The Respondent thereafter said words to the effect that she (Person A) was wasting her time working in the field of human rights in the UK when she could return to Afghanistan and educate the Taliban on terrorism.

9.6 Person E was a female solicitor who attended the event and had not met the Respondent prior to the event. Person E confirmed in her evidence that she witnessed the statements described by Person A directly above. Person E's evidence was that the Respondent repeatedly interrupted Person A and would not accept what she was saying.

Allegation 1.2.2: Statements to Person B

9.7 Person B had not met the Respondent prior to the event and described herself as a junior female solicitor. During the event the Respondent introduced himself to Person B and told her that she had been sat diagonally in front of him during the lecture and he asked Person B if she knew how he was sure. Person B responded that it was because she had red hair. The Respondent asked Person B if she had an interest in

genetics and she replied that she did. The Respondent commented that she must have Irish or Celtic heritage because of her colouring.

9.8 Person B stated that she was Ashkenazi and that her sister had recently taken part in a genetic study which showed her to be 93% Ashkenazi Jewish. In response the Respondent used words to the effect of "so you think you're Jewish?" Person B responded "I don't think I am Jewish – I am Jewish". The Respondent then asked Person B if she was "playing the religion or race card" (or words to the effect). Person B described being shocked at being told that being Jewish was a "card" to play.

9.9 Person C was in attendance when the Respondent asked Person B if she was "playing the religion or race card". Person C described Person B as having been noticeably upset. Person C had also not met the Respondent prior to the event.

Allegation 1.2.3: Statements to Person B and Person C

9.10 Subsequently, the Respondent was alleged to have used words to the effect that the definition of a successful woman was one who could afford to spend anything she liked and the definition of a successful man was one who could afford such a woman. Person B told the Respondent that the statement was offensive and Person C told the Respondent that if that was a joke it was not funny at all. The Respondent allegedly responded by suggesting that the male partners of Persons B and C must fund their lifestyles.

9.11 The Respondent had been informed by Person B that she was a solicitor practising family law and by Person C that she was a director within a company. Person B described finding the comments offensive, sexist and misogynistic. Person C described the comments as sexist and offensive.

Allegation 1.2.4: statement to Person C

9.12 Person C described the Respondent asking her which languages she spoke, something he had not asked of Person B who was Caucasian. Person C felt this had been asked of her as one of "a handful of non-Caucasian attendees". Person C advised the Respondent that she spoke English, French, Gujarati and some Hindi. The Respondent disagreed that she spoke those languages in that order and said that she spoke English, Gujarati, Hindi then French last, and said that her French must not be very good. Person C explained that she spoke the languages as listed and that her father's family were originally from Zaire (a former Belgian colony) and that she spoke French at home.

9.13 Person C also described the Respondent as saying words to the effect that Africans were never any good at business, nor will they be, that they (Africans) could never get it right and how Indians and Europeans made the Belgian Congolese civil. Person C described feeling very upset and uncomfortable in raising anything at the time as she did not wish to make a scene. She described feeling that no one should be treated in such a racist, sexist and bigoted manner and that she felt victimised but too scared to say anything.

Allegation 1.3: racially and/or ethnically and/or religiously motivated comments

9.14 The Applicant's case was that the Respondent's conduct as set out above was racially and/or ethnically and/or religiously motivated. In allegations 1.2.1, 1.2.2 and 1.2.4 the Respondent was aware of the racial and ethnic background of Person A, Person B and Person C. It was submitted that he must therefore have been acting in a manner motivated by prejudice based on their race and/or ethnicity and/or religion when making the comments set out above. It was the Applicant's case that the Respondent knowingly and deliberately directed such conduct towards Person A, as a Muslim person of Afghani origin, Person B as a Jewish attendee at the event and Person C as a person of Congolese heritage at the event.

Breaches of the Principles

9.15 Principle 2 required solicitors to act with integrity. By making the statements set out at above, including those allegedly motivated by reason of race, religion and/or ethnicity it was alleged that the Respondent failed to act with integrity. His actions were alleged to amount to a failure to act with integrity (i.e. with moral soundness, rectitude and steady adherence to an ethical code). The Applicant relied upon the case of Wingate v SRA [2018] EWCA Civ 366.

9.16 It was submitted that a solicitor acting with integrity would not have spoken to attendees at a professional event in a way that the Respondent must have known was inappropriate and which was likely to cause offence and distress. The Respondent, as an experienced and senior advocate and solicitor, must have been aware of the requirement to act appropriately towards those attending the event and particularly as an experienced and senior solicitor and SAHCA Committee member in relation to people who were clearly junior to him in age and experience and who were or might perceive themselves to be the subjects of the racially, religiously and ethically motivated statements.

9.17 By acting in the manner described above the Respondent was alleged to have acted in a manner likely to undermine public confidence in the profession, including the confidence of others present, many of whom would have known that he was a solicitor. The Respondent was alleged thereby to have breached Principle 6.

9.18 Principle 9 required solicitors to run their business or carry out their role in a way that encouraged equality of opportunity and respect for diversity. The Respondent attended the SAHCA event in his capacity as a Committee member and was submitted to be acting within his role as a solicitor. By acting in the manner described it was alleged that the Respondent failed to carry out his role in a way that encouraged respect for diversity, in that he subjected attendees to conduct which was offensive and detrimental to them by reference to their race, ethnicity or religion. The Respondent was thereby alleged to have breached Principle 9.

The Respondent's Case

9.19 The allegation was denied. The Respondent made various overarching statements and submissions:

- No one who has subsequently complained mentioned anything on the evening in question;

- Each of the comments complained of had been taken out of context, and within context was innocuous and/or inoffensive and was justified as a comment the substance of which was accurate as a valid and reasonable opinion;

- The comments complained of were intentionally taken out of context, and there was bad faith behind the complaint;

- He had not used some of the specific words about which complaints were made, and while the topics had been discussed the reports of what he had said were (intentionally) inaccurate;

- The comments were made at a private function (albeit a function by and for lawyers);

- The Respondent submitted that the case Scottow v. Crown Prosecution Service [2020] EWHC 3421 (Admin), when applied to the private conversations complained of, confirmed that in the given context each complainant "has no right not to be offended";

- The Respondent had attended hundreds of such functions over the thirty years and there had never been any complaint against him, let alone of this type and let alone four complaints in one evening. The Respondent submitted this showed the statistical virtual impossibility of the complaints being genuine;

- He stated that it appeared all of the complainants were connected with Person G and he believed that Person G invited them to the function with the specific malicious purpose of subsequently making the complaints, and

- The complaint was orchestrated by Person G as part of his long-standing personal issues with the Respondent and was fatally compromised by bad faith.

Allegation 1.2.1: statements to Person A

9.20 The Respondent's evidence was that Person A became somewhat animated when he revealed that he understood the difference between Farsi and Dari, and the differences between those languages and the Pashto spoken in southern Afghanistan. He said that he explained to Person A that his exposure from his work in Afghanistan was almost exclusively to Pashto, but he had a limited exposure to Farsi through collaborative work with an academic of Iranian origin.

9.21 The Respondent stated that Person A was aware of the saying that "All Taliban are Pashtuns, but not all Pashtuns are Taliban" and that his contacts in Afghanistan were mostly Pashtun. He said that she also knew that it was widely known that British diplomats and United States Government peace negotiators were aware that the Taliban needed legal advice on human rights issues, good governance, and legal system management to govern those areas of Afghanistan under their control.

9.22 The Respondent's evidence was that he introduced this into the conversation by way of making polite conversation on a topic with which Person A was familiar. He considered this relevant to her discussion of her human rights related work in the U.K. The Respondent stated that he thought that there was scope for her doing valuable work through charitable legal services policy advice in Afghanistan as she understood western norms of human rights and spoke one or more of the main Afghan languages.

9.23 The Respondent's evidence was that Person A exhibited some of what he described as the considerable animosity and belligerence shown, in his view, by the Dari speakers from the north towards the Pashto speakers of the south of Afghanistan. The Respondent stated that she made patronising comments about the Pashtun and he considered her attitude to be distasteful but attributed her comments to her background. He stated that Person A became more belligerent at any suggestion that she, as a Dari speaker from the north, should assist Pashtuns in any way.

9.24 The Respondent denied telling Person A that "she spoke Tajik". He stated that Tajik was an ethnic group and not a language and that the majority of the Tajik ethnic group in Afghanistan speak Dari. His view was that Person A became very aggressive towards him at her apparent inability to direct this conversation and seemed "caught out" by the depth of his in-country knowledge. The Respondent's case was that the comments he made were not offensive per se and should be considered even less so when put in context.

Allegation 1.2.2: statements to Person B

9.25 The Respondent stated that his recollection of this conversation was that it concerned the genetic background to the red-headedness of Person B. This was another attempt at polite conversation. He stated that he mentioned that red-headedness was a dominant characteristic of northern Europeans, and that red-headedness was genetically a sub-set of another dominant hair colour.

9.26 As set out under the Applicant's case, Person B replied that she was "Jewish" rather than replying that her background (that is, her ancestors) were from a particular region, such as eastern Europe. The Respondent stated that it was she who self-identified through a religious description which she introduced into a conversation which had begun about the genetics of hair colour. The Respondent stated that he did not recall having said "so you think you're Jewish" and he denied having said that Person B was "playing the race or religion card".

Allegation 1.2.3: statements to Person B and Person C

9.27 The Respondent's evidence was that his comments in this conversation were in the context of discussing the prominent family law case of Young v Young. He stated that he attributed the quoted words, a phrase very well known in the United States, to the American actress Lana Turner. He stated that during the conversation with Person B and Person C he told them about the case of Michelle and Scott Young in the London divorce courts, which had some notoriety at the time. He said he mentioned that the phrase quoted from Lana Turner was applied to the conduct of Michelle Young.

9.28 The Respondent stated that he did not recall commenting that the male partners of Persons B and C must fund their lifestyles. He also stated that he had been mis-quoted by Person C. In any event, he did not accept that it was inappropriate to have quoted a famous American actress in the context of discussing English divorce proceedings when some of those involved in the case had observed that the gist of the quoted words was the approach exhibited in that litigation.

Allegation 1.2.4: statements to Person C

9.29 The Respondent stated that he was finishing writing an 800 page book on international commercial arbitration in Eastern and Southern Africa. The Respondent stated that Person C was not "of Congolese heritage if that means of sub-Saharan African ethnicity". He stated that she was a person of Indian ethnicity. This was said to be relevant to any discussion of the role of the Indian diaspora "imported" into East Africa during the past 150 years, which the Respondent stated was evidently the diaspora to which Person C's antecedents belonged.

9.30 The Respondent denied that he "disagreed" with Person C about the languages she spoke and her level of proficiency in each. He stated in his Answer that Person C did not speak any of the four major African languages spoken in the Democratic Republic of Congo.

9.31 The Respondent stated that his recollection of this discussion was that, once Person C had mentioned her connection with the region, he was keen to find out if she had any knowledge of the legal system of the Democratic Republic of Congo. This was because despite the very large population he stated that it had never had a stable legal system, and accordingly never had a stable economy. There was little information available about its legal history and he was keen to find out whether she could assist. He stated in his Answer that this was despite Indian traders having been "invited" into the country by the colonial power specifically for the purpose of setting up and developing trading networks. The Respondent said that specifically he was keen to know if Person C had any insight into the adaptation of the Belgian Code of Civil Procedure for use in the Democratic Republic of Congo at the time of independence, as this was relevant to that part of his arbitration book, and he said that materials on this were very scarce. He said he was disappointed that Person C seemed to have no interest in discussing the lecture and in his view had no understanding of the Democratic Republic of Congo, "let alone any knowledge of its legal system". He said that he had asked her several times, but she had no knowledge, "not a glimmer".

9.32 The Respondent stated that the words "Africans were never any good at business, nor will they be" were not his, and he denied making any personal comments using those words at the event. He stated that the words, however, described the sentiment of the colonial powers in pre-independence times, which was what prompted the various colonial powers in East Africa actively to attract merchants and traders from India. The Respondent stated that he suspected that the complainant (which he considered to be Person G ultimately) may have been at least vaguely aware of those issues, and distilled various things that said that evening, truncated the thoughts into a phrase of Person G's making, and advanced it with a negative spin on it. The Respondent noted in his Answer and during the hearing that Person C was of Indian and not African

ethnicity, and her claim to have been upset by purported comments about the business capabilities of Africans was not genuine.

9.33 The Respondent stated that the words "that they (Africans) could never get it right" were also not his words, and he denied making any personal comments using those words at that event. He also denied that he used words alleged about "how Indians and Europeans made the Belgian Congolese civil" but did make reference to the legal systems which were brought in. He made reference to Joseph Conrad's book "Heart of Darkness", which he stated that Person C had "never heard of, let alone read". He said that this book was widely held to be one of the best novellas of the 20th century. He stated that this lack of knowledge by Person C was in stark contrast to other people with whom he spoke that evening, and with the sort of people with whom he speaks at other such functions. He stated that he appreciated being able to exchange ideas on common themes and considered that no-one who subsequently complained seemed interested to engage in "polite conversation", let alone to discuss the lecture of the evening, or indeed to discuss any law-related topics.

9.34 The Respondent denied any breach of Principles 2, 6 or 9. In relation to Principle 9 specifically, the Respondent submitted that the comments he made were made at a private function (albeit a function by and for lawyers), and stated his attendance was not as part of his business. He submitted that accordingly Principle 9 did apply to this complaint. He further stated that he did not understand how any of the comments made could be made "in a way that encourages equality of opportunity and respect for diversity" and that he understood that element of Principle 9 to be directed to opportunities in the workplace. The comments complained of were not made in a workplace and accordingly he did not believe Principle 9 applied. The Respondent stated that he apologised if his interpretation was wrong.

Allegation 1.3: racially and/or ethnically and/or religiously motivated comments

9.35 The Respondent denied that the conversations were racially and/or ethnically and/or religiously motivated. He submitted that discussion of race, ethnicity and religion was not, per se, prohibited or illegal, even for a solicitor, especially in private conversation. His case was that his treatment of various topics had been improperly re-cast and de-contextualised by each complainant, which was a dishonesty by the complainants. He submitted that each of the people to whom the allegation related had improperly applied a "woke" perception to misrepresentations of their conversation topics, and added a negative spin to these "woke" perceptions which was enhanced by deliberate decontextualisation.

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

9.36 The Principles which it was alleged that the Respondent had breached were 2, 6 and 9 which related to acting with integrity, in a manner which upheld public trust in the Respondent and the provision of legal services and carrying out his role in a way that encouraged equality of opportunity and respect for diversity respectively.

9.37 As well as denying that he had said some of the words attributed to him, and contending those he did say were unobjectionable when placed in context and assessed fairly, the Respondent also submitted that the lecture and networking event

was a private function which took place outside the scope of his legal practice and role as a solicitor. The event was the Lord Slynn Memorial Lecture which was hosted by SAHCA, and a reception and networking event thereafter held at the Royal Courts of Justice. The event was open to invitees only. The Respondent was a SAHCA committee member and attended the lecture and subsequent reception. Given this context, the Tribunal accepted the Applicant's submission that the Respondent attended the event in his capacity as a solicitor. Accordingly, Principles 2, 6 and 9 were engaged as the definition of "practice" included in the Code, within which the Principles were set out, included activities undertaken in the individual's capacity as a solicitor.

9.38 In any event, the Tribunal noted that Principles 2 and 6 applied to activities falling outside legal practice by virtue of paragraph 5.1 of the notes on the Principles set out in the Code. The Tribunal also considered that the ethical standards of the profession, relevant to Principle 2 and the requirement to act with integrity, unambiguously extended to acting with respect for diversity, whether within practice or a solicitor's conduct outside practice.

9.39 The thrust of the Respondent's position, however, was that the comments which he acknowledged making were unobjectionable and had been deliberately decontextualised. He further submitted that in any event there was no right not to be offended.

9.40 The Respondent also contended that the complaints were not made in good faith and that Person G had orchestrated the complaints to the extent of having invited some of the attendees to the event for the purpose of making the complaints. The Tribunal found this contention to be far-fetched and unconvincing. Such a plan would be reliant on the Respondent duly obliging with conversational material about which complaints could be made. Person G's evidence had been straightforward and he stated that his relationship with the Respondent was no more challenging than he had with others. The Tribunal did not accept that he was motivated by any animosity towards the Respondent. There was no evidence of this. Having heard accounts of potentially serious complaints from multiple attendees at the event, the Tribunal agreed that Person G's position with SAHCA obliged him to assist those individuals in formalising their complaints so that they could be investigated.

9.41 The Tribunal considered each of the allegations in turn.

1.2.1 – statements to Person A

9.42 The Tribunal considered that the context of the conversation was relevant. It was at a SAHCA legal lecture, the Respondent was an experienced solicitor and Person A was a relatively young female legal executive, who described herself as originating from Afghanistan, who had been invited to the event.

9.43 Person A and the Respondent gave different accounts of the conversation between them. The Respondent denied telling Person A that "she spoke Tajik". The Respondent accepted that the discussion had included his view that Person A could do valuable work educating the Taliban. Person E also gave oral evidence to the Tribunal. She corroborated Person A's account of the conversation. The Tribunal

noted that the original emailed complaint of 16 June 2019 was consistent with the account provided by Person A and Person E in their later written statements and in their live evidence to the Tribunal.

9.44 In his oral evidence to the Tribunal the Respondent gave an account of a discussion touching on most of the elements relied upon by the Applicant that could have been perfectly reasonable. However, the Tribunal considered that it was more likely than not that the conversation had unfolded in the way described by Person A as corroborated by Person E. There was no evidence beyond the Respondent's assertion that either witness had any prior motive to fabricate or exaggerate a complaint. Neither had met the Respondent before the event. The Respondent's own evidence, and his cross examination of Person A and other complainants, displayed a dismissive condescension which the Tribunal felt was to some extent consistent with the conduct complained of and undermined the credibility of his denials and rationalisations.

9.45 The Tribunal accepted the evidence of Person A and Person E both of whom the Tribunal found to be credible witnesses. Person A's evidence was that she was shocked and offended by comments made by the Respondent. She readily acknowledged during questioning when she could not recall something. The Tribunal assessed her account of the exchange with the Respondent, and its effect, as genuine. As noted above, her evidence to the Tribunal included the same key elements which had been included within the complaint submitted shortly after the event. Person E's evidence was that the Respondent told Person A that, contrary to what she had said, she did not speak Farsi but that her language was Tajik. She described the Respondent's manner as loud and aggressive.

9.46 At the start of his conversation with Person A the Respondent had been made aware that she originated from Afghanistan and was told that she spoke Farsi. He contradicted her on this issue which was central to her ethnic identity. He made comments about her teaching the Taliban. The Respondent was correct in stating that the Taliban needed no teaching about terrorism, but the thrust of the allegation was made out. His manner became aggressive during their conversation. To continue to make such pointed comments in this context, bearing in mind his seniority in relation to Person A, was problematic. The Respondent chose to contradict Person A on matters intrinsically linked with her race and ethnicity, and made unbidden comments about Person A going to Afghanistan to teach the Taliban, in a way which was perceived by Person A and Person E as aggressive. The Tribunal had found that Person A was genuinely shocked and upset. The Tribunal found the comments to be rude, belittling and strange.

1.2.2 – statements to Person B

9.47 Person B was a female solicitor admitted to the Roll in 2016 who practised in family law.

9.48 Person B and the Respondent gave the same account of the beginning of their conversation. The Respondent opened the conversation by asking if Person B was interested in genetics after her red hair had been mentioned. The Respondent had denied saying "so you think you're Jewish" when told about the genetic study that showed Person B's sister, in Person B's words, to be "93% Ashkenazi Jewish".

9.49 The Tribunal found Person B a very compelling, credible and plausible witness and noted there was no apparent motive for her to invent the account or to seek to make trouble for the Respondent. The fact that she was very good friends with Person C, who also gave evidence about the exchange, and was therefore indirectly linked to Person G who the Respondent contended had orchestrated the complaints, did not appear to the Tribunal to undermine her evidence. Person B stated that the Respondent had said "so you think you're Jewish" and then asked if she was "playing the religion or race card". In her oral evidence she said that she was shocked at the words which was why she remembered them. Person C also gave evidence that she witnessed the Respondent use these words and that Person B was noticeably upset. An account which was consistent with the live evidence given by both witnesses was included in the original emailed complaint.

9.50 The Tribunal accepted the account of the conversation provided by Person B and Person C and considered that it was more likely than not to be accurate. When being cross examined by the Respondent during the hearing Person B objected that the Respondent was treating her in a manner similar to the way he had spoken to her and others at the event. The Tribunal agreed. Whilst the Tribunal recognised that the Respondent was not experienced in cross-examination and naturally wished to robustly challenge an account with which he disagreed, the questions put were often dismissive and patronising. The comments made to Person B at the meeting related to Person B's ethnicity and religion.

1.2.3 – statements to Person B and Person C

9.51 During his evidence, the Respondent again provided an account of the way in which a conversation covering the same themes and material could have been unproblematic. The Tribunal did not accept his evidence that this was how the conversation went.

9.52 Person C was the partner of Person G. She was not a lawyer and was employed as a director of procurement. The Tribunal found her evidence to be credible and her professed shock and offence to be genuine. As noted above, the Tribunal found Person B to be a very credible witness. The Tribunal accepted the consistent account of the conversation provided by both witnesses (which was also consistent with the original complaint). The Tribunal accepted the evidence from both witnesses that the Respondent did not attribute and identify the words he used (about a successful woman being one that could afford to spend anything she liked and a successful man being one who could afford such a woman) to an American actress. The Tribunal found that he also used the words alleged that their male partners must fund their lifestyles. The Tribunal found it more likely than not that the account provided by Person B and Person C was accurate. It was consistent with the type of comments complained of by other witnesses with no apparent motive to seek to create trouble for the Respondent.

1.2.4 – statements to Person C

9.53 The conversation relating specifically to Person C followed immediately from that also involving Person B (directly above). Person B and Person C were present throughout the entire exchange and gave consistent evidence about the conversation. The Tribunal accepted the account of the conversation provided by Person B and

Person C and found it was more likely than not to be accurate. This included the Respondent using the words alleged including words to the effect that:

- Africans were never any good at business, nor will they be;
- That they (Africans) could never get it right; and
- How Indians and Europeans made the Belgian Congolese civil.

9.54 In his evidence the Respondent had again provided an account of a discussion about matters relating to the legal system in the Democratic Republic of Congo and the history of that country and region which would have been unobjectionable. However, the Tribunal rejected his account of the conversation and preferred that provided by Person B and Person C. The Tribunal found that the Respondent's pleadings in which he noted that Person C was of Indian ethnicity rather than African "yet claimed to have been upset by purported comments about African business capabilities" betrayed a surprising lack of awareness that an individual may well be shocked and upset by what they perceive to be racist comments directed at those of another ethnicity. It was not any excuse that Person C was not of African ethnicity. She was entitled to be offended whatever her nationality or ethnicity, and it was the more likely that she would be offended as her heritage was from (what had been) Zaire.

9.55 The Tribunal also accepted the account of Person C, corroborated by Person B, that the Respondent had disagreed that she spoke the four languages she had mentioned in the order she listed them. In itself this was not necessarily particularly rude or offensive, but the Tribunal considered that, even on the Respondent's own account, it was consistent with the various accounts of a patronising and dismissive approach to the interactions which took no regard of the likely and reasonable sensitivities of the young women with whom he conversed at the event.

Allegation 1.3 – motivation

9.56 The Tribunal went on to consider whether the comments or any of them were racially, ethnically or religiously motivated as alleged. The Tribunal accepted the Respondent's submission that discussing matters of race, ethnicity or religion was not in itself inherently problematic. A conversation touching on these themes could not sensibly be described as being 'motivated' by racial, ethnic or religious considerations simply by virtue of the subject matter under discussion. For conduct to be aggravated by these factors the Tribunal considered that there must be something objectionable in the specific comments made or some specific reason why the very fact of the conversation was problematic.

9.57 The Respondent spoke with assurance on a wide range of topics, and in his evidence and his questioning of those who had made complaints about him, the Tribunal considered that he displayed an assertiveness, dismissiveness and belligerence which was consistent with the descriptions applied to his comments by Persons A, B, C and E. The Tribunal considered that the comments from the Respondent were likely to, and did, provoke and upset the young and ethnically and religiously diverse women with whom he spoke at the event, after which he sought to belittle their objections and to characterise them as examples of "wokeism", made in bad faith, at the behest of

another member of the SAHCA committee. The Tribunal rejected these submissions as self-serving rationalisations and noted they were consistent with the dismissiveness with which he questioned the young female complainants during the hearing. As set out above, the Tribunal had accepted the accounts of the conversations provided by those who had lodged the complaints.

9.58 The Respondent's conduct was at best belittling, insensitive and patronising. Focusing as it did on the race, ethnicity and/or religion of those to whom his variously dismissive, rude and/or aggressive comments were directed, the Tribunal accepted that the Respondent's conduct could be said to be 'motivated' by these factors as alleged. The Tribunal decided that it was so motivated, and accordingly found proved to the requisite standard that the Respondent's conduct outlined above in relation to allegations 1.2.1, 1.2.2 and 1.2.4 was racially and/or ethnically and/or religiously motivated.

9.59 The Tribunal did not accept the Respondent's argument that it was statistically impossible for there to be multiple complaints on one evening when there had been none in the many years he had been attending such events. The evidence put before the Tribunal was entirely sufficient to establish the fact that the complaints were in large measure accurate.

Alleged breaches of the Principles

9.60 The event was a formal function attended by lawyers and others by invitation. The complainants had stressed their unhappiness at such comments being directed to them at this type of event in particular. The Tribunal found, as noted above, that the nature of the event meant that the Principles were engaged.

9.61 Principle 9 required that solicitors run their business or carry out their role in a way that encourages equality of opportunity and respect for diversity. The Tribunal had found that the Respondent had made the comments alleged and that they included racially, ethnically and/or religiously motivated comments which were rude and at times aggressive and which had shocked and upset those with whom he conversed. The Tribunal considered that as an experienced solicitor, and SAHCA committee member, attending a SAHCA event, the Respondent was carrying out his role as a solicitor. He was only there because he was a solicitor. The Tribunal found that the conduct found proved plainly amounted to a breach of Principle 9 and that the requisite standard of proof was comfortably met. The dismissive, rude and/or aggressive comments related directly to the race, ethnicity and/or religion of the young female attendees at the event and did not display the respect for diversity required by Principle 9.

9.62 The Tribunal considered that the individual complainants, and the public at large, would have an expectation that solicitors attending a professional legal event would conduct themselves with a degree of professionalism and in a manner consistent with contemporary expectations of respect for diversity. Where a solicitor fails to do so, repeatedly, in particular where he is a much more senior experienced professional than those to whom his comments were directed, the Tribunal accepted the submission that the public's confidence in the profession would be detrimentally affected. The Tribunal was very mindful that robust, open discussion and freedom of

expression were, of course, important rights and principles valued by the profession and society generally. However, for the specific reasons set out above the Tribunal had found that the Respondent had made the comments that included racially, ethnically and/or religiously motivated comments which were rude and at times aggressive and which had caused considerable upset. The Tribunal found to the requisite standard that the Respondent's conduct had failed to maintain the trust placed by the public in him and in the provision of legal services in breach of Principle 6.

9.63 The Tribunal had regard to the test for conduct lacking integrity set out in the case of Wingate. It was held in that case that "Integrity connotes adherence to the ethical standards of one's own profession". As stated above, the Tribunal considered that the ethical standards of the profession unambiguously extended to acting with respect for diversity. This did not amount to "wokeism" or any prohibition on discussing controversial or challenging topics robustly; it required of solicitors at least a basic level of civility and respect for diversity. That the event was a formal legal function only heightened that requirement. The Tribunal found that the conduct found proved as set out above amounted to a clear failure to comply with those minimal ethical standards. The Tribunal found the breach of Principle 2 proved on the balance of probabilities.

10. **Allegation 1.4: Between August 2019 and September 2020, the Respondent failed to co-operate with the investigation conducted by and on behalf of the Applicant in that he:**

1.4.1 Provided inaccurate and/or misleading information to an officer of the Applicant which he knew or ought to have known was inaccurate and/or misleading in that he stated that he had applied for a stay in civil proceedings when he had not done so;

1.4.2 Provided inaccurate and/or misleading information to an officer of the Applicant which he knew or ought to have known was inaccurate and misleading in that he stated that he had appealed an order in civil proceedings when he had not done so;

1.4.3 Provided information to an officer of the Applicant which he knew or ought to have known was inaccurate and misleading in that he stated that

> ***"..The retired Metropolitan Police inspector who introduced me to [Client B] has been active in mediating a settlement with [Client B], and he has acknowledged developments as part of this. I have therefore responded to [Client B] through him…."***

when this was not correct and there was no such request for or communication about any mediation or settlement;

1.4.4 Failed to reply promptly or at all to requests for information made by or on behalf of the Applicant, including Notices served under Section 44B of the Solicitors Act 1974;

1.4.5 Failed to provide a complete response to requests for information made by or on behalf of the Applicant, including Notices served under Section 44B of the Solicitors Act 1974;

and by reason of the matters set out at 1.4.1 to 1.4.5 above or any of them breached one or more of Principles 2 and 7 of the Principles and/or failed to achieve one or more of Outcomes 10.6, 10.8 and 10.9 of the Code prior to 25 November 2019 and one or more of Principles 7.3 and 7.4 of the SRA Code of Conduct for Solicitors thereafter.

The Applicant's Case

10.1 The Applicant investigated the concerns raised by Clients A and B and SAHCA from August 2019 onwards. The particulars of the Respondent's alleged failure to co-operate with the Applicant are summarised below.

Allegation 1.4.1: provision of inaccurate and/or misleading information to the Applicant in relation to a stay of proceedings (Client B claim)

10.2 The Respondent sent an email dated 11 October 2019 which stated that he had "…appealed, as part of which I have sought a Stay (as is the usual course)" indicating that that the Respondent had lodged an appeal and sought a stay of the Order (requiring him to pay costs to Client B).

10.3 Following requests for the appeal documents and for confirmation of the stay the Respondent provided a copy of the Notice of Appeal and Grounds of Appeal on 13 January 2020. They did not include an application for a stay. The investigating officer requested clarification from the Respondent and contacted Wandsworth County Court. On 16 January 2020 Wandsworth County Court confirmed that no stay had been applied for and that there had been no movement on the Court file since March 2019.

10.4 The Respondent's email dated 11 October 2019 was therefore incorrect and misleading. By indicating that a stay had been applied for, the Respondent was said to have implied that payment of the sum due under the costs Order would no longer be due pending resolution of the appeal and that he was therefore not in breach of the Order.

10.5 The Respondent had accepted in correspondence that he had not in fact applied for a stay as he had indicated to the Applicant's investigating officer.

Allegation 1.4.2: reckless and/or knowing provision of misleading information to the Applicant in relation to appeal of proceedings (Client A claim)

10.6 The Respondent wrote to the Applicant by letter dated 28 September 2020 and stated in relation to the Client A claim: "An appeal has been lodged against an order dated 9 February 2017." The Respondent did not provide the Applicant with copies of any appeal documentation, stating that "documents not to hand – being searched for in archive (no access at present)" and confirming that there was "no known order for stay".

10.7 The statement that the Respondent had applied for an appeal was alleged to be incorrect and misleading. Client A's solicitor, Ms Cobb, stated in her evidence that no appeal against the Order was lodged and/or served. The Central London County Court has also confirmed by email that no appeal had been lodged.

Allegation 1.4.3: provision of misleading information to the Applicant in relation to communication as to mediation/settlement of claim (Client B claim)

10.8 During the Applicant's investigation of the report made by Client B, the Respondent stated by email dated 11 October 2019 that:

> *"… The retired Metropolitan Police inspector who introduced me to [Client B] has been active in mediating a settlement with [Client B], and he has acknowledged developments as part of this. I have therefore responded to [Client B] through him…"*

10.9 During the course of the Applicant's investigation the retired Metropolitan Police Inspector was identified as Person I. Person I confirmed that he introduced the Respondent to Client B following which the Respondent acted on behalf of Client B in the litigation which led to the Respondent's claim for unpaid fees. Person I's evidence in his witness statement was that:

- He had not been contacted by the Respondent in relation to settlement, mediation or payment of the costs Order;
- Prior to the date of his witness statement, the Respondent had not at that time contacted Person I since 4 May 2018, and such communication was in relation to a matter unrelated to the costs Order;
- He had not been active or in any way involved with mediating a settlement with Client B; and
- The Respondent has not communicated/ responded to Client B through him.

10.10 During his live evidence Person I made some amendments to the position he had previously outlined as summarised directly above. Person I gave evidence at the end of the first day of the hearing and the beginning of the second day. On the first day Person I stated that he recalled that the Respondent had been in touch with him once "last summer" about the costs and, having contacted Client B, he (Person I) told the Respondent to contact Client B's solicitors about it. This was more recent than the 4 May 2018 position set out in his witness statement. On the second day Person I said that he may have misspoken the previous day, and that he recalled that his witness statement was correct when signed on 21 January 2021 and sent to the Applicant's solicitors but that on the following day he had received an email from the Respondent. Person I stated that he did not respond, but that the Respondent sent a second email (which Person I also ignored) after which he received a phone call from the Respondent. His recollection was that the resulting discussion probably happened in February of 2021.

10.11 In response to a question from Ms Bruce, Person I confirmed that he had not spoken to the Respondent between 4 May 2018 and the date of his written statement, or in the run up to the hearing. In response to a later question from the Respondent about whether Person I had spoken with him by telephone a number of times since May 2018, Person I stated that if they had, it was on matters unrelated to the costs Order or Client B. Person I reiterated that all he had said at any stage about the costs Order and related matters was that the Respondent should contact Client B's new solicitors.

10.12 Person I also stated that having been asked about it by the Respondent during cross-examination, he had a vague memory that a promise of a bronze statue may have featured in the Respondent's agreed remuneration.

10.13 Client B provided a witness statement and gave oral evidence during which he confirmed that the Respondent did not seek to mediate, pay or otherwise settle the outstanding costs Order until the Respondent sent a letter to client B's solicitor on 21 December 2020 seeking client account details.

10.14 As such, even allowing for the amendments to Person I's position, the Respondent's statement was alleged to be incorrect and misleading. It was said to be to the Respondent's benefit to create the false impression that he was taking steps to enable the debt imposed by the costs Order to be settled. It was submitted that the Tribunal could safely infer that the Respondent must have been aware that he was not involved in mediating settlement of the costs order, whether through Person I or at all, and therefore made the misleading statement knowing that it was incorrect.

Allegation 1.4.4: failure to reply promptly or at all

10.15 The Respondent was alleged to have repeatedly failed to reply promptly or at all to communications made by or on behalf of the Applicant during its investigations, and in doing so to have delayed and hampered those investigations.

10.16 The Rule 12 Statement included various examples relied upon by the Applicant:

- In relation to Client B, the investigating officer chased the Respondent on 17 October 2019, 28 October 2019 and 6 November 2019, asking for copies of the appeal documents he had referred to in his email dated 11 October 2019. The Respondent did not respond.

- Also in relation to Client B, the investigating officer emailed the Respondent on 16 January 2020 allowing him further time to respond, asking him to provide a full response to the formal Production Notice which had been served together with copies of any pleadings filed. No response was received.

- The investigating officer sent a further email to the Respondent on 23 January 2020 (also in relation to Client B), following a telephone discussion with the Court on 16 January 2020. The email confirmed no stay had been sought and no further documents had been lodged in respect of any purported appeal since 25 June 2019. The email asked the Respondent to respond, but no response was received.

- A further email was sent to the Respondent on 4 March 2020, reminding him that he had not complied in full with the Production Notice in relation to Client B and had not provided any details of his actions on the matter after 13 January 2020. The Respondent did not respond.

- In relation to the report from SAHCA, the Applicant wrote to the Respondent on 25 and 30 March 2020 to advise him of the allegations and sending him copies of the available witness statements for his comments. No response was received until the Respondent's letters of 28 September 2020 which were said to amount to a substantially incomplete response (as set out in more detail below).

Allegation 1.4.5: failure to provide a complete response

Client B

10.17 On 18 December 2019, in furtherance of the investigation of the complaint from Client B, the Respondent was served with a Production Notice as stated above. This required the Respondent to provide the following documents and information by 6 January 2020:

- Whether the summarily assessed costs in the Order dated 9 January 2019 had been paid.

- If payment had been made: (a) the amount paid; (b) when the payment was made; and (c) how the payment was made.

- Whether an appeal of the Order had been lodged.

- If an appeal had been lodged: (a) copies of all pleading and orders in the appeal; (b) the current position of the appeal; and (c) a copy of any order for a stay of the appeal.

10.18 The Respondent failed to fully comply with the Production Notice and was chased by emails on 13 and 16 January 2020 requiring a response by 20 January 2020. By email dated 13 January 2020 the Respondent wrote:

> *"I must apologise for the late response to your production order, and to substantively reply to your earlier enquiry regarding the Form N161 Appellant's Notice. The lateness is my fault alone, due to my being involved in litigation preparation for a fatal accident case based overseas."*

The email went on:

> *"Attached please find a scanned copy of the Form N161 Appellant's Notice for the appeal against the first instance judgment in the [Client B] costs recovery claim that I brought... Again, my apologies for the delay in substantive response. I would be grateful for a further week or so to attend to the court file inspection and/or making the application to amend."*

10.19 By email dated 4 March 2020, as no response to the Production Notice had been received, the Respondent was notified that the Applicant was considering further action. The Respondent's subsequent letter dated 28 September 2020 included the following in relation to Client B:

> *"I am unsure of what further information is required on this. The status of the appeal is that, as far as I know, it is pending, awaiting my skeleton reply on the finalised transcript of judgment. The S.R.A. has my Form N161 Appellant's Notice. Please advise if further information is required, and if so, what further information."*

Client A

10.20 On 21 May 2020 the Respondent was served with a further Production Notice in relation to the investigation of Client A's complaint. This required the Respondent to provide, within 14 days, the following information and documentation:

- Whether the Respondent had lodged an appeal against the Order dated 9 February 2017.

- If an appeal had been lodged, copies of (a) all pleadings and orders in the appeal; (b) any order for a stay of the appeal; and (c) a statement of the current position of the appeal.

- A description of all other outstanding judgments, statutory demands and petitions made against the Respondent or the firm.

- A copy of all orders and pleadings for each of the outstanding matters.

- Copies of the Respondent's last three client account reconciliation statements with supporting documents as follows: (a) client matter listing; (b) bank statements; and (c) cash book.

10.21 The Respondent did not substantively respond to this Production Notice until 28 September 2020 (over 3 months after the response was due). The Applicant's case was that the response was, in any event, incomplete. In particular, the Respondent failed to provide copies of pleadings and orders in the appeal, stating that they were not to hand and were being searched for in archive, and all other orders and pleadings in the claim. The Respondent also stated that his firm did not hold client money and had no client account and could not therefore provide the documentation requested in support of client account reconciliation.

10.22 The Respondent's letter of 28 September 2020 included the following further response in relation to Client A:

> *"I am unsure of what further information is required on this. The status of the appeal is that, as far as I know, is also that it is pending, awaiting my skeleton reply on the finalised transcript of judgment. Please advise if further information is required, and if so, what further information. I await your advice as to the detail of the complaint by Carbon Law Partners, specifically*

with regard to their explanation of why they have rejected the £5,500 + £200 payments several times and then served me with a statutory demand."

The SAHCA complaint

10.23 In response to the complaint from SAHCA, the Respondent was alleged to have failed to provide a substantive response. His letter dated 28 September 2020 included a statement that he proposed:

> *"to write an extended reply limited to addressing this 'New Section C' only. Time prevents me from addressing this adequately in the short time allowed."*

The summary response did not include any admission or denial of the alleged statements, but included the following statement:

> *"The summary response, however, is that this matter arose from an intense personality clash between [Person G] relating to my view on his chairmanship of the Executive Committee suffering from gross mismanagement of S.A.H.C.A. [Person G] would be ultimately responsible for this gross management. Sad to say, but sis [sic] complaint is an attempt to cover his tracks."*

10.24 In the same letter dated 28 September 2020 the Respondent stated:

- He did not have access to his office building during 'lockdown';
- He had isolated during August and September 2020, working on a book which he was writing; and
- "*I also bring to the S.R.A.'s attention that the publisher was expecting the manuscript for the arbitration book some time ago. I am being pressed on this because of two particular Privy Council cases due to be heard early next year, for which the appearance of the book will be relevant. Accordingly, I am having to balance providing full disclosure and explanation to my regulator, with fulfilling contractual obligations to the publisher."*

Breach of the Principles

10.25 By failing to co-operate with the Applicant, including by way of recklessly or knowingly making misleading statements, failing to respond, and providing late or incomplete responses, it was alleged that the Respondent failed to act with integrity in breach of Principle 2. It was submitted that a solicitor acting with integrity would have promptly and properly engaged with and cooperated with the Applicant's investigation of the three reports and would have provided complete and timely responses, ensured that the information provided to the Applicant was accurate, and not provided untrue or inaccurate information to the Applicant in order to assuage regulatory concerns which were under investigation. It was alleged that in failing to do so, the Respondent prioritised his own interests over his duty to co-operate with the Applicant and compromised the Applicant's ability to complete its investigations

in a timely manner. This also required the Applicant to conduct additional investigations in order to verify information provided by the Respondent.

10.26 Principle 7 required solicitors to comply with their legal and regulatory obligations and deal with their regulators and ombudsman in an open, timely and co-operative manner. It was alleged that the conduct described above did not amount t- co-operating adequately with the Applicant and that the Respondent had thereby breached Principle 7.

10.27 The Respondent was alleged to have failed to achieve outcomes 10.6, 10.8 and 10.9 of the Code.

- Outcome 10.6 required that a solicitor must co-operate fully with the Applicant and the Legal Ombudsman at all times including in relation to any investigation about a claim for redress.

- Outcome 10.8 required a solicitor to comply promptly with any written notice from the Applicant.

- Outcome 10.9 stated that pursuant to a notice under Outcome 10.8 a solicitor was required to:
    - produce for inspection by the Applicant documents held by them, or held under their control;
    - provide all information and explanations requested; and
    - comply with all requests from the Applicant as to the form in which they produce any documents they hold electronically, and for photocopies of any documents to take away; in connection with their practice or in connection with any trust of which they are, or formerly were, a trustee.

10.28 The Rule 12 Statement stated that the alleged breaches summarised above related to conduct prior to 25 November 2019. Conduct from that date onward was submitted to have breached "Principles 7.3 and 7.4 of the SRA Code of Conduct for Solicitors".

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

10.29 The Respondent denied that he failed to co-operate with the Applicant's investigation. He admitted that he was "tardy" in making some replies because: (1) for the early part of the time in question he was not in the country for most of the time, and (2) from 24 March 2020 onwards, he was "locked down" away from London. In both cases, he stated that he did not have remote electronic access, or physical access, to the archive files to promptly provide background information to the Applicant.

10.30 He stated in his Answer that throughout the whole of the given time period he was under contract to deliver the manuscript for what he described as a major specialist work on international commercial arbitration, for which he had scaled down his legal practice work, and for which he had additionally isolated himself professionally and geographically to develop the work. This work on the manuscript had delayed his responses.

10.31 The Respondent stated that in some cases the Applicant asked for information it already had. For example, the Production Notice sent at the start of the March 2020 Covid-19 emergency lockdown, asked for production of his "client account ledgers" when the Applicant knew that he did not hold client account monies (as stated on his practising certificate application form each year). He also queried the relevance of client account monies when the issue with the two relevant clients was that neither had ever paid him any money whatsoever. His reply to the Applicant accurately stated that he had no client account ledgers to produce and he stated that this appeared to have escalated into a complaint that he had "failed to co-operate".

Allegation 1.4.1: provision of inaccurate and/or misleading information to the Applicant in relation to a stay of proceedings (Client B claim)

10.32 The Respondent accepted that he might have provided inaccurate information about having applied for a stay. His evidence was that he thought he had done so, as was his usual practice. He stated in his Answer that he had been unable to view the Court case file to confirm what was held on it as the Courts had either been closed, or on limited work routine, since March 2020. He stated that if he had given inaccurate information the error was his and he apologised.

10.33 He stated that in any event, an application for a stay was peripheral to the matter of payment of costs under the given circumstances. His belief was that the former clients owed him more than he owed them, and that he was entitled to impose a lien on the costs owed (as set out above). He stated in his Answer that the costs ordered had been paid, albeit well beyond the 14 day deadline.

Allegation 1.4.2: reckless and/or knowing provision of misleading information to the Applicant in relation to appeal of proceedings (Client A claim)

10.34 The Respondent again accepted that he might have provided inaccurate information that he had appealed the relevant order. His evidence was, again, that he thought he had done so, because that was his recollection, in the absence of access at the time to the archive files. The Respondent stated that he may have incorrectly recalled appealing the order rather than pressing for a set-off with Client A (as set out in his letter of 13 March 2017). He apologised if the information he provided was inaccurate.

Allegation 1.4.3: provision of misleading information to the Applicant in relation to communication as to mediation/settlement of claim (Client B claim)

10.35 The Respondent denied this element of the allegation. He stated that he had worked with the former Metropolitan Police inspector ("Person I") on another matter, overseas, relating to a fraud on a multi-jurisdictional bank syndicate. The Respondent's evidence was that he had asked Person I several times during the time since the costs Order to contact Client B to mediate a settlement, and Person I had from time-to-time given feedback which had proved to be unhelpful.

Allegation 1.4.4: failure to reply promptly or at all

10.36 The Respondent noted that the Production Notice sent after the commencement of the first Covid-19 national lockdown requested his client account ledgers and that he replied that he did not hold client account money, and so did not keep a client account ledger. As noted above, he also stated in his reply that this should have been evident to the Applicant.

10.37 The Respondent admitted being late providing case file information but stated this was due to extenuating circumstances. Firstly, part of the delay was because he was out of the country at certain times, due to the Covid-19 emergency lockdown he could not access hard copy archive files and he had no remote access to archived electronic files, and due to the persistent pressure to finish the arbitration law manuscript. He stated that when he got access to the hard copy files and offered to send a copy to the Applicant he was told he should not send a hard copy. He subsequently obtained and provided an electronic copy of what was available.

10.38 Secondly, he stated that it was not made clear whether the Applicant sought the case files for the costs claims (the Respondent suing the Clients A and B for fees), or the main case work files for the cases that generated the fees for which he later sued. He stated he was not minded to send unnecessary paperwork to the Applicant. He requested clarification from the Applicant about what, if any, more was required. He stated that most of what was in the files was irrelevant to the complaints of Client A and Client B. He also noted that neither client was a client of his at the time of the complaints (or for more than six years prior to them).

10.39 The Respondent stated that his understanding was that when the solicitors acting for Client A and Client B made their complaints to the Applicant they should have provided a full explanation as to the background of the complaint (which he stated neither did). He stated that they should have provided copies of the case files which the Applicant instead later sought from him for reasons he said he did not understand. He stated that the solicitors for Client A had failed to state in their complaint that they had rejected payment of costs made by the Respondent on multiple occasions and had not addressed what he referred to as the set-off issue against their client.

Allegation 1.4.5: failure to provide a complete response

10.40 The Respondent's case as summarised above also included his response to allegation 1.4.5. He repeated that he was unclear what additional failure there was to provide a complete response and stated he would promptly remedy this if the position was clarified.

Breaches of the Principles

10.41 The Respondent denied that he had breached Principle 2, including where he had made factual admissions as set out above. The Respondent also stated that his on-going primary requirement was to ensure that he acted in the best interests his clients with continuity for their work despite the restrictions and considerable additional administrative work required by the Covid-19 emergency lockdown restrictions. He submitted that in the given circumstances his actions did not lack integrity. He also

denied that he had breached Outcomes 10.6, 10.8 and 10.9 of the Code (and Principles 7.3 and 7.4) for the same reasons.

10.42 He accepted that he "may have appeared to have been tardy in complying fully with the requirements of Principle 7". The context for this, including the substantial restrictions of the Covid-19 emergency lockdown (which prevented access to his archive files), the lack of clarity and/or purpose in some of the requests, and failure by the complainants as solicitors to provide information subsequently requested from him, as well as and personal circumstances (including book writing) were summarised above.

10.43 In relation to the SAHCA complaint, the Respondent stated that one significant source of delay was the research of primary source material required for the response letter running to over a hundred pages he produced to put the various conversations complained of into context. He stated that bare written denials were plainly inadequate for the Applicant and during 'lockdown' he did not have access to hard copy sources of information, nor to electronic databases, nor to library resources, from which to carry out the research.

The Tribunal's Decision

Allegation 1.4.1: provision of inaccurate and/or misleading information to the Applicant in relation to a stay of proceedings (Client B claim)

10.44 The Tribunal had been referred to the Respondent's email of 11 October 2019 in which he had stated that he sought a stay alongside his appeal against the Order requiring him to pay costs to Client B. The Tribunal was also referred to his Appellant's Notice in which the box indicating that he sought a stay was not ticked. Ms George gave oral evidence and exhibited her contemporaneous note of a conversation she had with an officer at Wandsworth County Court on 16 January 2020. The note indicated she was informed that no documents had been received by the Court since the Respondent's Grounds of Appeal had been lodged. The Respondent had accepted in his evidence that he may have provided inaccurate information in this regard, but that it had been his genuine recollection at the time. The Tribunal determined that it was more likely than not that the Respondent had not applied for a stay and that the statement he had made to the contrary was inaccurate and misleading.

10.45 Whilst acknowledging that he may have provided inaccurate information, the Respondent denied the alleged breaches of Principles 2 and 7 and Outcomes 10.6, 10.8 and 10.9 of the Code.

10.46 The Tribunal accepted that during the early part of the relevant period the Respondent was out of the country and may have had very limited if any access to the relevant paperwork. The Tribunal also accepted that the impact of Covid restrictions may well have had an impact on the Respondent's timely access to hard copy documents. The Tribunal found the Respondent's evidence that this had been his recollection to be plausible. Whilst he had described the two cases, those involving Clients A and B, as exceptional and it was clear from the content and manner of the Respondent's evidence about them that he still felt greatly aggrieved and the cases would be likely

to be memorable, the Tribunal considered that it may be plausible that having appealed the Respondent genuinely, but wrongly, recalled that he had also applied for a stay. The Tribunal did not consider there was evidence before it to prove on the balance of probabilities that the Respondent knew that the information he provided in his email about having applied for a stay was untrue.

10.47 The Tribunal applied the test for conduct lacking integrity in Wingate. Solicitors are required to be scrupulously accurate. Information provided to the regulator about court proceedings in the context of an alleged failure to comply with a Court Order was a case where accuracy was particularly important. However, given the finding that the Respondent was not aware that his statement was inaccurate, and the reminder in Wingate that solicitors were not required to be "paragons of virtue", the Tribunal did not consider that the threshold for conduct lacking integrity had been met. The allegation that his conduct in stating he had applied for a stay alongside his appeal lacked integrity was found not proved.

10.48 However, the Tribunal considered that the alleged breach of Principle 7 was proved to the requisite standard. Principle 7 required the Respondent to cooperate with the Applicant in an open and cooperative manner. Whilst his inaccurate statement was held not to lack integrity, the Tribunal considered that the Respondent's failure to check the position, or qualify his statement to reflect his lack of access to the relevant documents, which led to the Applicant being presented with a firm and erroneous assertion on a matter which was under investigating, fell below the conduct required of a solicitor by Principle 7. The Respondent had raised points in his defence which may be relevant to mitigation, but the Tribunal found that the breach of Principle 7 was proved on the balance of probabilities.

10.49 Given these findings, and for the same reasons, the Tribunal found to the requisite standard that the Respondent had failed to achieve Outcome 10.6 as alleged. This outcome required full cooperation with the Applicant and the provision of inaccurate information on a simple and verifiable factual matter amounted to a failure to provide it.

Allegation 1.4.2: reckless and/or knowing provision of misleading information to the Applicant in relation to appeal of proceedings (Client A claim)

10.50 The Tribunal had been referred to the Respondent's letter of 28 September 2020 in which he stated that he had lodged an appeal against the Order that he pay costs to Client A. Ms Cobb, the solicitor for Client A, had given evidence that no appeal was served. The Tribunal found Ms Cobb to be a credible and transparent witness who gave straightforward evidence and sought to assist the Tribunal. The Tribunal was also referred to an email from an officer of the Central London County Court who stated that since the Order awarding costs to Client A was made on 9 February 2017 there had been no further action, including any appeal, on the case. The Tribunal found that it was more likely than not that the Respondent had not appealed the Order.

10.51 The Respondent had again accepted in his evidence that he may have provided inaccurate information, but stated that he had replied to the best of his recollection. The surrounding circumstances which he stated contributed to this apparent mistake have been set out above and are not repeated.

10.52 The Tribunal's found the Respondent's position in relation to wrongly stating he had submitted an appeal to be much less plausible than his position under the previous allegation about wrongly recalling that he had also applied for a stay when appealing. The Respondent had said in his evidence that the two cases were the only disputes of this type with former clients in his professional experience. He clearly still felt aggrieved and considered he had been unfairly denied payment of a significant amount of fees and/or payment in kind which he considered had been agreed. The Tribunal accepted that the Respondent was a busy sole practitioner with many commitments who had been out of the country and 'locked down' during much of the relevant period. However, as an experienced and intelligent practitioner, which the Respondent evidently was, the Tribunal did not find it credible that he could have made such a mistake recalling a fundamental detail (whether he appealed) a memorable order (costs being awarded against him when he sought to obtain payment of his legal fees) in a case he described as exceptional.

10.53 The Tribunal found much of the Respondent's evidence on the whole to be seeking to be helpful. However, at various times in his evidence and his correspondence he gave the impression of finding such regulatory matters somewhat beneath him or at best of having given them insufficient priority. His response of 28 September 2020 confirming that an appeal had been lodged, contained within a seven page letter to the Applicant's FIO, appeared designed to defuse the situation in which he found himself. The Tribunal found it more likely than not that the Respondent had made the statement without checking, which was obvious, and also without genuine belief in its accuracy; the Tribunal not considering such genuine belief to be credible in the circumstances. Applying the test for conduct lacking integrity in Wingate, the Tribunal found proved on the balance of probabilities that providing such an inaccurate response, without genuine belief in its accuracy, to the Applicant's investigating officer in a formal investigation by his regulator, was conduct which lacked integrity.

10.54 However, the Tribunal found that the alleged breach of Principle 2 was not proved as it was no longer in force at the date of the Respondent's letter (28 September 2020). The replacement provision for conduct lacking integrity, Principle 5 which took effect from 25 November 2019, was not pleaded by the Applicant and accordingly the Tribunal made no finding that it had been breached. Principle 7 and Outcome 10.6 were similarly not in force at the date of the Respondent's letter.

10.55 The Applicant had alleged breaches of what were described in the Rule 12 Statement as "one or more of Principles 7.3 and 7.4 of the SRA Code of Conduct" for acts taking place on or after 25 November 2019. The Tribunal considered that it was clear from the Rule 12 Statement that this reference was intended to be to paragraphs 7.3 and 7.4 of the Code of Conduct for Solicitors which took effect from 25 November 2019. These paragraphs stated:

> *"7.3 You cooperate with the SRA, other regulators, ombudsmen, and those bodies with a role overseeing and supervising the delivery of, or investigating concerns in relation to, legal services.*
>
> *7.4 You respond promptly to the SRA and:*

(a) provide full and accurate explanations, information and documents in response to any request or requirement; and

(b) ensure that relevant information which is held by you, or by third parties carrying out functions on your behalf which are critical to the delivery of your legal services, is available for inspection by the SRA.

10.56 The Tribunal was satisfied that the findings set out above in relation to the Respondent's cooperation with the Applicant amounted to a clear breach of these provisions. Accordingly, the Tribunal found the alleged breaches of paragraphs 7.3 and 7.4 of the Code of Conduct for Solicitors which took effect from 25 November 2019 to be proved to the requisite standard.

Allegation 1.4.3: provision of misleading information to the Applicant in relation to communication as to mediation/settlement of claim (Client B claim)

10.57 The key element of the Respondent's email of 11 October 2019, on which this allegation was based, was the assertion that Person I had been "active in mediating a settlement" with Client B.

10.58 Person I's evidence was somewhat unpersuasive. His evidence had run from the end of the first day of the hearing to the morning of the second day and had changed overnight in a significant way. Given that the issue on which his position changed was whether or not he had spoken to the Respondent, and when, the Tribunal considered that this undermined the credibility of Person I's evidence generally and it was afforded very little weight. Person I's revised live evidence indicated that there had been some degree of contact with the Respondent beyond the dates indicated by the Applicant, and that the costs relating to Client A were discussed to a limited extent. Person I remained consistent that little detail had been discussed and that he had not been active in mediating a settlement. Person I maintained under questioning that he had simply referred the Respondent to Client A's solicitors.

10.59 Client B's evidence was that he had asked Person I to contact the Respondent about payment of the costs due as Client B, and his solicitors had had no success progressing matters. Client B's evidence was that he understood Person I had had no response and that in any event, Person I was not involved in trying to resolve the matter.

10.60 The Respondent's own evidence was that the responses he said that he received from Person I were unhelpful. The Respondent did not put forward as part of his own case any terms which he said he had put forward for Client B's consideration or any proposals for settlement he was making as part of the active mediation of a settlement he claimed was underway via Person I. The Tribunal found that the communication with Client B via Person I was cursory at best. The was no evidence, even from the Respondent, that there was any engagement between the parties nor any meaningful effort to reach a settlement through mediation. The Respondent said nothing in his evidence beyond, effectively, that he sought to open a channel of communication through Person I and was rebuffed. Why this was necessary or appropriate when Client B had engaged new solicitors who sought to correspond with the Respondent

was not made clear by the Respondent. In any event, the Tribunal found that, at best, the Respondent sought to open a channel of communication via Person I which may well have been with a view to reaching a settlement. However, the Tribunal found that the Respondent's efforts did not result in settlement with Client B being explored. Person I could not accurately be described as actively mediating a settlement. The very limited conveying of a message to Client B and his negative response (which it appeared likely was all that had occurred) did not begin to approach the description applied by the Respondent in his correspondence with the Applicant. The Tribunal found proved to the requisite standard that the Respondent's statement had been inaccurate and misleading. The Tribunal also found that the Respondent must have known this to be the case. It was inconceivable that the degree of detail and specificity in the statement could be the result of a mistake or 'finessing' the position to his own advantage; it was a clear misrepresentation of the true position.

10.61 Applying the test from Wingate the Tribunal found that making the statement that Person I had been active in mediating a settlement when this was not accurate, and the Respondent could not have genuinely believed it was accurate, amounted to conduct lacking integrity. Solicitors were obliged to be scrupulously accurate and whilst inadvertent mistakes were inevitable sometimes, the Tribunal found that the Respondent's statement was not the result of any such error and was, at best, an exaggeration of the true position to such an extent that it was misleading. Such exaggeration, to the point of material inaccuracy in response to an enquiry from his regulator, amounted to a failure to adhere to the minimum necessary ethical standards of the profession. The Tribunal found the breach of Principle 2 proved on the balance of probabilities.

10.62 The conduct found proved involved the making of a misleading statement to the Applicant and the Tribunal accordingly also found proved to the requisite standard that his conduct had breached Principle 7. The Tribunal similarly found proved to the requisite standard that the Respondent had failed to achieve Outcome 10.6 which required full cooperation with any investigation by the Applicant; a materially misleading statement in the circumstances summarised above could not amount to full cooperation.

Allegation 1.4.4: failure to reply promptly or at all

10.63 The Respondent admitted that he had been late in responding to the Production Notices and other requests for information and documents served by the Respondent. He set out various extenuating circumstances including being overseas for an extended period, the limitations associated with the national Covid 19 'lockdown', other commitments and what he considered to be ambiguity in the requests.

10.64 Ms George's evidence, during the hearing and also as set out in her investigatory report, was that the Respondent had asked for and received numerous extensions of time in which to respond. Ms George had produced a schedule of her requests and the delays and lack of responses which ran from August 2019 to October 2020. The Tribunal had been referred to the documents relied upon by the Applicant and accepted the chronology outlined. The Tribunal acknowledged the surrounding circumstances outlined by the Respondent would have had some impact on his ability to respond promptly but did not accept that they provided an adequate explanation for

the repeated and extended delays in his responses. The first national Covid 19 'lockdown' ended in June 2020 and responding fully to his regulator's communications should have been a priority from then if the restrictions had hindered his ability to do so before. There was no indication that this was the case.

10.65 The Respondent had stated that the Applicant had asked for certain information already known to it. The Tribunal found this statement was indicative of the dismissive approach with which the Respondent approached many of the Applicant's requests. That the form submitted for the annual renewal of his practising certificate may have indicated that his firm had no client account and did not handle client money did not absolve the Respondent of his obligation to respond to a direct question from an FIO when one was put to him. Whilst the duplication may be somewhat frustrating, it was no adequate answer to a failure to reply promptly. Similarly, any lack of clarity he considered there may be in some of the requests, or the fact he considered others should have provided copy files, was not an adequate answer to the repeated and extended delays in responding.

10.66 The Tribunal found proved on the balance of probabilities that the Respondent had failed to comply promptly with the communications from the Applicant as alleged. The relevant timespan in this allegation spanned the Principles and provisions of the Code and also the new SRA Principles and Code of Conduct introduced with effect from 25 November 2019.

10.67 The Tribunal was not persuaded that evidence had been adduced to prove on the balance of probabilities that the Respondent's failure to reply promptly amounted to a failure to adhere to the ethical standards of the profession. Timely responses to the Applicant's correspondence was something every solicitor should prioritise. However, given the extenuating circumstances set out above, and given that it appeared on the material before the Tribunal that he may ultimately have fully responded albeit after considerable delay, the Tribunal found it not proved that the Respondent's conduct had reached the threshold such that it had lacked integrity.

10.68 The Tribunal was satisfied, however, that it amounted to a clear failure to cooperate fully with the Applicant in an open and timely manner. The failure extended from August 2019 to October 2020. Accordingly, the Tribunal found proved to the requisite standard that, for conduct prior to 25 November 2019, the Respondent had breached Principle 7 and failed to achieve Outcomes 10.6, 10.8 and 10.9. For the period after that date, the Tribunal found that the Respondent had breached paragraphs 7.3 and 7.4 of the SRA Code of Conduct for Solicitors which came into force on 25 November 2019.

Allegation 1.4.5: failure to provide a complete response

10.69 The terms of the Production Notice requests made to the Respondent on 18 December 2019 (in relation to Client B) and 21 May 2020 (in relation to Client A) were set out in detail in the summary of the Applicant's case above to record the level of detail and specificity in the information and documents requested by the Applicant. A Production Notice issued under Section 44B of the Solicitors Act 1974 is a formal mechanism, which ultimately carries the potential for imprisonment for the provision of false or misleading information. It is a process which requires respect and

prioritisation from solicitors. The Tribunal considered it was clear what was requested.

10.70 In her evidence, and her investigation report, Ms George provided examples of partial responses provided by the Respondent. These examples ran from August 2019 to October 2020. Her evidence was that she had to repeatedly chase for any response and when he did reply he would often go off on a tangent and provide piecemeal information which did not fully answer the matters raised. The Tribunal accepted this evidence by reference to the documents to which it was referred.

10.71 The Respondent had raised the same issues set out under the previous allegation, including being overseas, the limitations associated with 'lockdown', other commitments and what he considered to be ambiguity in the requests. Having been referred to the relevant documents, the Tribunal did not consider that the requests were ambiguous. Additionally, for the same reasons set out in relation to the previous allegation, the Tribunal did not consider that the extenuating circumstances raised by the Respondent amounted to an adequate answer for his extended failure to provide full replies to the Applicant's enquiries. The Respondent made reference in his correspondence to the Applicant of 28 September 2020 to "having to balance providing full disclosure and explanation to my regulator, with fulfilling contractual obligations to the publisher". The Tribunal found this consistent with the inadequate priority he afforded the provision of full responses to his regulator and to be an indication that he recognised some shortcomings in his response. The Tribunal found that it had been proved to the requisite standard that the Respondent had failed to provide complete responses as alleged, including to formal Production Notices.

10.72 The Rule 12 Statement focused on events from December 2019 onwards and accordingly the new SRA Principles and Code of Conduct introduced with effect from 25 November 2019 were applicable.

10.73 The Tribunal was not persuaded that evidence had been adduced to prove on the balance of probabilities that the Respondent's incomplete replies amounted to a failure to adhere to the ethical standards of the profession. Full and frank responses were required, however, as with the previous allegation, given the extenuating circumstances set out above, and given that it appeared on the material before the Tribunal that he may ultimately have fully responded albeit after considerable delay, the Tribunal found it not proved that the Respondent's conduct had lacked integrity. Given this finding the Tribunal was not required to consider at length the fact that Principle 2 (which was included in the allegations) was no longer in force on the dates relied upon by the Applicant in the Rule 12 Statement.

10.74 The Tribunal was satisfied, however, that the conduct described above amounted to a clear failure to cooperate fully with the Applicant in an open and timely manner. Accordingly, the Tribunal found proved to the requisite standard that the Respondent had breached paragraphs 7.3 and 7.4 of the SRA Code of Conduct for Solicitors which came into force on 25 November 2019. These provisions mirrored Principle 7 which had been in force prior to that date.

11. **Allegation 1.5: By reason of the conduct referred to at one or more of allegations 1.4.1, 1.4.2 and 1.4.3 above the Respondent acted:**

1.5.1 dishonestly; or

1.5.2 in the alternative to allegation 1.5.1 above, recklessly.

The Applicant's Case

Allegation 1.5.1: Dishonesty as to allegations 1.4.1, 1.4.2 and 1.4.3

11.1 The Applicant relied upon the test for dishonesty stated by the Supreme Court in Ivey v Genting Casinos [2017] UKSC 67:

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

11.2 The Applicant's case was that the Respondent was an experienced solicitor who understood that he was under professional obligations to his regulator to co-operate with its investigation and to provide accurate information and behave honestly. It was alleged that he deliberately chose to ignore these professional obligations and provided false and misleading information.

Allegation 1.4.1:

11.3 The Respondent provided information to the Applicant which he knew or ought to have known was inaccurate and misleading in that he stated that he had applied for a stay in civil proceedings when he had not done so (as set out above). The Respondent was alleged to have made the statement knowing that this was incorrect, doing so to indicate to the Applicant that, if stayed, non-payment of the costs Order would not amount to a breach of that Order. The Respondent, by way of correspondence from Client B's solicitor on 11 June 2019, had been put on notice that no stay of proceedings had been ordered. The Respondent did not reply to correct that assumption or to confirm that he had applied for a stay. The Respondent did not seek to rely upon a stay of proceedings having been applied for as a basis to avoid payment of the costs Order. It was submitted that if the Respondent had believed that he had applied for a stay of proceedings, he would have:

- confirmed to Client B's solicitor that he had done so, particularly given that Client B was seeking to enforce the Order; and

- corresponded with the Court enquiring as to the status of his application for a stay.

Allegation 1.4.2

11.4 As set out above, it was alleged that the Respondent provided information to the Applicant that he had appealed an order in civil proceedings when he had not done so (in relation to Client A's claim and the Order (including a costs order) made against the Respondent). The statement that the Respondent had applied for an appeal was incorrect. No application for appeal had been made whether orally or by way of an Appellant Notice. It was alleged that as the Respondent had been engaged at various times in relation to the Client A claim and enforcement of the costs Order he must have been familiar with the procedural position and all relevant information was known to or readily discoverable by him. The Respondent had not subsequently relied upon the fact of any appeal or stated that he had in fact lodged an appeal. As such, at the time of making the statement to the Applicant, it was alleged that the Respondent knew that he had not lodged an appeal and that the statement he made was incorrect and misleading.

11.5 In correspondence to Client A's solicitor, the Respondent did not refer to having lodged an appeal. Further, in 2018 the Respondent applied to set aside a statutory demand issued on behalf of Client A to enforce the costs Order. That application did not refer to or rely on any appeal against the costs Order despite setting out the chronology of steps taken following the Order being made. In November 2020 the Respondent applied to set aside a further statutory demand issued on behalf of Client A to enforce the costs Order. The Respondent served a witness statement in support of that application which included a statement of truth. That witness statement also did not refer to or rely on any appeal against the costs Order and within the statement the Respondent disputed the debt on the basis that he had previously sought to make payment against the sum owing and as to quantum and a cross claim, and not the fact of any appeal. Within the Respondent's witness statement he also referred to steps taken after the hearing on 9 February 2017 and again made no reference to any appeal having been lodged.

11.6 The Applicant contended that it was to the benefit or potential benefit of the Respondent for the Applicant to believe that he had applied for an appeal against the Order, to provide some explanation for his failure to comply with it. In light of the statements giving rise to allegations 1.4.1 and 1.4.3, the Applicant alleged that the Respondent had established a pattern of making misleading statements to the Applicant in order to benefit by seeking to assuage regulatory concerns and investigations and that he did so knowingly.

Allegation 1.4.3

11.7 It was alleged that the Respondent dishonestly provided misleading information to an officer of the Applicant when stating by email on 11 October 2019 that the retired Metropolitan Police inspector who introduced him to Client B had been active in mediating a settlement, had acknowledged developments as part of this and that the Respondent had thus responded to Client B through him. As set out above, the

Applicant's case was that this was not correct and there was no such request for or communication about any mediation or settlement.

11.8 Both Client B and Person I confirmed in their evidence that Person I had not been active in mediating a settlement and that, in fact, the Respondent had made no request that he do so, and that Client B had not received communication from the Respondent whether directly or through Person I in relation to mediation or settlement of the claim. As the Respondent had not sent such communications to Person I or Client B in relation to the court Order at the time of his email to the Applicant, it was submitted that he must have known that the statement was untrue, and therefore made that statement dishonestly.

11.9 It was submitted that ordinary, decent people would consider that the Respondent's conduct as described above, in respect of any of the individual instances relating to allegations 1.4.1, 1.4.2 and 1.4.3, was dishonest.

Allegation 1.5.2: Recklessness as to allegations 1.4.1, 1.4.2 and 1.4.3

11.10 In the alternative to dishonesty, it was alleged that the Respondent acted, at the least, recklessly by way of the conduct set out in one or more of allegations 1.4.1, 1.4.2 and 1.4.3.

Allegation 1.4.1

11.11 It was submitted that as minimum the Respondent failed to take steps to check the Appellant's Notice before making the statement to the Applicant that he had applied for a stay. It was submitted he made the misleading statement recklessly as to whether the statement was correct and having failed to conduct reasonable checks or, in the absence of such checks, to qualify his statements to the Respondent to the effect that his understanding as to any stay of the Order was to be verified.

Allegation 1.4.2

11.12 Similarly, it was the Applicant's case that it was readily discoverable by the Respondent that no appeal had been lodged in relation to the claim against Client A. The absence of an Appellant's Notice and/or correspondence with the Court and/or record of payment of a court fee should have indicated to the Respondent that no appeal had been lodged. Whilst the Respondent had written in his response to the Applicant: "documents not to hand – being searched for in archive (no access at present)" it was alleged that he did not qualify his statement that an appeal had been lodged. This formed the basis of the Applicant's case that at the least the Respondent made the statement recklessly in stating to the Applicant that that "An appeal has been lodged against an order dated 9 February 2017" having failed to take steps to check the position before making the statement to the Applicant.

Allegation 1.4.3

11.13 In relation to the comments set out above relating to the retired Metropolitan Police inspector (Person I) said by the Respondent to have "been active in mediating a settlement" with Client B, the basis for the Applicant's contention that the statements

were incorrect and misleading are set out above. It was submitted the Respondent must have at least been reckless in making such a statement as to whether it was correct.

The Respondent's Case

11.14 The Respondent submitted that whatever the failings he had acknowledged, or other perceived failings may be found, he had not acted dishonestly or recklessly as alleged. His genuine belief was that he had acted appropriately for the reasons set out above under the response to allegations 1.4.1, 1.4.2 and 1.4.3. He submitted that the Applicant had produced insufficient evidence to discharge the burden of proof upon it. He invited the Tribunal and the Applicant to accept his apologies for administrative failings of tardiness, noting the various explanations and extenuating circumstances.

11.15 Further, the Respondent was entitled to benefit from the lack of any previous findings or evidence of any propensity towards the making of misleading statements to be taken into account by the Tribunal when assessing the allegations of dishonesty and recklessness. This consideration was relevant to the Tribunal's consideration of the plausibility of the aggravating allegations.

The Tribunal's Decision

Findings in relation to dishonesty and recklessness.

11.16 The Tribunal accepted the test for dishonest conduct as set out by the Applicant. Dishonesty was alleged in relation to the conduct set out in allegations 1.4.1, 1.4.2 and 1.4.3.

11.17 Recklessness was alleged in the alternative in relation to the same allegations. The Tribunal applied the working definition of recklessness set out by Wilkie J in Brett v SRA [2014] EWHC 2974 (Admin) at [78]:

> *"I remind myself that the word "recklessly", in criminal statutes, is now settled as being satisfied:*
>
> > *"with respect to (i) a circumstance when he is aware of a risk that it exists or will exist and (ii) a result when he is aware that a risk will occur and it is, in circumstances known to him, unreasonable for him to take the risk" (See R v G [2004] 1AC 1034 Archbold para 11-51.)"*
>
> *I adopt that as the working definition of recklessness for the purpose of this appeal."*

Allegation 1.4.1

11.18 The Tribunal had found in relation to allegation 1.4.1 that it had not been proved that the Respondent knew that the information he provided in his email about having applied for a stay (in relation to Client B's Order) was untrue. As set out above, in all the circumstances the Tribunal had considered that the misleading statement may have been the result of a simple mistaken recollection. That being the case, when

applying the second limb of the Ivey test, the Tribunal did not consider that ordinary decent people would regard the Respondent's conduct as dishonest. They would be concerned about such an inaccurate statement, but the Tribunal found that the Applicant had not discharged the burden of proof upon it.

11.19 The Tribunal went on to consider whether the alternative aggravating allegation of recklessness had been proved. The Tribunal considered that the Respondent should have checked the position given that the correspondence was with his regulator as part of a formal investigation. However, the Tribunal was not satisfied that burden of proof which was on the Applicant had been discharged in relation to the second limb of the test from Brett. Having accepted that the inaccuracy was due to a genuine mistaken recollection, the Tribunal did not find that it was proved on the balance of probabilities that he perceived a risk of misleading the Applicant or that it was unreasonable for him to provide a response based on his recollection to the Applicant. The aggravating allegation of recklessness was not proved.

Allegation 1.4.2

11.20 Unlike the previous allegation, the Tribunal had rejected the Respondent's contention that he had provided the inaccurate information about having appealed the costs Order (relating to Client A) based on his genuine recollection at the time. As set out above, even allowing for the Respondent's previous unblemished disciplinary record, the Tribunal had found that it was not credible that he could have made such a mistake recalling a fundamental detail (whether he appealed) about a memorable order (costs being awarded against him when he had sought to obtain payment of his legal fees) in a case he described as exceptional. Despite the extenuating circumstances rehearsed several times above, the Tribunal had found it more likely than not that the Respondent had made the statement without genuine belief in its accuracy; the Tribunal not considering such genuine belief to be credible in the circumstances.

11.21 The Tribunal considered that making an inaccurate statement to his regulator in the course of an investigation, without belief that it was genuine, was conduct which ordinary decent people would regard as dishonest. The aggravating allegation of dishonesty was accordingly proved to the requisite standard in relation to allegation 1.4.2.

Allegation 1.4.3

11.22 The Tribunal had found that, at best, the Respondent sought to open a channel of communication with Client B via Person I but that the Respondent's efforts did not result in settlement with Client B being explored and that Person I could not accurately be described as actively mediating a settlement as the Respondent had stated. The Tribunal had found that the Respondent must have known his statement to the Applicant was inaccurate.

11.23 However, as set out above, the Tribunal had placed very little weight on the evidence provided by Person I on the basis that it changed significantly overnight and was ultimately at odds with his written statement and the case as pleaded by the Applicant. That being the case, and whilst the Tribunal had considered that presenting the position in the way the Respondent did in his inaccurate statement to his regulator was

conduct which lacked integrity, the Tribunal was not satisfied that the burden on the Applicant imposed by the Ivey test for dishonesty had been discharged. Without the corroboration of Person I's evidence, the Tribunal did not consider there was sufficient evidence to conclude that it was more likely than not that ordinary decent people would regard the inaccurate, misleading statement to be dishonest rather than embellishment and 'over-egging' of the position. The burden of proof was on the Applicant and the Respondent was entitled to the benefit of the evidence on this point being too finely balanced to conclude that it was more likely than not that the second limb of the Ivey test was satisfied.

11.24 The Tribunal went on to consider the alternative aggravating allegation of recklessness. Unlike in 1.4.1, the Tribunal had found that the Respondent was aware that his statement to the Applicant about the extent and nature of Person I's involvement was misleading. In putting forward this account, albeit not dishonestly, the Tribunal found that the Respondent must have been aware that the Applicant would thereby have formed an inaccurate impression of the position. The Tribunal found that both limbs of the test from Brett were satisfied. The Respondent was aware of the risk that the Applicant would be misled and it was unreasonable for him to take that risk. The information was being conveyed to a forensic investigator acting on behalf of his regulator and the Tribunal found it was plainly unreasonable for him to make the statement he did which created the strong risk that the Applicant would be misled. The aggravating allegation of recklessness was accordingly found proved to the requisite standard.

Previous Disciplinary Matters

12. There were no previous disciplinary findings.

Mitigation

13. The context provided by the Respondent in his defence of the allegations included various points of mitigation. He had stated that his failure to comply with the Court Orders which were the subject of allegation 1.1 was in the context of two clients who he considered had taken advantage of him and failed to make any payment for the very considerable work he had carried out for them. He stated that his acknowledged delays in responding to the Applicant had been caused in large part by being overseas, being 'locked down' without physical or remote access to his resources and being contractually committed to produce a time-consuming technical manuscript for a legal publisher.

14. The Respondent accepted that a finding of dishonesty was inevitably a very serious matter, but noted that in the letter in question, of 28 September 2020, he had stated that he did not have the documents to hand. He also submitted that the answers he had provided within the document sent to the Applicant were internally inconsistent and the impact of his statement was further minimised by also having stated that there was "no known order for stay". The impact was accordingly lessened as this was the key information in relation to his compliance with the relevant Order.

15. The Respondent submitted that whilst the Tribunal had made one finding that he had acted dishonestly, it related to one statement that he had made to the Applicant on one occasion. This was not the type of grave matter such as dipping into the client account or fabricating documents fraudulently. It was one statement in relation to one file in which he was his own client seeking to recover fees he considered were due from a former client. Whilst a finding of dishonesty had been made, the Respondent submitted it was at the lower end of the spectrum. He had ultimately paid the costs Orders about which he was corresponding with the Applicant and stated that the Applicant did become aware that there had been no appeal. The Applicant's investigation had not been affected. As the communication had gone directly to the Applicant and no one else, the Respondent submitted that public confidence would not be affected. The Respondent stated that had the limitations and restrictions related to Covid not been present he would have had the opportunity to review the file and this incident would not have happened.

16. Given that the statement was made in one communication to the Applicant the Respondent stated that there was no real harm to his former client caused. Considered in the round, including his correspondence to Ms Cobb who acted on behalf of Client A, the Respondent submitted that his communications made it clear he was not going to appeal the costs Order. Cumulatively these factors amounted to exceptional circumstances such that a strike off from the Roll was not inevitable and would be disproportionate.

17. The Respondent had said in his evidence and submissions that whilst there were various complaints made in relation to comments he made at the event on 12 June 2019, he had never been the subject of any other complaints on any matters at any stage of his 30 year career. He apologised for the genuine upset his comments had caused. He submitted that a reprimand for the comments he had made would be proportionate and indicated he would give suitable assurances to the Tribunal about future conduct.

18. The Respondent noted that he had made various factual admissions at an early stage. He had no previous disciplinary or regulatory findings against him. He stated that none of the conduct found proved had been for his own benefit.

19. The Respondent addressed the Tribunal on the illustrative factors set out in the Tribunal's Guidance Note on Sanctions. He noted that a fine was a sanction open to the Tribunal. He invited the Tribunal to impose a fine, potentially combined with a reprimand, which he submitted would be an adequate and proportionate sanction. The Respondent indicated that the Covid restrictions had had an impact on his income and that his financial means were limited.

Sanction

20. The Tribunal referred to its Guidance Note on Sanctions (8th 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.

21. In assessing culpability, the Tribunal found that the Respondent's motivation in relation to his failure to comply with the Court Orders was a deeply held conviction that he had been taken advantage of by the two clients in question. The Tribunal assessed the motivation as being more a point of principle than a question of money. With regards to the delayed, incomplete and inaccurate information provided to the Applicant, the Tribunal found that the Respondent's motivation had been to buy time and to avoid difficult regulatory scrutiny. He insufficiently focused upon and prioritised full and timely cooperation with his regulator. At the event on 12 June 2019, the Tribunal did not consider that the Respondent had set out to upset or antagonise those to whom he directed the various comments recorded above. The Tribunal considered that the Respondent's actions at this event were spontaneous. His actions with regards to the delays in the provision of information to the Applicant and the incomplete and incorrect information provided could not be described as spontaneous. Only one instance of dishonestly providing inaccurate and misleading information had been found proved but across the other findings made by the Tribunal there was a pattern of non-compliance and obfuscation over several months. The Respondent had direct control over the circumstances of the misconduct even allowing for the restrictions of 'lockdown'; he had control over how he responded to the constraints this imposed, the degree of precision in his communications with the Applicant and the priority he gave this process. The Respondent was a highly experienced solicitor. The Tribunal had found that he deliberately misled his regulator. The Tribunal assessed his culpability as high.

22. The Tribunal went on to consider the harm caused. The Tribunal considered the harm caused by the misconduct was entirely foreseeable. The three individuals to whom the Respondent's comments at the event on 12 June 2019 were primarily directed were directly affected by the conduct. Such conduct also had an impact on the reputation of the profession. Similarly, Client A and Client B had both been directly affected by the Respondent's failure to comply with the costs orders in a timely manner. The Applicant had been put to additional time and expense. The harm to the reputation of the profession caused by an experienced solicitor dishonestly providing misleading information to the regulator was also very serious.

23. The Tribunal then considered aggravating factors. The Tribunal had made one finding of dishonesty, that the Respondent had dishonestly supplied inaccurate information to the Applicant to lessen the impact of his non-compliance with the relevant costs Order. The delays and incomplete responses to the Applicant were repeated. The findings in relation to the event on 12 June 2019 included conduct displaying a lack of respect for diversity such that the Respondent's professional obligations were breached. The Respondent had apologised for the genuine upset caused when making submissions in mitigation, and in his defence of the allegations had apologised at various points if his understanding underpinning his actions was wrong. However, the Tribunal considered his insight to be limited and noted that he repeatedly blamed others for the conduct found proved. This included blaming his former clients for his own failure to pay costs orders made by the Court, the Applicant for a purported lack of clarity in requests contributing to the deficiencies in his replies, and seeking to discredit those who complained about his conduct at the event by asserting that they submitted complaints in bad faith as part of a Person G's premeditated plan. The Tribunal considered that the Respondent should reasonably have known that the

conduct complained of was in material breach of his obligations as a solicitor to protect the reputation of the profession.

24. The Tribunal also considered mitigating factors. The Respondent had an otherwise unblemished disciplinary record throughout his long career. He had belatedly made payment of the principal sums due under the costs Orders (although not of the interest due). The misconduct was limited to three distinct episodes: the event on 12 June 2019 and the costs Orders made in relation to Clients A and B and his correspondence with the Applicant in relation to these Orders.

25. The overall seriousness of the misconduct was extremely high; this was inevitable given the finding of dishonesty. In addition, the Tribunal had made multiple findings that the Respondent's conduct had lacked integrity and had failed to meet the minimum ethical standards required from solicitors including conduct displaying a lack of respect for diversity. In light of these findings, the Tribunal had regard to the case of SRA v Sharma [2010] EWHC 2022 and the comment of Coulson J that, save in exceptional circumstances, a finding of dishonesty will almost invariably lead to the solicitor being struck of the Roll.

26. The Respondent had invited the Tribunal to apply a fine as the sanction and submitted this would be proportionate in all the circumstances. He had submitted that exceptional circumstances existed. Specifically, the finding of dishonesty related to a single communication sent to the Applicant, in which the Respondent had revealed relevant and accurate information that he had not applied for a stay. Any advantage for the Respondent was marginal and the Applicant's investigation was not affected.

27. The Tribunal considered the nature, scope and extent of the dishonesty and whether it was momentary, of benefit to the Respondent or had an adverse effect on others. The nature of the dishonesty was the incorrect statement in his letter of 28 September 2020 that the Respondent had appealed the costs Order in favour of Client A when this was not the case. This was inaccurate and misleading and the Tribunal had found the Respondent was aware of this. As to the scope and extent of the dishonesty, it was limited to the statement in the one letter and the Tribunal accepted that the impact of the statement was undermined to some extent by the fact that he also stated in the same letter that he had not applied for a stay and had also indicated that he did not have the documents to hand. However, the drafting and sending of a formal seven-page letter, in which the inaccurate statement was contained, could not be described as a 'moment of madness'. The Tribunal considered there was also some limited benefit to the Respondent in that the inaccurate statement was likely to assuage the Applicant's concerns about his non-compliance with the costs Order even if to a very limited extent in the light of the other information he divulged.

28. The Tribunal considered that there may potentially be exceptional factors present such that the single dishonesty finding in itself may not have required a sanction of strike off to be imposed. However, when considering sanction, whilst the Respondent had had a long and previously unblemished career, the Tribunal had made several other very serious findings. He had failed to comply with Court Orders, recklessly provided other misleading information to the Applicant in conduct lacking integrity and failed to respond and cooperate adequately with his regulator over an extended period and on multiple occasions. The Tribunal also considered the multiple racially, ethnically

or religiously motivated comments to be very serious misconduct in itself. The cumulative impact of these various findings was that the Respondent's conduct was assessed as extremely serious.

29. Given such findings the Tribunal considered that a reprimand, fine or suspension would fail to adequately deal with the reputational harm caused to the profession and would not reflect the seriousness of the conduct found proved. The Tribunal similarly did not consider that there were restrictions which could be imposed which would address the seriousness of the misconduct. The Tribunal determined that cumulatively the conduct found proved was of the highest level of seriousness and that the protection of the reputation of the legal profession required that the appropriate sanction was strike off from the Roll.

Costs

30. The total costs claimed in the Applicant's schedule of costs dated 13 July 2021 was £41,850. On behalf of the Applicant, Ms Bruce submitted that these costs were reasonable and she noted that no costs were sought for FIO time and no additional costs were sought for the time spent responding to the late documents submitted by the Respondent. She stated that Capsticks' fee was fixed and equated to a notional hourly rate of £94.50.

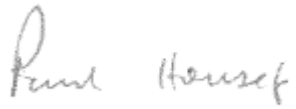
31. In reply the Respondent stated that the Applicant requested various case files and he had supplied around 500 in total. Most of what was supplied did not result in any allegations being brought and he submitted that such time should be discounted. The Respondent submitted that it was not clear to what the 150 hours shown in the schedule for "investigation and preparation of the Rule 12 and documents for issue" related.

32. The Tribunal assessed the costs for the hearing. The Tribunal had heard the case and considered all of the evidence. The Tribunal reviewed the schedule of costs carefully. The Tribunal considered that having regard to the level of documentation and the work necessarily involved in the Application, the costs claimed were reasonable and proportionate in all the circumstances. Given that the FIO's charges were not included costs claims the Tribunal was satisfied that time incurred in relation to the material supplied by the Respondent which did not feature in the allegations or the proceedings had not been unfairly included. The Respondent had indicated in his mitigation that the Covid restrictions had had an impact on his income and that his financial means were limited. However, he had supplied no evidence of means. In line with its Standard Directions, of which the Respondent had received a copy, and Rule 43(5) of the Solicitors (Disciplinary Proceedings) Rules 2019 the Tribunal 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 £41,850.

Statement of Full Order

33. The Tribunal ORDERED that the Respondent, VICTOR STOCKINGER, 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 £41,850.

Dated this 17th day of September 2021
On behalf of the Tribunal



P S L Housego
Chair