The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding and Sanction

Case reference: PC 2020/0252/D5

James Stephen Preece

The Director-General of the Bar Standards Board

The Chair of the Bar Standards Board

The Treasurer of the Honourable Society of Middle Temple

Disciplinary Tribunal

James Stephen Preece

1. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 26th October 2022, I sat as Chairman of a Disciplinary Tribunal on 21st and 22nd November 2022 to hear and determine 11 charges of professional misconduct contrary to the Code of Conduct of the Bar of England and Wales against James Stephen Preece, barrister of the Honourable Society of Middle Temple.

Panel Members

2. The other members of the Tribunal were:

   Lakshmi Ramakrishnan (Lay Member)

   Thomas Williams (Barrister Member)

   Geoffrey Brighton (Lay Member)

   Ashley Serr (Barrister Member)

Parties Present and Representation

3. The Respondent was not present and was not represented. The Bar Standards Board ("BSB") was represented by Mr David Sharpe KC of counsel.

Charges

4. The hearing was concerned with the following charges, all of which related to the appearance by Mr Preece when making an ex *parte* application to a Deputy District Judge in the Central Family Court on 13 September 2019.

   Charge 1

   Professional misconduct contrary to Core Duty 1, rC3.1 rC3.2 of the Code of Conduct of the Bar of England and Wales (9th Edition).

Particulars of Offence
On 13 September 2019, during an *ex parte* hearing before a Deputy District Judge in the Central Family Court, James Stephen Preece, an unregistered barrister, failed to observe his duty to the court in the administration of justice, in that he made statements to the court about matters which individually or in combination he knew were untrue and/or misleading to the court, and/or abused his role as an advocate:

1. M had primary care of the child which the application relates to; and/or
2. F simply took the child; and/or
3. F was overdue in submitting an alcohol test and was refusing to lodge it; and/or
4. F was not in contact with F's solicitors and/or
5. F was not engaging; and/or
6. M's criminal case would not be prosecuted; and/or
7. He [Mr Preece] was a 'criminal barrister'.

Charge 2
Professional misconduct contrary to Core Duty 3 of the Code of Conduct.
Particulars of Offence
This alleges that by making those same statements, which Mr Preece individually or in combination knew were untrue and/misleading to the court, he acted without honesty.

Charge 3
Professional misconduct contrary to Court Duty 5 of the Code of Conduct
Particulars of Offence
This alleges that by making those same statements about matters which he knew were untrue, he behaved in a way that would diminish the trust and confidence which the public places in him or in the profession.

Charge 4
Professional misconduct, contrary to Core Duty 3 of the Code of Conduct
This alleges, as an alternative to Charge 1, that when Mr Preece made the statements to the court referred to, he recklessly misled the court, or recklessly attempted to mislead the court, and/or abused his role as an advocate.

Charge 5
Professional misconduct, contrary to Core Duty 3 of the Code of Conduct
This alleges, as an alternative to Charge 2, that Mr Preece was reckless as to the truth of the statements.

Charge 6
Professional misconduct, contrary to Core Duty 5 of the Code of Conduct
This alleges, as an alternative to Charge 3, that Mr Preece was reckless as to the truth of the statements

Charge 7
Professional misconduct contrary to Core Duty 1, rC3.1 rC3.2 of the Code of Conduct of the Bar of England and Wales (9th Edition).
Particulars of Offence
This alleges that on the same occasion during an *ex parte* hearing before a Deputy District Judge in the Central Family Court, Mr Preece acted without integrity and/or abused his role as an advocate, when he made serious allegations about F without proper basis, including:

1. F was an alcoholic; and/or
2. F simply took the child; and/or
3. F was not in contact with his solicitor and was not prepared to communicate; and/or
4. F was using sexual violence towards M; and/or
5. F was in a sexual relationship with his sister.

Charge 8
Professional misconduct contrary to Core Duty 5 of the Code of Conduct
Particulars of Offence
This alleges that in making the same allegations on the same occasion, Mr Preece behaved in a way that would diminish the trust and confidence which the public places in him or in the profession.

Charge 9
Professional misconduct contrary to rS8 of the Code of Conduct
Particulars of Offence
This alleges that on the same occasion Mr Preece "practised as a barrister when he supplied legal services to his lay client, and held himself out as a barrister when he told the Deputy District Judge, on three occasions, that he was a 'criminal barrister', and/or when he was not authorised to do so".

Charge 10
Professional misconduct, contrary to Core Duty 5 of the Code of Conduct
Particulars of Offence
This alleges that by acting as alleged in Charge 9, Mr Preece behaved in a way that would diminish the trust and confidence which the public places in him or the profession.

Charge 11
Professional misconduct contrary to Core Duty 10 of the Code of Conduct
Particulars of Offence
This alleges that on the same occasion Mr Preece failed to comply with his legal and regulatory obligations in that whilst representing a lay client he misled the court as to his professional status when he presented to the court that he was appearing as a barrister when he was not authorised to appear as a barrister.

Background history

5. Mr Preece was called to the Bar in 2017. He did not complete pupillage, and he does not hold authorisation to practice. He has therefore remained an unregistered barrister.

6. At the relevant time he worked as a case manager for MB Law Ltd., Solicitors.

7. The 11 charges before the Tribunal all relate to the appearance by Mr Preece when making an *ex parte* application to a Deputy District Judge in the Central Family Court on 13 September 2019.

8. Although there was uncertainty (largely caused by what Mr Preece said and did not say to the court on 13 September 2019 about his status) it is now accepted that on that occasion he was able to exercise a right of audience in proceedings heard in chambers,

as someone assisting in the conduct of litigation under the instructions and supervision of an authorised person.

9. The application before the court was made on behalf of the mother of a 2½ year-old girl who was then living with the father.

10. On 4 April 2019 (over 5 months before the application made on 13 September) the child had been collected and retained by the father with whom she continued to live thereafter. The father then sought legal advice, and in May 2019 proceedings under the Children Act 1989 were initiated on his behalf. On 17 June 2019 an application was made to the court on behalf of the father without notice to the mother. The court then made a prohibited steps order preventing the mother from removing the child from the care of the father without his written consent or consent of the court. A return date was fixed for 24 June 2019.

11. A safeguarding letter was provided by Cafcass dated 15 June 2019, a copy of which has not been seen by the Tribunal.

12. On 24 June 2019, when the father was again represented by counsel, the mother appeared assisted by a McKenzie friend (unnamed). The order then made recorded that the parties had agreed that the prohibited steps order of 17 June would remain in force, with the mother not opposing its continuation, but informing the court that she would be seeking the return of the child to her care. The prohibited steps order was then restated, preventing the mother from removing the child from the care of the father other than with his written consent or that of the court.

13. On 17 July 2019 at a FHDRA hearing before Deputy District Judge Marks, the father was represented by counsel and the mother again appeared in person, assisted by a McKenzie friend (unnamed in the order then made, but someone other than Mr Preece). Orders were made including:

(i) A prohibited steps order again preventing the mother from removing the child from the care of the father or any person or institution to whom the father had entrusted the child's care, other than with the written consent of the father or of the court.

(ii) An order for the father to make the child available to spend time with the mother once a week, subject to specified directions. One of those directions was that it was a condition of the mother's contact with the child that she did not return to her home with the child.

(iii) A direction that the father should provide hair strand and blood samples for alcohol testing, to be arranged by the father through his solicitor, the report of which was to be provided by 21 August 2019. It was specifically provided that the cost of the testing must be paid by the parties in equal shares.

14. Other directions then made provided for a report by Cafcass, including specific matters to be addressed by Cafcass, and the order provided for a further hearing on 16 October 2019 (a Dispute Resolution Appointment).

15. It is clear that the court then proceeded on the basis that the child would remain in the father's care, at least pending the recommendations of Cafcass.

16. It is not clear when MB Law were first instructed by the mother. However, according to a statement within the report by the father's solicitors to the Bar Standards Board, the father's solicitors had received notice on 14 August 2019 that MB Law had been instructed by the mother. According to the statement by Mr Sharma of MB Law (made in connection with a later application for wasted costs in December 2019), another firm of solicitors had been briefly instructed previously by the mother, but MB Law were not aware of that and had only received "limited documentation" from the mother whom they assumed had been acting in person with a McKenzie friend.

17. Following receipt of the notice from MB Law that they acted for the mother, the father's solicitors sent an e-mail to Mr Sharma of MB Law on the same day, 14 August 2019 attaching a copy of the order of 17 July 2019. This e-mail said that the father's solicitors had made the necessary arrangements for the father to be tested for alcohol use in accordance with the order, but before the test could be carried out the mother must pay her half of the father's testing costs. It was further said that the mother had emailed the testing company on 2 August to say she had posted them a cheque for her share of their costs, but the testing company had not received a cheque from her. The father's solicitors wrote that if the mother did not make the required payment by 12 noon on 15 August it would not be possible for the father to fulfil his obligations under the order and that the father's solicitors would in those circumstances assume that the mother agreed that the alcohol test was not required.

18. The father's solicitors sent further emails to MB Law on 27 August and 29 August, but these were not responded to. Whether or not the 3 emails from the father's solicitors sent in August 2019 were ever received appears to have been the subject of evidence (including expert evidence) in the course of the subsequent wasted cost proceedings.

19. According to a later Position Statement and a statement by Mr Sharma of MB Law (provided in December in connection with a wasted costs hearing), Mr Preece first made contact with, and met, the mother in respect of her criminal matter alone on 26 August 2019.

20. An unexplained fact that emerged in the course of the investigations by the Bar Standards Board was that, soon after, on 30 August 2019 a company called GST Law Group Limited was incorporated in which the mother was a director and Mr Preece shown as the only other shareholder.

21. By letter dated 6 September 2019 MB Law wrote to the father's solicitors at some length, informing them that they intended to make an emergency application for contact between the mother and the child, giving the father until 3 p.m. that day to agree to cooperate with the contact arrangements that were in place, failing which they would instruct counsel to make an emergency application that day and request costs. It was stated in this letter that the father's solicitors should also complete the outstanding directions from the court, including provision of the alcohol analysis test for the father immediately. Clearly that suggested that the MB Law had, or at least had sight of, the order of 17 July 2019, if not the subsequent emails from the father's solicitors.

22. In answer, the father's solicitors wrote to MB Law and Mr Sharma by e-mail on the same day, 9 September 2019, referring to their emails of 14, 27 and 29 August, saying that each of them seemed to "have been ignored". That e-mail from the father's solicitors of 9 September made clear that the allegations against the father contained in the letter from MB Law of 6 September were disputed and said that there had been earlier directions by the court and that the father had sent the mother his statement on 7 August in accordance with the directions. This e-mail referred to 2 witness statements filed by the mother and to previous hearings.

23. In the e-mail of 9 September, the father's solicitors also said that the mother had made no attempt to see or speak to the child for nearly 2 months and that she had failed to file a witness statement setting out her concerns and had only in the last week paid her share of the alcohol testing fees. They said therefore that "until a determination is made, our client will not be making [the child] available for contact given his genuine concerns for [the child's] safety whilst in [the mother's] care".

24. There does not appear to have been any response by MB Law to that e-mail of 9 September, nor any request by MB Law to see the emails they were said to have ignored, or for copies of the court directions said to have been made or of the father's statement referred to. It appears it was not until later, in the wasted costs proceedings that followed, that it was suggested that the emails from the father's solicitors sent in August had not been received.

25. According to the statement of the father's solicitor, on 9 September 2019 Mr Preece left a voice message on the solicitor's answering machine saying that he would like to discuss child contact arrangements. The solicitor returned the call on the same day and informed Mr Preece that she was awaiting the father's instructions. In fact the attendance note of these telephone discussions on 9 September 2019 shows that the message from Mr Preece asking for the father's intentions regarding contact included a statement by Mr Preece that there was a 'penal order' in place and that he intended to make an urgent application to the court that day to reinstate contact, but before he did so he said that he had to be able to tell the judge what further measures he had taken to get the father's solicitors to advise the father to reinstate contact. To this the father's solicitor responded saying that she hoped to let Mr Preece have a response by

that evening or next morning and asked him to hold off making any application before then. It does not appear to have been suggested in that discussion that the application on behalf of the mother would also be for return of the child, rather than just for reinstatement of contact.

26. A letter dated 4 September 2019 from MB Law, signed by Mr Preece, on behalf of the mother to the Crown Prosecution Service had referred to a criminal assault case against the mother in which the solicitors would be attending the Case Management Hearing on 5 September 2019 (the next day) and the trial on 11 October 2019. The aim of the letter was stated to be to make the CPS aware of the whole background, so that the CPS could revisit and reconsider proceeding with the prosecution. The letter contained allegations against the father of a serious alcohol problem, for which a test had been ordered in the family proceedings, and of sexual abuse including rape. The letter stated the concern that the CPS was being used to punish the mother through a manipulated incident set up by the father and the alleged victim of the assault. A copy of this letter was provided to the Central Family Court at the same time as the application on 13 September 2019. It is not clear whether a response was provided by the CPS, or what happened at the hearing on 5 September in the criminal proceedings. However, it appears that the criminal case against the mother did proceed to trial on 11 October 2019, and she was convicted of assaulting the paternal aunt for which she was sentenced on 12 November 2019 to 16 weeks in custody, suspended for 18 months, together with 160 hours unpaid work and a fine.

27. On 13 September 2019 an application was issued in the court on behalf of the mother. The orders sought were a prohibited steps order to prevent the father from moving the child out of the country and:

    "Variation to the order dated 17 July 2019. Applicant to gain full custody of the child".

28. The application stated that an urgent hearing or without notice hearing was required and also stated that there were previous or ongoing proceedings about the child. In the section of the application setting out reasons for an urgent and without notice hearing it was stated that the father was an alcoholic who became very aggressive under the influence of alcohol "and drug"*[sic]*. It was alleged that under the order of 17 July 2019 the father was ordered to provide a report concerning alcohol and drug issues which he had failed to do and therefore was in contempt of the court order. In fact, the direction made on 17 July 2019 was for a report relating to alcohol use, but not drugs. It was further stated in this part of the application that the father was in breach of the order for child contact and that he had prevented contact "by fabricating and manipulating an argument". It was said that the mother believed that the father would put the child at risk of harm or remove the child from the country and that the father was "known for breaching the court orders" and known for "fabricating and manipulating [a] situation which will put the child in danger and risk of mental abuse." In the section of the application claiming exemption from attendance at a Mediation, Information and Assessment Meeting (a MIAM) it was confirmed on behalf of the applicant that there

was a risk to the life, liberty or physical safety of the applicant or her family or home, and that any delay caused by attending a MIAM would cause a risk of harm to the child.

29. The application gave the details of the solicitors acting for the mother, but the completed statement of truth at the end of the application was not actually signed by the solicitor (Mr Sharma) whose name was given. In a later Position Statement by Mr Sharma in connection with a wasted costs hearing in February 2020 he said that MB Law had not felt able to sign the application because they could not verify any of the details contained within it because they had not received supporting documentation.

30. The application to the court was accompanied by a statement by the mother also dated 13 September 2019. This statement was said to have been made pursuant to the order of the Deputy District Judge dated 17 July 2019, although MB Law and Mr Preece later said they had not seen that order. This statement alleged that the father had removed the child from the mother's care unilaterally. It was said that the alcohol test on the father ordered by the court was overdue and that the father did not appear to be giving instructions to his solicitors on that. It was also alleged that all requests in respect of contact were "likewise without response", and that the father had stopped contact completely and was unilaterally ignoring the contact order. The statement said that the mother was seeking urgent return of the child to her primary care or immediate reinstatement of contact to her. It was said that the child was at risk and that the mother could not wait for the next court date.

31. The transcript of the hearing before Deputy District Judge Butler on 13 September 2019 shows that it took place between 2:34 p.m. and 2:46 p.m. Mr Preece informed the Deputy District Judge that he had appeared earlier in the day before Judge Hughes who was minded to reinstate contact, and that she had sent him away to get a witness statement from the mother which he had now provided. He also said that Judge Hughes wanted the C100 amended, which he had done. He confirmed to the Deputy District Judge that the application was for immediate return of the child or, in the alternative immediate reinstatement of contact. In answer to the judge Mr Preece said that the father had taken the child "about 4 months ago".

32. The court does not seem to have been provided with any chronology or skeleton argument on behalf of the mother. The Deputy District Judge told Mr Preece that he had "a quick read" of the papers and that he had read the mother's statement "very quickly". Much of what Mr Preece then told the Deputy District Judge was in response to questions from the court. Mr Preece told the judge that he had "been involved with this for about a week". He also informed the judge that he had been to the mother's property 3 times and that it was "a normal family home".

33. In the course of his submissions Mr Preece said: "I'm actually a criminal barrister, I was called to the bar – but the coercive control in this case is worrying". He said "I'm dealing with the criminal matter. It's, it probably won't be prosecuted…"

34. Mr Preece then told the judge:

    "So my, my concern is, genuine safety in this case, sir. The… we have a, an admitted alcoholic who is not in contact, who is prone to sexual violence and has a 2 ½ year old girl and has a sexual relationship with his sister".

35. The Deputy District Judge then asked Mr Preece if he would be able to draw the order which he (the judge) was about to make to return the child to the mother forthwith. Mr Preece again said "I'm actually a criminal barrister". He said he would get the order drafted, adding "I'll get someone to draft this now, because I'm a criminal barrister…

36. It is not clear who actually drafted the order. Mr Preece has said that he passed the task to someone else in MB Law. MB Law sent the order to the judge's clerk by Gmail on the morning of 16 September, with a copy also sent to Mr Preece, who did not take the opportunity to correct the description of himself as appearing as counsel.

37. The resulting order of Deputy District Judge Butler on 13 September 2019 stated that the mother was present "and represented by Mr James Preece of Counsel" and that the father was not present and was unrepresented. The recitals within the order referred to the court having read the C100 [*i.e.* the application] and the C1A [a supplemental information form to be completed when there are allegations that the child may have suffered or be at risk of suffering violence or abuse]. The Tribunal have not seen any C1A that was filed. The recitals stated that the father had no notice of the hearing and that the court heard "submission*[sic]* by Counsel for the Mother".

38. The order provided for the father to return the child to the mother forthwith, and for the father to have contact with the child to "mirror the same arrangements as were in place for the mother". The case was listed for a return date on 16 October 2019 (already listed for a DRA) and the father was granted permission to apply for an earlier return date on notice to the mother. The father was ordered to pay the mother's "legal costs of reinstatement of contact from the date that the contact order was breached by the… Father until the date of return of [the child] to the… Mother".

39. It is also not clear when the perfected order was obtained or received by MB Law. The Family Procedure Rules required the applicant to serve the application and the order made without notice within 48 hours after the making of that order. However, these do not appear to have been served until 17 September 2019 when, according to the father's solicitor, she received a telephone call from the father saying that 2 police officers and a man known to be Mr Preece attended the father's home and removed the child from his care.

40. The father applied to return the case to court for an early hearing, and on 19 September 2019 his application was heard by HH Judge Tolson QC. The father was represented by counsel, and the mother was described as appearing in person "assisted by Mr Preece (McKenzie Friend)". The order recorded that the court heard the oral submissions of counsel for the father and of Mr Preece "(he having been granted rights of audience for the purpose of today's hearing only)".

41. The court's concern about the status of Mr Preece appeared from that order of 19 September which recorded that:

    "Should Mr Preece no longer appear or otherwise represent the mother then he is invited to provide the court with a letter within 14 days, explaining his involvement within these proceedings so far. This invitation does not affect any privilege against self-incrimination."

42. It was directed that in the event that Mr Preece wished to appear in future as advocate for the mother, or to act for her in any legal capacity, "then he must provide the court and the father's solicitors with a written statement within 14 days, establishing his right of audience before the court and/or other qualifications to act." It was further directed that in the event that Mr Preece did not have, at the material times, the right of audience and/or other qualification to represent the mother, the solicitors currently representing the mother should file a statement explaining what had occurred and establishing that those currently acting were appropriately qualified.

43. Judge Tolson ordered that the order made by the Deputy District Judge on 13 September 2019 should be discharged in its entirety, and the order of 17 July 2019 reinstated. It was recorded that it was appropriate for the father's solicitors to obtain a transcript of the *ex parte* hearing on 13 September 2019. The parties were also permitted to write to the court to indicate alleged breaches of the order of 17 July.

44. In relation to the child the court recorded that she had been brought to court and returned to the father's care following the hearing.

45. In the course of further e-mail correspondence, on 25 September 2019, the father's solicitors sent the alcohol test report to MB Law. They said that it would be highlighted that the reason for delay in filing the report was the mother's failure to pay her share of the costs when first required to do so. It was also said that the results confirmed that, contrary to the mother's allegations, the father did not have a drinking problem.

46. Mr Preece provided a letter to Judge Tolson QC which appears undated. In this he said that he was always under the direct instructions and supervision of his senior partner as the caseworker in the matter. His relationship with the mother was that of a caseworker on all matters. Those included family, criminal and commercial matters. He said that he was called to the bar with a "very competent" BPTC and had a law degree from the University of Birmingham. He said, "I am gaining experience prior to pupillage".

47. Mr Preece wrote:

    "The mistake that was made for which I sincerely apologise was that the draft Order was returned from my firm to the court referring to me as Counsel. The draft order was completed in a different branch by someone I have never met and was overdue and should have been checked much more carefully. I regret that very much and I will ensure that kind of serious error is never repeated".

48. Mr Preece said that his firm was then off the record in the mother's family case.

49. After a further hearing before Judge Tolson QC on 14 and 15 November 2019, the judge made a further order on 15 November 2019. This provided for the child to live with the father. The order recorded the judge's findings contained in his oral judgment which had then been given. These included a finding that the mother was not a truthful witness, and other unfavourable findings about her. There was a finding in these terms:

    "The respondent mother had failed to inform the court through her representation, on 13 September 2019 of the details of the order of 17 July 2019 and other orders made in these proceedings and the court was therefore misled".

50. The Tribunal do not have a transcript of the actual judgment given on 15 November 2019, and accordingly it is not clear what was then said about the role of Mr Preece on 13 September 2019.

51. It appears that the proceedings in the Family Court thereafter were mainly concerned with the application against MB Law and Mr Preece for wasted costs. The order of 15 November 2019 recorded that the court was considering whether to make a wasted costs order against MB Law or Mr Preece, for which a hearing was fixed for 13 December 2019 and for which MB Law and Mr Preece were directed to attend court and permitted to make representations and file evidence.

52. In response Mr Preece made a statement to the court dated 28 November 2019. In that statement he said he had assisted the mother in court on 13 and 19 September 2019 and that he had rights of audience in the Family Court. He referred to Schedule 3 to the Legal Services Act 2007 and said that he was under the direct instructions and supervision of his senior partner on 13 and 19 September 2019 and therefore had rights of audience for both hearings. However, he then went on to suggest that he had assisted as a McKenzie friend and that "this was recorded at the time". He also said he made it very clear to both clerks at the hearings he was there as a McKenzie friend, and he had ensured that was passed on to the judge "in the normal way". He said "If I had not been accepted as a McKenzie friend who could then address the court, I would have then used my rights of audience under the law. I was aware that I had rights of audience on 13 September 2019 anyway and there was therefore clearly no intention whatsoever to mislead the court." He said that he had represented the mother's instructions to the court accurately and in good faith.

53. The essential difficulty appears to be that, according to the transcript, Mr Preece did not explain to the Deputy District Judge on 13 September 2019 that he was appearing simply as a McKenzie friend, nor did he explain that he was also able to exercise a right of audience in proceedings heard in chambers, as someone assisting in the conduct of litigation under the instructions and supervision of an authorised person. According to the transcript of that hearing, he stated (on 3 occasions) that he was a criminal barrister, without qualifying that statement in any way.

54. In the same statement of 28 November Mr Preece said that at the time of the hearing on 13 September he was the mother's caseworker on her criminal matter and said that "overlapped substantially" with the family matter. He said he had relied on instructions from the mother in making the application and submissions at court. He said that he had "no idea on 13 September 2019 that an order dated 17 July 2019 included a prohibited steps order" and that no mention was made to him by the court about 17 July order.

55. In a position statement of 12 December 2019 on behalf of MB Law and Mr Preece in connection with the application for wasted costs it was submitted that Mr Preece could not be held responsible for a failure to mention the prohibited steps order (*i.e.* that of 17 July) because he knew nothing about it, had no documents about it and had no instructions from the mother about it.

56. It is hard to reconcile the suggestion by Mr Preece that he was ignorant of the order of the 17 July 2019 with the circumstances of 13 September 2019. The application on behalf of the mother to the court on 13 September 2019 referred specifically to that order of 17 July and sought variation of it. The part of the application for details of any other court cases referred specifically to an earlier case in the Central Family Court, giving the date of 17 July 2019 and a case number. The mother's statement of 13 September 2019, which Mr Preece told the Deputy District Judge that he had provided, referred to the order of 17 July 2019 in its first paragraph; and both in that statement and in Mr Preece's submissions to the court there were references to the contact order and to the direction for blood testing which were also both contained in the order of 17 July 2019. In his submissions Mr Preece also referred to "a current order" that the child was not to go to the mother's property.

57. In the position statement on behalf of MB Law limited and Mr Preece of 12 December 2019 in respect of the hearing for wasted costs on 13 December 2019 it was submitted that, despite requests, the mother had not provided documents and materials and that "as at 13 September, [MB Law and Mr Preece] had but the C100 application and anything that attached/presented alongside that application…", and that they "acted solely on the verbal instructions provided by the [mother] in these family proceedings, and only did so for a very short time". It was repeated that despite several requests for her family file and documents relating to the family matters the mother did not provide those at any time.

58. It is not possible to ascertain exactly what documents Mr Preece and his firm did or did not have at the time of the application on 13 September 2019; but there is nothing from the transcript to indicate that Mr Preece then informed the court that he was without documents or that he lacked fuller information about the background history.

59. At the later hearing on 13 December 2019 on the question of wasted costs, Judge Tolson QC adjourned an application. In doing so he referred to the order of 13 September having been obtained without notice and "apparently without anything like full information being placed before the court". The order then made by Judge Tolson included the following:

    "3. On the papers before the court (the transcript of the hearing on 13 September and the witness statements in particular) there appeared to be failings on the part of the legal team which could not be the responsibility of the mother.

    4. These apparent failings included: (i) not bringing to the attention of the deputy judge on 13 September the correspondence from the father's solicitors;(ii) claiming that the father and/or his solicitors could not be contacted; (iii) giving an incorrect history of the matter to the court."

60. In the event, there was no determination by the court of those matters because it appears the application for wasted costs was not pursued, as was later recorded in an order made by Her Honour Judge Harris on 21 February 2020. For that reason, it is unclear what findings Mr Preece sought to rely on in support of his later assertion that the allegations against him became *res judicata*. However, that assertion by Mr Preece was canvassed in his correspondence with the Bar Standards Board in June and July 2020. Mr Preece then maintained that the court had made no adverse findings about him in December 2019; the Bar Standards Board pointed out that the judgments of Judge Tolson did not make any finding about whether Mr Preece had breached any provisions of the BSB Handbook, and that the only reference to him was in one paragraph of a judgment which stated that a separate order for costs would not be made against him as it appeared he was acting under the umbrella of MB Law. In those circumstances Mr Preece was pressed by the BSB for his response to the matters set out in the summary of allegations that had been sent to him in March 2020.

61. Mr Preece left MB Law in March 2020.

62. The solicitors for the father reported Mr Preece to the Bar Standards Board. In July 2021 the BSB referred the case to the Tribunal. In subsequent correspondence with the BSB in September 2021 Mr Preece reiterated his contention that the allegations were *res judicata* and that the proceedings were an abuse of process because the BSB were seeking to rehear matters which had already been heard and decided by the court. In an e-mail of 7 September 2021 Mr Preece wrote to the BSB saying:

"Please be aware that the address you hold is several years out of date please do not use it. As the proceedings you are undertaking are an abuse of process, I would be grateful if you did not serve anything at all on me."

63. Mr Preece repeated this in his final e-mail to the BSB of 15 October 2021, after which he did not respond to further communications.

Preliminary Matters

64. The hearing before the Tribunal began with an application by the BSB to amend the statement of offence of Charge 8 to read 'rS8' instead of 'rC6'. There were no submissions on behalf of the Respondent as he was not present nor represented. This application was granted on the basis it conferred no injustice to the Respondent.

65. Mr Sharpe KC then made an application for the case to proceed in the Respondent's absence. He took the Panel through the correspondence at the time when the Respondent was engaging, and the period of time then when read receipts were being received by the BSB in response to their emails (this continued as late as November 2021). These showed emails had at the least been opened. However, the Respondent appears to have then disabled his email address. Postal addresses seemed to be mail drops only, and not addresses where the Respondent had actually been resident. There was some reason to think that he could be living abroad – specifically in Spain, as a result of a court case against someone with his name in the Magistrates' Court concerning the poor condition of a house that he owned. Costs of further investigations on behalf of the BSB into his whereabouts were judged to be prohibitive.

66. The Panel retired to consider that application and then returned at 12:45 and ruled as follows:

> 'This Disciplinary Tribunal hearing listed today and tomorrow concerns charges of professional misconduct made against Respondent Mr Preece. Mr Preece has not attended the hearing and is not represented. He has not communicated with the Tribunal in any way.
> In the circumstances the BSB have submitted that the Tribunal may properly proceed in the absence of the Respondent. It is submitted that in this case the Tribunal can be satisfied that the procedure for service of documents by the BSB has been complied with and the matter can proceed in his absence. The BSB have provided a substantial bundle of documents indicating efforts to serve on Mr Preece and to engage him in the process.
> The problem is that Mr Preece has not provided any current professional or residential or other address. His whereabouts are unknown. All the BSB have had is an email address, and so the Tribunal had earlier directed that service should be on that address. It is clear that he has therefore been made aware of the charges and been supplied with supporting evidence; he has engaged in some correspondence with the BSB - albeit not very constructively in the circumstances. His response to the BSB in an email of 7 September 2021 made

clear that he did not wish to be served at all, and his view that the charges against him were an abuse of process by reason of *res judicata*. The last actual response from Mr Preece was in October 2021. Evidence shows that emails were thereafter received by him, as there are read receipts which have been provided by the BSB in their bundle. He discontinued the email address around July 2022. After this he has not been made aware by email of the actual hearing date allocated for the Tribunal. However, given his unwillingness to communicate or engage with the BSB or Tribunal, the Tribunal's view is that that would not justify an adjournment to explore other means of locating or communicating with him.

Despite requests to provide alternative addresses he has failed to do so. The Tribunal is satisfied considerable efforts have been made to engage Mr Preece and all reasonable efforts have been made to locate and notify him so he might have a proper opportunity to participate. Those have included the instruction of an enquiry agency who provided a report which the Tribunal has read, as well as the statements of employees of the BSB. Mr Preece has chosen not to respond or participate.

To some extent at least the Tribunal do have his response to the allegations made against him at an earlier stage. Having regard to the authorities referred to by Mr Sharpe KC, the Tribunal are satisfied that it would be just to proceed and that there would be no benefit in an adjournment at this stage.'

Pleas

67. As Mr Preece was neither present nor represented, the charges were all taken to be denied.

Evidence

68. The Tribunal were provided with substantial bundles of documents.

69. Mr Sharpe KC confirmed that the necessary permissions had been obtained for the use of the Family Court transcripts in these proceedings.

70. The Tribunal indicated that, in the absence of the Respondent, they did not anticipate requiring to hear from the two proposed live witnesses, neither of whom had been present at the Family Court hearing in September 2019 that formed the basis of the allegations, as that had been an *ex parte* hearing.

71. Mr Sharpe read the statement of Ms Gardiner, the father's solicitor, to the Panel, directing them to accompanying exhibits. He then went through the chronology of the case, setting out the evidence for Mr Preece's conduct as alleged. There are a number of orders and associated documents in the bundle put before the Panel that Mr Sharpe KC explained as part of the chronology. The BSB's main evidence was the transcript of a hearing before DDJ Butler on 13/9/19, in which the Respondent explicitly stated to the Judge on more than one occasion that he is a barrister.

72. In response to a question about the Form C1A Mr Sharpe said that the BSB had spoken to the father who said that either it never existed, or he was never provided with a copy by Mr Preece. Mr Sharpe indicated the latter seems more likely as it would have been expected to exist.

73. Two statements had been provided by the father. It was explained that initially the father had wanted to incorporate the contents of the impact statement into his overall statement. The BSB did not want to do that, and so as a compromise father provided two statements – one the factual witness statement and the other the impact statement.

74. The date of the criminal offence proceedings relating to the mother was clarified from information in an email to the father from an officer in the Metropolitan Police. The BSB had contacted father and received the information in an email. The mother was sentenced on 12 November 2019. It was clear that at the time of hearing on 13 September 2019 Mr Preece would have been aware of the position in the criminal proceedings with which he was dealing.

75. Mr Sharpe KC went through the transcript of the hearing on the 13 September 2019.

76. It was submitted that Mr Preece at no point corrected the misunderstanding that he was appearing as a barrister. Mr Sharpe confirmed that the BSB were not saying he appeared in court when should not have done so. There is a route to rights of audience under 2007 Act, and where he was claiming to be instructed by and under close supervision of an authorised person, he had a route to a legal right of audience in the Family Court case in chambers, and BSB accepted that.

77. Mr Sharpe continued by submitting that the provision was a two-edged sword, as, if Mr Preece was right that in this case, he had been instructed by, and under close supervision of, a partner in his firm. This caused real difficulties to his position in terms of his knowledge of the facts relevant to the case, as if he was properly instructed and under supervision it was extremely difficult to see how he was not aware of the relevant facts which includes the various letters that had passed between the solicitors. The BSB conceded that he had rights of audience, but to have benefitted from that he ought to have been under close supervision: and that was inconsistent with the suggestion that he turned up to court unaware of any of the circumstances of the correspondence relating to the facts of the case, and while then representing to judge that he was a criminal barrister when in fact he was, at very most, a non-registered barrister exercising a very specific right of audience under a lacuna in the LSA 2007.

78. Mr Preece appeared later to be saying that the only reason they went to court on 13 September was that the father would not agree to contact. If that was so, then that was

not apparent from the court transcript of the hearing which showed that a range of concerns about the father and child were expressed.

79. Mr Sharpe said that Mr Preece had claimed he had no idea that an order made in July 2019 contained a Prohibited Steps Order. Mr Preece seemed to be suggesting that the Court was itself at fault for not mentioning to him the July hearing and the contents of the resulting order. He submitted that it was inconceivable that anyone attending court in any case, claiming to be instructed and closely supervised, and having had calls made personally between him and a solicitor on the other side, could not be aware of this information if they took even the smallest care in their preparation for the hearing.

80. There is no court attendance sheet for 13 September, just the transcript. Mr Sharpe outlined what Mr Preece's response to this aspect of the allegation appeared to be, which was that he had informed the court clerks of his position.

81. It was submitted by Mr Sharpe that the C100 and mother's witness statement both referred specifically to the order made in July, and that in the circumstances it was inconceivable that the mother's solicitors and Mr Preece would not have made some attempt to obtain that order from the court before seeking a listing and a hearing before the Judge. They appeared to suggest that they had not had proper access to documents. There would be a duty upon any lawyer acting to ensure that they had obtained the documentation to properly represent their client. They appeared to be blaming their own client for not giving them the documentation.

82. The mother's solicitors and Mr Preece had initially said that they went before the court as there was no agreement to contact between the child and the mother. But later, there was also a suggestion by them that there had been a 'snatch' of the child. Nothing in the court orders suggested that that had happened.

83. Mr Serr observed that there are two strands being ridden – first, that the mother was a fantasist, but on the other hand that they had investigated the claims of the mother and they were correct. Behaviour such as this went to the heart of the relationship between the Bar and the Bench, and Mr Preece had not been full and frank in what he said in court. The father's solicitors had to obtain the transcript as there were insufficient notes of what had happened at the hearing, and this was especially concerning where the child might be uprooted from one parent to another as a result of the proceedings.

84. The statement by Mr Preece claimed that Mr Preece did not have sight of various details; but he was a recipient of a Gmail that contained at least some of them (it is a GMail document where the icon for the attached draft order can be seen – it was sent to the Court Office and Mr Preece was another recipient of it). It was submitted that it had therefore become incumbent on Mr Preece to correct the misunderstanding as to whether he was appearing as counsel or not.

85. If MB Law and Mr Preece were saying that they did not receive emails of 14 and 27 August, it appears that the father's solicitors wrote again, saying that their letters had not been acknowledged. Assuming they did get that third email on the 29 August, they should have asked for the missing emails to be sent again.

86. The application for a wasted costs order did not proceed to a determination – this was relevant as Mr Preece had suggested in his correspondence to the BSB that there was a judicial determination that was favourable to him and the BSB consequently could not revisit the facts due to *res judicata*.

87. Mr Sharpe continued to take the Tribunal through the chronology by way of the emails that were sent between MB Law and Ms Gardiner. These included those containing serious allegations made on behalf of the mother against the father of rape and violence, and continuing disputes as to contact and alcohol testing.

Findings

88. In considering what findings are appropriate in this case, the Tribunal have to consider various matters.

    1. The duty of an advocate making an *ex parte* application.

    The courts rely on the integrity of advocates appearing before them. The duty of an advocate not to mislead the court, whether by putting forward matters known not to be true or by omission, is fundamental in safeguarding the fairness and justice of proceedings.

    In the case of *Wingate v. Solicitors Regulation Authority* [2018] EWCA Civ 366, [2018] 1 WLR 3969, Jackson LJ described the term "integrity" as a useful shorthand to express the higher standards which society expects from professional persons and which the profession's expect from their own members. He said [para 100]: "Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse." He went on to give illustrations of what constituted acting without integrity [para 101] including recklessly, but not dishonestly, allowing a court to be misled. He added [at para 102] that: "Obviously, neither courts nor professional tribunals must set unrealistically high standards".

    The obligation not to mislead is of particular importance when the advocate appears on behalf of a party seeking relief *ex parte* and the court is asked to make a decision without hearing both sides. The obligation on the applicant and on his or her representative is to make full, frank and fair disclosure of all the material facts, *i.e.* those which it is material for the judge to know in dealing with the application: materiality is not to be decided by the assessment of the applicant or his or her representatives, and

they are expected to have made proper enquiries before making the application so that the court can be fully informed. Clearly, the potential consequences of the court making an incorrect decision without proper information could be particularly serious when the application is for an order requiring a young child to be suddenly moved from one household to another, particularly if (as happened in this case) the order is set aside, and the child concerned is then moved back.

2. The burden of proof

The burden of proving the charges lies upon the BSB throughout. Each charge has to be considered separately. The Tribunal should apply the civil standard of proof when deciding the charges of professional misconduct where the conduct alleged within that charge occurred after 1 April 2019.

3. The effect of the absence of the respondent, Mr Preece

Mr Preece has had every opportunity to take part in the proceedings against him in the Tribunal. He appears to have chosen not to do so and not to communicate with the Bar Standards Board or the Tribunal since October 2021. Although the Tribunal have written evidence from him in the form of the statements he made to the Family Court and in his earlier responses to the Bar Standards Board, that evidence has not been tested by cross-examination, and the Tribunal do not have his responses to the specific allegations contained within the charges under consideration. Accordingly, as a result of his unwillingness to become involved or to go beyond his assertion of *res judicata*, several important questions have been left unanswered. The Tribunal have therefore had to consider carefully whether, and to what extent, adverse inferences can properly be drawn against Mr Preece, recognising the need for caution in doing so in his absence. Insofar as the Tribunal have some explanations by Mr Preece and MB Law the Tribunal have had to consider whether they are plausible and would make Mr Preece's behaviour excusable.

4. *Res judicata*

The Tribunal are satisfied that there is no evidence of any judgment or ruling in the Family Court which exonerated Mr Preece as suggested by him. On the contrary, the evidence indicates that the Family Court became concerned at what was said and done by Mr Preece.

5. Conclusions

89. Having reviewed the evidence, the Tribunal are satisfied that when the court made the *ex parte* order on 13 September 2019 it did so without having been provided with an objective or coherent presentation of the factual and procedural history in the case. Mr Preece did not then indicate to the court that he or MB Law lacked information or documents. It is clear that the court made the order in reliance on the oral submissions of Mr Preece and on the statement which Mr Preece said he had provided. Mr Preece presented a series of allegations without making the court aware that they were disputed and without referring to the e-mail correspondence. He did not mention his conversation with the father's solicitor on 9 September, although in their conversation

he had told the father's solicitor that "he had to be able to tell the judge what further measures he had taken to get the father's solicitors to advise the father to reinstate contact".

90. Charges 1-6 are based on 7 specific statements made by Mr Preece to the court on 13 September 2019. Charges 1 and 4 are alternatives. Charges 2 and 5 are alternatives. Charges 3 and 6 are alternatives. Essentially, in each case the question for the Tribunal has been whether Mr Preece knew the individual statements made by him were untrue and misleading, such that he acted without honesty; or whether he acted recklessly as to the truth of what he then said to the court.

91. The statements by Mr Preece to the court that the mother had the primary care of the child and that the father had simply taken the child were incorrect and misleading, particularly given the length of time the child had lived with the father. In so far as the mother's solicitors and Mr Preece had gone before the court for an order for return of the child, and not just for reinstatement of contact (as had been suggested by Mr Preece in his telephone conversation with the father's solicitor on 9 September) it was of particular importance that he should explain to the court fully and accurately the circumstances in which the child had gone to live with the father, what had happened in the intervening period and why an immediate order made without notice to the father was necessary in the interests of the child. In the circumstances Mr Preece was not honest in his presentation of the situation.

92. The statement by Mr Preece to the court that the father was overdue in submitting an alcohol test and was refusing to lodge the test result was plainly inconsistent with the correspondence. Even if Mr Preece had not seen all of the correspondence, which clearly showed why the test had been delayed, there was no basis for saying that the father was refusing to lodge a test result. At the very least Mr Preece's statement to the court was reckless.

93. The statements by Mr Preece to the court that the father was not in contact with his solicitors and was not engaging had no factual basis. Even if Mr Preece had not seen, or been made aware of, the email correspondence from the father's solicitor in August 2019, he should have drawn the court's attention to the father's solicitor's email of 9 September and to his own conversation with the father's solicitor on the same day. He gave an unjustified impression that the father was obstructive and uncooperative. Mr Preece was not honest in his presentation in that regard.

94. The statement by Mr Preece that the criminal case against the mother would not be prosecuted was reckless, based on an optimistic hope that the CPS would decide not to proceed. At the very least Mr Preece should have told the court that his firm had asked the CPS to reconsider the prosecution and that a response to that request was still awaited.

95. The statement that Mr Preece was a criminal barrister, made without any qualification accurately to describe his actual status as a practitioner, was reckless. The court would have been left with the impression that Mr Preece was a practising barrister with rights of audience as such, rather than appearing as an agent for the solicitors who employed him and relying on the statutory exception which gave him only a limited right of audience on a hearing in chambers. If, as Mr Preece later maintained, he had explained his position to the judge's clerk, he did not repeat that explanation to the judge himself which he should have done in so far as he felt it was necessary or helpful to inform the judge (as he did several times) of his status as a barrister. In that regard he was reckless.

96. Accordingly, the Tribunal conclude that Charges 1, 2 and 3 are established in respect of the statements made by Mr Preece were known by him to be untrue. Charges 4, 5 and 6 are established to the extent that the other statements made by him were made recklessly as to the truth.

97. Charges 7 and 8 concern 5 specific allegations made by Mr Preece about the father. The Tribunal are satisfied that in making those statements without pointing out to the court that each of the serious allegations against the father were disputed, Mr Preece acted without integrity and in breach of his role as an advocate, particularly when making submissions in support of an application made at an *ex parte* hearing and without notice to the other party. Such behaviour was clearly likely to diminish the trust and confidence which the public places in the profession. Charges 7 and 8 are therefore established.

98. Charges 9, 10 and 11 relate to Mr Preece's unqualified references to himself as a criminal barrister. As stated above, in so far as Mr Preece felt it necessary to refer to his status as a barrister, it was incumbent on him to make clear that he was appearing in reliance on his limited right of audience before a judge in chambers. He presented himself as a practising criminal barrister, and to that extent those charges are established.

99. The decision of the Tribunal on the individual charges is unanimous.

Sanction

100. Had Mr Preece been present at the hearing the Tribunal would have gone on to consider the question of what sanctions might be imposed. However, in the circumstances it will be necessary, after publication of the decision on the charges and after further attempts have been made to contact Mr Preece, to give him a further opportunity to respond or make representations in respect of sanctions. To enable that a further hearing will be arranged and notified to the parties.

101. If Mr Preece again does not attend the hearing the BSB and the Tribunal will have to consider whether and to what extent it has been practicable to comply with the relevant procedures in accordance with regulations E183 and E184.

Further steps

102. This report was sent to Mr Preece by way of email on 15th December 2022. This was the only contact address that BTAS or the BSB had for him. The email bounced back to BTAS when it was sent.

Adjourned Sanction Hearing

103. On 22nd February 2023, the Panel reconvened to deal with the issue of sanction. Mr Preece had not been in contact with BTAS or the BSB in the interim.

104. Mr Sharpe KC again applied to proceed in the respondent's absence, having set out the steps taken by the BSB. The Panel acceded to that application.

105. The Tribunal were a 4-person Panel for the sanction hearing, as Mr Brighton was unavailable. Under rE149 this is permissible, and Mr Sharpe KC had no observations to make.

106. Mr Sharpe KC directed the Tribunal to the Sanctions Guidelines, and specifically to misconduct group A.

107. It was noted that there is no specific mitigation as nothing about the respondent's present circumstances is known due to his lack of engagement.

108. The BSB confirmed that there were no previous disciplinary findings against Mr Preece.

109. An application for costs was made by the BSB in the sum of £4,770.

110. The Panel adjourned from 11:10 to 11:45 to consider the decision as to sanctions.

111. When they returned, they gave their sanction judgement as follows:

'The tribunal have been considering the question of sanctions to be imposed in this case. On the 21st and 22nd Nov 2022 the Tribunal heard and determined charges of professional misconduct against the Respondent Mr Preece. The charges were found to have been established. A written report of the decision dated 14th December 2022 was provided to Mr Preece. He had not attended that hearing and the Tribunal decided that in the circumstances they could then properly proceed in his absence. Having found the charges established, the consideration of any appropriate sanctions was adjourned until today to allow the Respondent a further opportunity to appear, or at least to communicate and to offer any mitigation and explanation of his conduct and his present situation and attitude.

The Respondent has not appeared, and the Tribunal have been informed that the BSB have had no further contact with him and have no further or better information as to where he might be. In those circumstances, the BSB renewed the application to proceed in his absence, and the Tribunal are satisfied that the rules do permit the Tribunal to continue to proceed in his absence and that it would be fair to do so. The Tribunal now have to determine the sanctions to impose. In doing so the Tribunal have to have regard to Sanctions Guidance version 6, applicable from 1st Jan 2022. Sanctions are not to be imposed to punish, though it is to be recognised they may have a punitive effect. The purposes of applying sanctions for professional misconduct are to protect public and consumers of legal services, maintain public confidence and trust in the profession and enforcement system, maintain and promote high standards of behaviour, and act as deterrent to the individual barrister as well as the wider profession.

A fundamental principle behind the imposition of a sanction is that any sanction should be proportionate, weighing the interests of public with those of practitioners, and must be no more than necessary to achieve those stated purposes. The Guidance proposes a 6-step staged approach which the Tribunal have undertaken in this case. The 6 steps are set out in Part 2 of the Guidance. In this case, as appears from the decision of the tribunal at the earlier stage, the most serious allegations found and established were of dishonesty. According to the Guidance, dishonesty normally involves disbarment in the absence of any exceptional circumstances. Because of the lack of engagement by the Respondent the Tribunal have nothing to indicate any exceptional circumstances to explain or justify the conduct by the Respondent, and accordingly the Tribunal consider that disbarment would be justified in respect of each of the charges in which element of dishonesty has been established.

The Tribunal have to determine seriousness of the misconduct by reference to culpability and harm factors. In this case, the behaviour by the Respondent was indeed serious – a serious failure on his part to act with integrity and honesty in the representations he made to the court, at a hearing conducted without notice to the other party. There was also a failure to refer the court to the last order made in the proceedings which both governed the arrangements for the child and set out the procedural and evidential directions in place, and a failure to refer the court to various important matters. The Respondent was personally responsible for these failures when making the application to the court: he must have prepared what he was going to say to the court. His representations were misleading and were made in a situation in which clarity and accuracy of submissions to the court were to be expected and were crucial.

The harm caused by those breaches of duty in this case was as follows:

a. Harm to the child at the centre of the dispute, who was, as a result of the order obtained, moved from one parent to the other at short notice and then moved back again when matter was later brought back to court.

b. Harm to other party to proceedings – the father who was not present and thus not able to defend his position. The Tribunal were provided with a statement by the father describing the effect of the abrupt enforcement of the order when the Respondent, with the police, attended at his home with a view to removing child in accordance with the order the Respondent had obtained.
c. Potential harm to the reputation of the profession because of the Respondent's conduct of the case.

The Tribunal should next consider the indicative sanction level – here, disbarment is indicated by the Guidance.

The Tribunal should next consider any aggravating and mitigating factors. This was a serious failure by the Respondent, who has not indicated any regret and has not engaged with Tribunal to explain himself. The only mitigation that the Tribunal have gleaned is that he has no previous record of any disciplinary misdemeanours and the matters relating to the charges all arose on one occasion – there is no other course of misconduct of which Tribunal have been made aware.

The Tribunal then have to consider the totality principle to determine the sanctions. Referring back to the findings, in charges 1, 2 and 3 the statements dishonestly made justify disbarment. Therefore, in respect of each of those charges, the sanction is to be disbarment.

Charges 4, 5 and 6 were alternative charges and were found to have been established in respect of elements of charges 1-3 which did not involve dishonesty, but only recklessness. No separate penalty is imposed in respect of those charges.

Charges 7 and 8 concern the specific allegations made by the Respondent to the court about the father in respect of which the Tribunal found the Respondent had acted without integrity and in breach of his role as an advocate, especially when making applications at *ex parte* hearing, and had acted in a way that would diminish trust and confidence placed in him or in the profession. Those charges cannot be looked at in isolation – the collective effect of the Respondent's breaches of duty justify disbarment in respect of charges 7 and 8.

Charges 9, 10 and 11 relate to his unqualified references to himself as a criminal barrister, without explaining his correct status to the court. Although the Tribunal consider that those matters, if they had been dealt with separately and in isolation, would be likely to have attracted suspension, the Tribunal have concluded that, having already imposed disbarment, in the circumstances there should be no separate penalty in respect of charges 9, 10 and 11.

The only other matters to be considered are costs and implementation of the disbarment.

Although considerable expense was caused by necessary efforts to trace Respondent, largely because of his evasive conduct, the only costs sought against him by the BSB relate to the fees incurred instructing counsel for the hearings in the sum of £4,770 including VAT. An order for payment of costs is made in that amount.

The disbarment should take effect immediately. There will be no restriction on publication of the decision."

112. The Treasurer of the Honourable Society of Middle Temple is requested to take action on this report in accordance with rE239 of the Disciplinary Tribunal Regulations 2017.

Dated: 14th December 2022 and 22nd February 2023

HH James Meston KC
Chairman of the Tribunal