



Neutral Citation Number: [2024] EWHC 2946 (Admin)

Case No: AC-2024-CDF-000108

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT (SITTING IN WALES)
Appeal to the High Court under section 24 of the Crime and Courts Act 2013

Cardiff Civil and Family Justice Centre
2 Park Street
Cardiff, CF10 1ET

Date: 20/11/2024

Before :

MR JUSTICE KERR

Between :

PETER JOHN WAREING **Appellant**
- and -
BAR STANDARDS BOARD **Respondent**

Mr Peter John Wareing (in person) for the Appellant
Mr Leo Davidson (instructed by Bar Standards Board) for the Respondent

Hearing date: 18 November 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 20 November 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

MR JUSTICE KERR

Mr Justice Kerr :

Introduction and Summary

1. The appellant (**Mr Wareing**) was disbarred in May 2024 from practising as a barrister by a disciplinary tribunal (**the tribunal**) after adjudicating six charges which they found in part proved. He has exercised his statutory right of appeal against that decision. The appeal came before me two days ago. Mr Wareing represents himself. The respondent (**the BSB**) is represented, as it was before the tribunal, by Mr Leo Davidson of counsel.
2. I must allow the appeal (by CPR rule 52.21(3)) if I consider that the decision of the tribunal was wrong, or that it was unjust because of a serious or other irregularity in the course of the proceedings. The appellant has argued on four grounds that the tribunal's decision suffers from both those defects and that it should be set aside. The BSB, through Mr Davidson, argued to the contrary that the decision was correct and just.

Relevant Law

3. The BSB drew my attention to a useful review of the relevant provisions and case law and a distillation of the applicable principles in an appeal such as this. It is found in the decision of Calver J in *Owusu-Yianoma v BSB* [2023] EWHC 2785 (Admin), at [16]-[28]. I am guided by what he said there and commend it to any reader requiring more detail than just the key points, to which I confine myself in the following summary:
 - (1) Barristers in England and Wales are bound by the Code of Conduct (**the code**) which is included in the BSB Handbook, published by the BSB. Disciplinary charges are dealt with by a disciplinary tribunal whose decision is subject to appeal under section 24 of the Crime and Courts Act 2013. The procedure before a disciplinary tribunal (and on appeal from it) is governed by the Disciplinary Tribunal Regulations.
 - (2) On appeal to the High Court, CPR Part 52 applies. The court normally carries out a review and does not receive further evidence, though the appellate court does engage with the merits and the nature of the appeal is flexible, depending on the body appealed against. The court will allow the appeal if the decision was wrong or unjust because of a procedural or other irregularity, as already mentioned.
 - (3) While engaging with the merits, the appellate court will accord an appropriate degree of respect and deference to the tribunal below, which is a specialist tribunal appointed for the specific disciplinary purpose and will often have had the benefit of hearing oral evidence. Appropriate deference is also due to the evaluative assessment undertaken by the tribunal below and the outcome of that assessment.
 - (4) The appellate court will not lightly interfere with a decision to impose a particular sanction; it will only do so if the tribunal below committed an error of principle in carrying out its evaluation or if, for some other reason, the evaluation was wrong and outside the bounds of what the adjudicative body could properly and reasonably decide. The court will interfere if the sanction is clearly inappropriate.

Facts

Background and previous disciplinary record

4. Mr Wareing was called to the Bar in 2004, completed pupillage in 2013 and began practising. In his first years of practice in 2014 and 2015, it was later found in disciplinary proceedings, he failed to take reasonable steps to manage his practice competently and in such a way as to achieve compliance with his regulatory obligations and failed to provide a competent standard of work. Those matters were found proved in 2017 in four charges before a disciplinary tribunal, which imposed a reprimand on three of the charges and took no action on the fourth.
5. In February 2018, another tribunal narrowly decided not to suspend Mr Wareing for three further charges, which he admitted, of supplying legal services for reward when not authorised to do so and misleading clients into believing he was entitled to practise when he was not. An aggravating feature was that the regulatory requirements had been brought to his attention on several occasions, he lacked insight into the seriousness of the misconduct and it took place over a lengthy period. He was fined £1,500.
6. A further ten charges ensued, relating to behaviour between January and September 2015. Three of them he admitted; the other seven were found proved. They included sending unnecessarily hostile and antagonistic correspondence; dishonestly misleading a solicitor; falsely telling an employment tribunal that a witness statement could not be prepared when one had been; holding himself out as permitted to conduct litigation when he was not; and doing public access work when not entitled to do so.
7. Mr Wareing appeared before a disciplinary tribunal in July 2021 in respect of those charges. On 13 July 2021, it decided that he should be advised as to his future conduct, suspended from practice for six months and required to undertake a public access course before returning to practice. The disciplinary tribunal found that he lacked truthfulness.
8. The suspension started on 19 July 2021. During its currency, he remained a barrister but his practising certificate was suspended and he could not hold himself out as a barrister when providing legal services; or as authorised to carry out reserved legal activities within the Legal Services Act 2007; and he could not describe himself as a barrister in providing other services unless he disclosed the suspension.

Work done during the suspension

9. The charges Mr Wareing faced in the disciplinary matter leading to this appeal arose from his activities during the period of suspension in the following five cases:
 - (1) *Alliance Property Investors Limited v Kennedy Wright Assets Limited*, in the Business and Property Court, Manchester (***Alliance***);
 - (2) *Law Mergers & Acquisitions Ltd v. Daniel Johns Ltd and Bhatti*, in the Clerkenwell & Shoreditch County Court (***Law Mergers***);
 - (3) *Allen and Carr v. Roach Precision Engineering Ltd*, in the Birmingham employment tribunal (***Allen and Carr***);

(4) *Badloe v. Narco Tuning Ltd and Townsend*, in the Coventry County Court (***Badloe***);
and

(5) *Alsford Timber Ltd v. Syncardia Homes (Fernback) Ltd and Sobowale*, in the Brighton County Court and Lewes County Court (***Alsford Timber***).

10. In all those cases except *Alliance*, Mr Wareing was already instructed before the suspension and had provided barrister services before the suspension started on 19 July 2021. Just before it started, he wrote to Ms Vicky McCarthy of the BSB asking whether “despite the fact that I am suspended from practice as a Barrister, I can work within an SRA [Solicitors Regulation Authority] regulated entity; undertaking services as their Agent” (underlining in original).
11. Ms McCarthy responded on 19 July 2021 that it was a “question that the firm will need to ask the SRA but he must also not breach the terms of his suspension...”. Those terms were then set out by reference to the relevant disciplinary rule. The BSB Handbook continued to apply during the suspension. The suspended barrister must not practise as a barrister, hold himself out as one while providing legal services, hold himself out as authorised by the BSB to provide reserved legal services or, when providing non-legal services, describe himself as a barrister without disclosing the suspension.
12. In *Alliance*, Mr Wareing provided a skeleton argument on 21 August 2021 for a remote hearing in Manchester on 24 August 2021. He signed it “Peter Wareing Amethyst Chambers”. Before the suspension, he used to sign “Peter Wareing Barrister Amethyst Chambers”; after the suspension; he dropped the word “Barrister”. He exchanged skeletons with his barrister opponent, Ms Victoria Empson, on 22 August.
13. Her instructing solicitor discovered the suspension and told Ms Empson. At the remote hearing on 24 August, she raised the issue with District Judge Woodward, the judge. Mr Wareing confirmed the suspension and said he appeared as a solicitor’s agent, supervised by Precision Solicitors in Manchester. However, neither that firm nor any other was on the record. Mr Wareing could not explain to the judge why Precision Solicitors were not on the record. Precision Solicitors were “standing behind me”, he said.
14. He told the judge he had satisfied himself with the Bar Council, the SRA and the BSB that he came within the exemption in the Legal Services Act 2007 and his position was regular. The judge probed further and adjourned to enable Mr Wareing to make any enquiries that might help. He was unable to persuade the judge that he could represent the defendant and she declined to hear him and treated the defendant as absent. The detailed transcribed exchanges were quoted in the tribunal’s decision.
15. After the hearing, the judge checked his chambers website and Linked In profile. Suspension was not mentioned; he was “Counsel” at Amethyst Chambers and “I now work on direct access instructions ...”. The judge and Ms Empson made reports to the BSB. They and the solicitor, Mr Daniel Thomas, had all thought Mr Wareing was attending as a practising barrister until Mr Thomas’ research had revealed the suspension, resulting in the judge’s questioning of Mr Wareing and her refusal to hear him.

16. In *Law Mergers*, Mr Wareing had been instructed for the defendants on a direct access basis since February 2021. A hearing in Clerkenwell & Shoreditch County Court was listed for 7 September 2021, during the suspension. Ms Danielle McMahon of the first defendant's legal department wrote to the court on 3 September, copying Mr Wareing at Amethyst Chambers, saying it was represented by "Peter Wareing (Counsel) of Amethyst Chambers".
17. Ms McMahon sought an adjournment on the ground that Mr Wareing was "double booked" on 7 September. The second defendant, a director of the first defendant, applied on 6 September 2021 to move the hearing to the afternoon, starting at 2pm, on the basis that Mr Wareing would be available then but not in the morning. He too described Mr Wareing as "(Counsel) of Amethyst Chambers".
18. On the day, opposing counsel, Ms Brooke Lyne and her instructing solicitor, Ms Kathryn Dale, looked at the documents. The judge adjourned the hearing to 2pm and during the hiatus Ms Lyne and Ms Dale discovered Mr Wareing's suspension from the BSB website and Ms Lyne emailed him to let him know. He did not attend court at 2am; he left a message for Ms McMahon saying he was in Manchester that day. Ms Lyne informed the court of the suspension.
19. The hearing proceeded with no one representing the defendants. Judgment was given against them. An application was later made to set it aside. In opposing it, Ms Dale described Mr Wareing's conduct as extraordinary. Both she and Ms Lyne later provided evidence to the BSB about these events, commenting that no solicitors were on the record for the defendants and that Mr Wareing had not given any indication that he was instructed otherwise than as a practising barrister.
20. In *Allen and Carr*, Mr Wareing was instructed in April 2021 directly by both claimants on a direct access basis. He applied to join their cases. In June 2021, before the suspension, he was corresponding with the respondent's solicitor, Ms Karin Henson. After the suspension, on 22 August 2021, Mr Allen wrote to Ms Henson about a hearing bundle and saying if she was preparing one "my agent Mr Peter Wareing" would like a copy by 1 September 2021 so he could prepare for the hearing, fixed for 15 September. Mr Wareing "my agent" should, he asked, be copied into future correspondence.
21. The respondent's office manager, Ms Karen Hughes, complained to the BSB on 24 August 2021 that Mr Wareing was suspended and queried how he could be acting for the claimants; he "gives the profession a very bad name by acting while suspended". After the hearing on 15 September she wrote again saying at the hearing Mr Wareing had made clear he was not acting as counsel and the claimants confirmed they were content with that, so the hearing was able to proceed.
22. The respondent's barrister, Mr Jonathan Gidney, had updated the BSB, Ms Hughes noted. Mr Gidney had indeed kept the BSB informed. Ms Hughes complained about the tone of Mr Wareing's correspondence. Prior to 29 September, Mr Wareing wrote to Mr Gidney: "Cheap shot Mr Gidney. Unbecoming of a member of the bar and factually incorrect to boot." The suspension, he said, only prevented him from acting as a barrister, not from acting in the employment tribunal, where no right of audience is required. He copied in Ms Henson and "my lay clients", i.e. Mr Allen and Mr Carr.

23. After the hearing, Mr Wareing prepared papers for an appeal to the Employment Appeal Tribunal. He signed himself “Peter Wareing Amethyst Chambers” and wrote to the tribunal and Ms Henson assuring them that he would continue to represent his two lay clients, Mr Allen and Mr Carr. He commented that he was “currently working for several major firms of Solicitors as their Agent” but that it would be convenient to use the Amethyst Chambers email address, for continuity.
24. In November 2021, he wrote to the employment tribunal, describing himself as the “appointed representative for the Claimants”. He made representations on what he said was a lack of compliance by the respondent with directions given by the employment tribunal. As the tribunal (i.e. the disciplinary tribunal in this case) later commented, he was treated by the employment tribunal as a lay representative, he did not refer to himself as “counsel” after the suspension but he did not disclose the suspension or stop using the designation “Amethyst Chambers” after it.
25. In *Badloe*, Mr Wareing was instructed for the claimant before his suspension, on a direct access basis. He wrote to the court in June 2021, before the suspension, complaining about the court staff and describing himself as “appointed Counsel”, but referring also however to his client Mr Badloe as a “litigant in person”, assisted also by a “firm of paralegals” to which correspondence should in the first instance be sent. He said that he did not “have conduct of the litigation”, but asked to be copied in to correspondence.
26. After the suspension started, on 22 September 2021 Precision Solicitors, in Cheshire, sent the court a Notice of Change of representative. The email address supplied was peter.wareing@precisionsolicitors.co.uk. The notice was signed by Mr Wareing as “Solicitors Agent”. He appeared before District Judge Bowen that day and a note of that hearing recorded Mr Wareing appearing as a solicitor’s agent.
27. Ahead of a further hearing on 12 October 2021, he emailed the court from his Amethyst Chambers email address attaching a further Notice of Change, with Brown & Co Solicitors replacing Precision Solicitors and Mr Wareing again signing in the capacity of “Solicitors Agent”. On 11 October 2021, he submitted a skeleton argument in the same case, signed “Peter Wareing Solicitor’s Agent”, copying the email to the defendant’s solicitors, “their appointed Counsel, those instructing me and my lay client.” He signed the email “Yours faithfully Peter Wareing Amethyst Chambers”.
28. After the hearing on 12 October, Judge Gilmore was concerned about the incongruity between “Solicitor’s Agent” and “Amethyst Chambers”. She discovered that Mr Wareing was suspended by looking at the BSB website. She consulted her husband, an expert in regulatory law, who said he had been instructed by Mr Wareing; whereupon the judge recused herself. She made a report to the BSB.
29. In *Alsford Timber*, Mr Wareing was instructed by the second defendant via direct access before the suspension, with the second defendant mainly retaining conduct of the litigation and Mr Wareing having asked the claimant’s solicitors to keep him copied in. A hearing in Lewes County Court was scheduled for 25 October 2021, during the suspension. On 18 October, Mr Wareing emailed the claimant’s solicitors about the bundle, saying he had been in conference with his “lay client”. He signed “Peter Wareing Amethyst Chambers”.

30. On 20 October 2021, Mr Wareing emailed the claimant’s solicitors. The claimant’s counsel, Mr Matthew Gillett, having become aware of the suspension, was concerned and reported the matter to the BSB. On 21 October, Mr Gillett forwarded to the BSB extracts from Mr Wareing’s two emails, commenting that despite his suspension Mr Wareing appeared to be enjoying a busy practice. In one of the emails, Mr Wareing said he had been engaged in a multi-day trial and had a fast track single day trial in Stoke the next day. Both emails were signed “Peter Wareing Amethyst Chambers”.
31. In his report to the BSB, Mr Gillett noted also that Mr Wareing’s website profile remained on the Amethyst Chambers website, did not mention the suspension and described him as member of the public access scheme; while the sanction against him included, in addition to suspension, a requirement to under a public access course before returning to work after the suspension. Mr Gillett was concerned that Mr Wareing appeared to be holding himself out as a public access barrister during the suspension. There were no solicitors on the record in the case.
32. On 21 October 2021, Mr Gillett emailed Mr Wareing alerting him to the “serious issue” he would have to raise with the court and elsewhere, prudently adding that if he had got things wrong, he apologised. Mr Wareing responded that he was indeed suspended but not prevented from acting as a solicitor’s agent; that “the notice of hearing lodged in this case clearly indicates the capacity in which I act to represent Mr. Sobowale on Monday”. He added:

“I have asked the questions and have been assured by all concerned, both the BSB and the Bar Council and indeed even the SRA; that there is nothing in the terms of the suspension, (which ends January 18) or any of the relevant sections of the Code of Conduct which prevents or precludes me from acting before the Courts as a Solicitors Agent and doing so does not interfere with or contravene the terms of my suspension from practice as a Barrister.

I do not hold myself out as, nor do I present myself before the Court as Counsel. I trust that is the end of that non-starter of an issue.”

33. In his skeleton argument, Mr Gillett contended that Mr Wareing had no right of audience, that any application by him to be heard was opposed, that he could not bring himself within the exemption in paragraph 1(7) in Schedule 3 to the Legal Services Act 2007, that there were no solicitors acting and that Mr Wareing was probably not covered by professional indemnity insurance. The hearing on 25 October 2021 was vacated and by the time the case finally concluded, the suspension had ended.
34. On 1 December 2021, the head of Amethyst Chambers informed the BSB that he was aware of Mr Wareing’s suspension and that the latter had told him he had a letter from the Bar Council saying he could continue to practise as a solicitor’s agent. Mr Wareing had been asked to produce the letter but, four months on, had not done so. The BSB asked the head of chambers to remove any reference to Mr Wareing so that there could be no impression that he was still working from Amethyst Chambers.
35. On 6 December 2021, Mr Wareing reported his own position to the BSB in the terms quoted thus by the tribunal in its later decision:

“Being concerned that such a step may contravene the terms of my suspension, but still needing to work if I could; I contacted the BSB to ascertain whether there was any bar or

impediment to me acting in the capacity of Solicitors Agent. I received a response which appeared to confirm it did not but, as I did not feel that was a complete answer; I telephoned Ethics and sought their advice. I was informed by them that, as the e-mail response already told me, I should not hold myself out as a Barrister, or describe myself as one and, if I ensured I stuck to those rules, there was no bar or impediment to me being instructed by those firms to appear for clients of Solicitors as their agent.

Being therefore reassured that I would not be contravening any other rule or acting in a way which would contravene, or interfere with the terms of my suspension, I began acting as a Solicitors Agent.

However, whilst that status was never questioned by the Courts I appeared in, or challenged by any Judge up to last Wednesday, 3rd December, [a mistake for 1st December], I was then challenged on that status twice, once that day and once the following day, Thursday, 2 December 2021.

On the first occasion, the fact of my appearing as a Solicitors Agent was challenged by my opponent, who raised the issue before a QB Master, Master Cook, where I was appearing to represent the Claimant in a hearing of what I was advised would be several cross-applications, all of which were discontinued prior to the commencement of that hearing; save for an application for costs submitted and pursued by the 1st Defendants, BBC.

Contrary to what I had believed, and despite a notice of acting having been filed and served by e-mail, I was then told that by Master Cook I was unable to appear before a Queen's Bench Master as a Solicitors Agent. I therefore duly withdrew and as that hearing was open to the public, stayed to take a watching brief.

The Master also made a comment that he considered the status of Solicitors Agent to be a "*a transparent device to evade the suspension*" which comment caused me great concern in light of the advice received both from the BSB and from Ethics at the Bar Council and after which comment I had resolved to make this report in any event, if only to clarify the rectitude of the information I had been relying upon.

That decision to self-report was confirmed when, on the second occasion, when I was before the County Court in Newcastle, on the following day, Thursday 2nd December. I appeared to represent a Claimant pursuing a breach of trust case..... Following a full hearing of evidence, cross-examination and closing submissions; my status as Solicitors Agent was raised by my opponent, Mr, Kerfoot of Counsel to the Judge; DDJ O'Donnell [.....]

Having heard from both myself and Mr Kerfoot as to the existence and the background to the suspension, he then heard my explanation of the steps I had taken to ensure that I wasn't acting in contravention of my suspension and that it had been indicated to me by a representative from the BSB, Victoria McCarthy, (her e-mail of 18 July 2021 [in fact, 19 July] responding to my e-mail of 15 July) that I wasn't, before he heard arguments from my opponent relating to why, he said, I could not act as a Solicitors Agent.

Having initially confirmed that I could appear before him as Solicitors Agent the Judge then appeared to doubt his sureness and indicated that he would need to take guidance from the Presiding Judge concerning whether he should have heard me and adjourned the matter without giving judgement or reasons; so that he could consider the issue of my rights of audience, if any and whether he could grant those to me via the exercise of judicial discretion; asking for submissions on that point within 14 days."

36. On 18 January 2022, the suspension came to an end, but Mr Wareing was required to undertake a direct access course before returning to practice. I am not clear whether he went on a direct access course but the BSB took no point about that and he did resume practising as a barrister after 18 January 2022 and practised thereafter until 10 May 2024. The BSB, in 2021 and 2022, investigated and raised allegations against him.

After the suspension; the disciplinary proceedings

37. The BSB first put two allegations to Mr Wareing in writing, on or about 30 April 2022: failing to comply with the sanction of suspension; practising while suspended; and practising as a barrister when not authorised to do so. Mr Wareing responded in detail, denying the charges in an email of 30 May 2022. Later, six charges of professional misconduct were set out in a charging document dated 8 December 2022. The charges were of breaching Core Duties 3, 5, 9 and 10 of the code and breaching the Scope of Practice, Authorisation and Licensing Rules of the Bar of England and Wales.

38. The gist of the charges was:

- acting without honesty by practising and holding himself out as a barrister during the suspension (charge 1);
- acting without integrity by accepting instructions and holding himself out as a barrister knowing he was not authorised to practise as one (charge 2);
- acting in a manner likely to diminish public trust and confidence in the profession, by doing those things (charge 3);
- accepting public access work without being properly qualified (charge 4);
- practising as a barrister by providing legal services to a lay client, while suspended (charge 5); and
- carrying out a reserved legal activity under the Legal Services Act 2007 when not entitled to do so, by exercising or attempting exercise a right of audience (charge 6).

39. The facts supporting each charge were set out in the charge sheet as numbered paragraphs and related to Mr Wareing's conduct of the five cases, *Alliance*, *Law Mergers*, *Allen and Carr*, *Badloe* and *Alsford Timber*; save that the sixth and last charge did not cite *Allen and Carr* because it was an employment tribunal case where the restrictions on rights of audience in the ordinary courts do not apply.

40. A hearing fixed for October 2023 was adjourned at Mr Wareing's request for family reasons, without opposition from the BSB. On 18 November 2023, Mr Wareing emailed the BSB, copying the tribunal, that he was available in March 2024 on 6-8 March and 19-21 March but not thereafter, due to a planned visit to Canada for family reasons. The tribunal emailed on 19 December 2023 saying the hearing was listed for 18-21 March 2024, though subsequently confirming that the tribunal would not sit on 19 March.

41. Mr Wareing had not indicated availability in March 2024 on the first of those dates, 18 March; however, it turned out that his objection to the hearing dates ran deeper because

he appears to have intended, or said he intended, to say he was unavailable rather than available from 19-21 March. However, he did not comment on the hearing dates until 4 March 2024, when he claimed in an email to have received formal notification of the hearing (sent on 1 March 2024) from within the spam folder in his email mailbox.

42. He said he would be flying to Canada on the morning of 20 March and if the matter proceeded in his absence he would appeal against the decision to do so. The BSB opposed any further adjournment, reciting the procedural history since 19 December 2023 and earlier. The tribunal considered the correspondence and issued a written decision on 8 March 2024, refusing a further adjournment, giving the following reasons:

“1. It is a late application to vacate a fixed hearing.

2. The hearing was fixed having regard to the stated dates of availability of all concerned, including the respondent Mr Wareing.

3. Even though it is not clear exactly when Mr Wareing was notified of the dates of the hearing or when he booked the proposed trip to Canada, on the information available it appears at least that he took the risk of booking his trip to Canada on dates which he had previously given as dates upon which he would be available for the hearing. He then knew or ought to have realised that a hearing was being fixed, and he booked his trip to Canada without first checking with the Tribunal or BSB.”

43. Mr Wareing remonstrated at some length in a further email of 10 March 2024, to no avail. He provided a full 26 page statement dated 13 March responding to the charges. The tribunal read it and took it into account as is clear from paragraphs 14 and 23 of its decision. The tribunal (His Honour Judge Meston KC, a retired circuit judge, presiding) sat on 18 March 2024 and, after hearing argument from the BSB and being referred to well known case law such as *GMC v. Adeogba* [2016] EWCA Civ 182, decided to proceed in Mr Wareing’s absence.

44. In its oral ruling on the day granting the application to proceed in Mr Wareing’s absence, the tribunal said:

“No further significant information has been put before the Tribunal to justify an adjournment and the Panel are unanimous in finding that there is no sufficient reason to grant an adjournment at this very late stage.

Indeed, it occurs to us that from what we know of Mr. Wareing's movements and intentions, there is actually no reason that he could not have been present at least for the first two days of this hearing either physically or remotely.

We also had to consider, consequential upon that, the application by the Bar Standards Board to proceed with this hearing in his absence. It is clear, obviously that Mr. Wareing is aware of the hearing and it appears he has made a considered decision to absent himself.”

45. In its later written reasons, the tribunal added:

“The Panel were satisfied that Mr Wareing had been served with the convening order, the charges and the bundle of evidence prepared by the BSB and that he had prepared a substantial statement in response to the charges and to the evidence which the Panel were able to consider. He was aware of the possibility that the Panel could be asked to proceed in his

absence. The procedural requirements for service had been complied with and accordingly under rE183 the matter could proceed in his absence if it was considered just to do so. The Panel were referred to [case law cited]. The discretion to proceed in the absence of a respondent must be exercised with great care particularly where the absent party is unrepresented. It is necessary to have regard to all the circumstances of the case including the nature and circumstances of the absent party's behaviour in absenting himself, and, in particular, whether such behaviour was deliberate, voluntary or such as to waive his right to appear. The Panel decided that it was appropriate, fair and reasonable to proceed in the respondent's absence and that there was a public interest in resolving the charges without further delay" (paragraph 19).

46. The tribunal's findings on the merits, having heard evidence and submissions from the BSB, were quite brief. The charges were, in part but not entirely, proved. The findings were issued in writing on 21 March 2024, as follows:

"... 4. Charge 1 alleges that the respondent acted without honesty. Having considered the evidence and what must be ascertained to prove dishonesty, the Panel do not find the respondent to have been dishonest as alleged, and so Charge 1 is not established.

5. Charge 2 alleges that the respondent acted with a lack of integrity in respect of five matters. The Panel find Charge 2 established, except in the except in respect of the 4th particularised matter, which relates to a skeleton argument filed for a case in the Coventry County Court.

6. Charge 3 alleges acting in a way likely to diminish trust and confidence in the respondent and in the profession. The Panel find Charge 3 established, except again in respect of the 4th matter relating to the skeleton argument for the Coventry County Court case.

7. Charge 4 alleges acceptance of public access instructions in respect of five specified matters. The Panel find Charge 4 established as to the cases number 1, 2 and 5 but not as to those numbered 3 and 4.

8. Charge 5 alleges that the respondent practised as a barrister by supplying services to lay clients whilst holding himself out as a barrister. The Panel do not find Charge 5 established. Although there is evidence of what impression was given by the respondent to the court and to opposing lawyers, there is no, or no sufficient, evidence of what actually was said or not said to the lay clients in the individual cases identified.

9. Charge 6 alleges the respondent to have carried out a reserved legal activity namely by the exercise or attempted exercise of a right of audience in respect of 4 matters. The 4th of those matters is not pursued because it was not a case in which a right of audience was required, being a small claim. The 1st and 2nd of those 4 matters relate to the same case, when it is said that, in addition to the filing and service of a skeleton argument, the respondent appeared before the court. On the facts as shown by the documents, including a transcript, Charge 6 is established in respect of those first two matters. The third matter particularised in Charge 6 alleges exercise of a right of audience by filing a skeleton argument. Having considered the submissions on the point, the Panel do not think that that action alone was sufficient to amount to the exercise of a right of audience. Save as to that matter, and as to the 4th matter, Charge 6 is therefore established."

47. In the subsequent detailed written report dated 30 May 2024, the tribunal provided the following additional reasoning to support its conclusions (paragraphs 98-101):

“98. The essential allegation in Charges 1,2,3 and 5 was that Mr Wareing was conveying the impression that he was practising as a barrister. The Panel accepted the submissions of the BSB that Mr Wareing tried to behave and present himself as if his suspension from practice had not occurred; and, in so far as it became necessary to disclose his status, he adopted the device of being a ‘solicitor’s agent’ without any apparent effort to meet the definition of that role in substance. He did not adequately disclose his suspension to courts or opponents who (as submitted) for the most part found out only by their own researches, but for which they would have been unaware of his suspension and would have assumed that he acted or continued to act as counsel. His assertion in his self-report to the BSB sent in December 2021 that his status as solicitor’s agent was never questioned by the courts he appeared in, or challenged by any Judge up to his appearance before Master in early December, was not wholly truthful.

99. Mr Wareing’s wish to circumvent the effect of his suspension was shown by his approach to the BSB immediately after his suspension was imposed in July 2021. He has thereafter relied heavily upon the response to his approach from Ms McCarthy, repeatedly suggesting that she provided him with assurance he could act as a solicitor’s agent. He has gone further in emails to the tribunal, describing what Ms McCarthy wrote as giving him ‘prior and specific approval’ (his e-mail of 18 November 2023, paragraph 7) and ‘explicit confirmation’ (his e-mail of 4 March 2024). This became the defence of Mr Wareing to the charges (as stated in his statement in October 2023 when then applying for an adjournment of the disciplinary tribunal):

‘... the BSB themselves are instrumental in causing the present issues, as it is they who, through their agent, assured me that what I was doing, which is now said to be so wrong, was approved’.

However, it is clear to the Panel that Ms McCarthy’s e-mail to Mr Wareing of 19 July 2021 did not give him any such assurance, but rather told him what he must not do.

100. Mr Wareing himself, when self-reporting himself to the BSB in December 2021, said that he did not feel that what was in Ms McCarthy’s e-mail was a complete answer. However, as appears from the statement provided on Mr Wareing’s behalf by Luke Memory, he had told Mr Memory that he had received a response from the officer of the BSB who had been involved in the matter which had led to his suspension which gave him the “green light” to act as a solicitor’s agent. In reality the response from Ms McCarthy had not given him any green light. If anything, it should have prompted him to establish more clearly and precisely what he could and could not do if he wished to operate as a solicitor’s agent. As shown in the evidence before the Panel, the nature and extent of his activities went far beyond what might be expected of a solicitor’s agent, particularly in the absence of specific instruction and supervision from a solicitor case by case.

101. In the context of Charge 3, which alleges that Mr Wareing’s activities were likely to diminish public trust and confidence in the profession, the Panel considered objectively both what he did, and also what he omitted to do, following his suspension. The Panel found that his conduct was likely to diminish public trust and confidence. The evidence of Ms Hughes (a non-lawyer) confirmed that assessment: ‘Mr Wareing gives the profession a very bad name by acting while suspended’, and ‘it does seem ridiculous for a suspension to have been imposed that basically allows him to continue as normal.’

48. Mr Wareing filed a notice of appeal against that decision which, he wrote in his later amended notice of appeal, was brought on 11 April 2024. He sought a “stay of execution”. The BSB wrote to the King’s Bench Division listing office on 19 April saying that the sanction had not yet been decided upon so there was no decision to “stay”.

A further hearing had been fixed to take place on 26 April 2024 to consider the question of sanction. Mr Wareing confirmed that he would attend that hearing.

49. That hearing took place, in spite of an unsuccessful attempt by Mr Wareing to have it adjourned. He was (eventually, from just before 12 noon) present. The tribunal learned for the first time about the full history of Mr Wareing's disciplinary record; up to then it had only known about the proceedings leading to the suspension in July 2021.
50. After considering submissions, the tribunal returned and announced that it had decided to disbar Mr Wareing. On 9 May 2024, Mr Wareing amended his notice and grounds of appeal to add a challenge to that decision, which is therefore also before me. The reasoning supporting that decision was provided as part of the tribunal's later full report, dated 30 May 2024:

“121. It was necessary to have regard to the BTAS Sanctions Guidance and to the fundamental principles that:

(1) Sanctions are not to be imposed to punish, though it is to be recognised that they may have a punitive effect. The purposes of applying sanctions for professional misconduct are to (i) protect the public and consumers of legal services; (ii) maintain public confidence and trust in the profession and the enforcement system; (iii) maintain and promote high standards of behaviour and performance at the Bar; and (iv) act as a deterrent to the individual barrister, as well as the wider profession, from engaging in the misconduct subject to sanction.

(2) Sanctions should be proportionate, weighing the interests of the public with those of the practitioner, and must be no more than necessary to achieve those purposes.

122. The Guidance proposes a staged, 6-step approach to sanction:

(a) Determination of the appropriate applicable Misconduct Group for the proved misconduct as set out in Part 2 of the Guidance.

(b) Determination of the seriousness of the misconduct by reference to culpability and harm factors.

(c) Determination of the indicative sanction level for the proved misconduct.

(d) Application of aggravating and mitigating factors.

(e) Consideration of the totality principle and determination of the final sanction(s).

(f) Provision of written reasons for the sanctioning decision.

123. In this case it was important to remember the further principle that a Panel must only sanction the respondent in relation to the charges currently before it. Although dishonesty had been specifically alleged by the BSB, it had not been found by the Panel and accordingly the sanctioning decision should not be based on the suggestion of dishonesty or lack of honesty.

124. A further important point was that a denial of misconduct was not a reason to increase the sanction imposed.

125. The Panel had become aware at the sanctions hearing of the extent of the respondent's

disciplinary history (i.e. in addition to the suspension which had been imposed and which gave rise to the current charges). In so far as that could lead to consideration of disbarment reference was to be made to the statement in paragraph 6.37 of the Guidance that disbarment is the most serious sanction that can be imposed and is reserved for cases where the need to protect the public or the need to maintain public confidence in the profession is of such a level that the only reasonable option is to remove the respondent from the profession. Paragraph 6.39 states that it may also be that the cumulative impact of repeated misconduct at a lower level is such that the risk to the public of a barrister who does not meet the professional standards expected, despite previous sanctions is so great that only disbarment can meet that risk. It all depends on the facts of the misconduct, the nature of the previous history and the individual circumstances of the barrister.

126. The appropriate misconduct groups applicable in this case (with some overlaps) were group H (failure to comply with formal orders), group L (obligations to the regulator) and group F (misleading the court and others). The more serious elements were with respect to group H because of the respondent's failures to comply with the order for his suspension which had been imposed by a Tribunal for the protection of the public, and also with respect to group F in that the respondent had misled the court and opposing legal representatives, if only by omission.

127. The seriousness of the misconduct was in the deliberate and sustained attempt by the respondent to circumvent the terms of his suspension, even when he had been put on notice, from time to time that his status was questioned. This conduct caused concern to opposing lawyers and judges, was to the detriment of his clients who, at least, were inconvenienced when proceedings were curtailed because of his lack of candour and doubtful status. The respondent's assertions that he could continue to act as a solicitors' agent disregarded the guidance available to him. Moreover, in the period covered by the earlier charges he gave the misleading impression, until pressed, that he was, or was still, a practising barrister. The charges each involved a number of episodes, showing repeated misconduct. This conduct gave rise to harm, or potential harm to public confidence in the profession and in the administration of justice, and a risk of harm to the respondent's clients.

128. The indicative sanctions in the Guidance suggested a suspension of at least 12 months as a starting point, with the possibility of disbarment.

129. There were several aggravating factors:

(i) There had been a pattern of behaviour by the respondent seeking to evade the consequences of his suspension.

(ii) His previous disciplinary record.

(iii) The respondent had failed to show any sufficient insight or remorse, and there had been a lack of effort on his part to double-check his status, such that even when he did appear at the hearing to determine sanctions it was clear that he had still not read the part of the hearing bundle which set out the relevant guidance governing solicitors' agents. His continuing lack of insight suggested a risk of repetition in the future.

(iv) There had been an unusual failure on the part of the respondent to engage properly with these proceedings, despite their seriousness for him.

130. In mitigation:

(i) The Panel had supportive letters from solicitors and a statement from a solicitor.

(ii) The respondent had self-referred to the BSB (after referrals have been made by others), a point of limited weight in that his self-referral was prompted by serious criticism from Master Cook.

(iii) The respondent informed the Panel that he wished to continue with pro bono work.

131. In considering the totality principle, the charges covered the several incidents over the course of some time, each of which would have justified at least further suspension particularly in the light of the previous history.

132. The Panel attached particular weight to the risk of repetition in this case and, thereby, of harm to the public and to confidence in the profession, already indicated by the respondent's failures to recognise or comply with the restrictions imposed on him when suspended.

133. The Panel acknowledged that disbarment is the most serious sanction, but decided unanimously that it was the only reasonable option in this case.

134. Because the respondent already had lodged an appeal which was still pending the order for disbarment would not come into effect until after the outcome of the appeal is known.

135. In accordance with Regulation E227 and with paragraphs 6.44 and 6.45 of the Guidance, after hearing representations it was ordered that the respondent should suspend his practice and the BSB should suspend his practising certificate with effect from 10 May 2024."

Issues, Reasoning and Conclusions

51. Mr Wareing says in his skeleton argument that he relies on four grounds of appeal set out in his amended grounds, dated 9 May 2024. As I understand it, he BSB denied having been served with his notice of appeal as originally filed on 11 April 2024 and Mr Wareing amended his grounds in response to the sanction of disbarment. He begins by setting out what he calls background and context. He was approached after the suspension started by two firms of solicitors who liked the quality of his work, he explains.

52. He approached Ms McCarthy of the BSB for guidance on what kind of work he could do during the suspension; she did not say acting as a solicitor's agent would breach the suspension; he disclosed to the two firms his correspondence with Ms McCarthy "in which she gave what I believed was permission"; and the two firms proceeded to instruct him to act as such which he submits "is proof positive that they also appreciated the response of Ms. McCarthy to amount to express permission to do that".

First ground: permission to do work done during suspension

53. The first ground of appeal is that Mr Wareing reasonably relied on the permission "ostensibly granted" by Ms McCarthy to undertake work as a solicitor's agent "without transgressing the terms of suspension"; and that "applying the ultimate sanction of disbarment in consequence of a later finding that it did in fact transgress the rules was wrong pursuant to CPR 52.21(3)(a)." Alternatively, Mr Wareing submits:

"the refusal of the Tribunal to consider other alternative available sanctions, such as a period of further suspension, in reliance on the implied belief that the Appellant would wilfully ignore, disregard or otherwise flout that suspension because of his previous reliance on a seemingly approved action; was procedurally wrong pursuant to CPR 52.21(3)(b)."

54. In his skeleton argument, Mr Wareing adds the following points. He did not deliberately flout the terms of the suspension. He was not reckless or contemptuous of the possible consequences of acting as a solicitor's agent. He was "careful in scoping out the parameters of what I was being asked to engage[...]" in with acting as an Agent." That is shown by his questions to Ms McCarthy of the BSB and, he noted, she consulted a policy unit internally before responding.
55. He took, he submitted, "additional safeguarding steps" by consulting the BSB himself in December 2021. He double checked Ms McCarthy's advice with the BSB, "who essentially confirmed that advice", providing him with the "final piece in that jigsaw of comfort that what I was going to do would not only be ok, but would crucially have no impact on the terms of my suspension." The BSB's finding that no permission was granted, was perverse.
56. Worse was the BSB's wrong and prejudicial argument that he had committed a criminal offence under section 14 of the Legal Services Act 2007. No such offence was committed because, Mr Wareing submitted, he fell within the exemption from the prohibition in paragraph 1(7) of Schedule 3 to that Act, read with sections 12 and 19.
57. In support of that contention, he cited from a decision in 2022 of Her Honour Judge Backhouse, *Halborg v. Apple* who, he said, had held at [27] that a right of audience did not depend on a hearing being held in private; and at [142] that a solicitor's agent has a right of audience as an exempt person, within paragraph 1(7) of Schedule 3 to the Act.
58. Mr Wareing complained that the "pejorative reference" to criminal acts is likely to have helped persuade the tribunal that disbarment was the only reasonable option. Further, he complained that a BSB paper on acting as a solicitor's agent had not been referred to at the hearing before the tribunal but had not been provided to him.
59. In oral argument, Mr Wareing denied that he had ever held himself out as a barrister or given the impression that he was acting as one while he was suspended. He said the tribunal had agreed that merely providing a skeleton argument was not exercising a right of audience; solicitors and their agents did this all the time; the lower courts could not function if they needed a right of audience to do so.
60. He accepted that in order for him properly to act as a solicitor's agent, there would have to be a firm of solicitors on the record in the litigation. He said that there was in every case though in some of them it had not been possible to produce a notice of acting filed with the court because the firm had gone into liquidation and the liquidator was in possession of the firm's documents. He insisted that he was told by Ms McCarthy that he could act as a solicitor's agent and that he had double checked this himself with the BSB in December 2021 after being concerned by a remark made by a judge.
61. He said he had taken great care not to hold himself out as a barrister and that giving an impression of being a barrister, for example by using a chambers email address, was not the same as holding himself out as one. In none of the cases had he acted by direct access during the period of the suspension. The two firms of solicitors for which he acted as agent were well aware of his suspension and told him the SRA had no issue with it.

62. For the BSB, Mr Davidson submitted that Ms McCarthy had not provided any “permission” to Mr Wareing to act as a solicitor; nor could her email reasonably be interested as doing so. The same argument was raised with the tribunal below and it was entitled to reject it. The tribunal saw the emails (as I have), heard Mr Wareing and addressed the point in its decision, saying Ms McCarthy’s email gave him no assurance but “rather told him what he must not do”. She had “not given him any green light”.
63. The tribunal, said Mr Davidson, was also aware that Mr Wareing himself told the BSB in December 2021 that he was not confident Ms McCarthy’s response to his query was “a complete answer”. That was why he had telephoned the Bar Council’s ethics helpline. The tribunal may well have acknowledged that Mr Wareing’s subjective belief about the email was real because it exonerated him of dishonesty on the first charge.
64. It was also quite proper, Mr Davidson submitted, for the tribunal to draw the inference that Mr Wareing was unconcerned about taking steps that would or could amount to disregard of the suspension and his regulatory obligations and his continuing lack of insight and insistence that it had been reasonable for him to rely on Ms McCarthy’s response to his query. In oral argument he pointed out that there were three cases - *Alliance*, *Law Mergers* and *Alsford Timber* - where, as the tribunal had correctly recognised, Mr Wareing conducted the litigation without solicitors on the record.
65. In *Alliance*, Mr Wareing had admitted to the tribunal, as he had admitted to District Judge Woodward, that Precision Solicitors never came on the record. In *Law Mergers*, there were no solicitors on the record and his opponent, Ms Lynes, had thought Mr Wareing was instructed by direct access. In *Alsford Timber*, the BSB received confirmation direct from the court, after Mr Gillett’s report, that there were no solicitors on the record for the defendants, Mr Wareing’s clients.
66. In the other two cases – *Allen and Carr* and *Badloe* – the tribunal had dismissed allegations to the effect that Mr Wareing had conducted litigation in breach of the terms of the suspension. In *Allen and Carr*, he had acted as a lay representative and a right of audience is not required in the employment tribunal. In *Badloe*, the tribunal accepted that Brown & Co were placed on the court record by Mr Wareing filing a notice of change in his capacity as their agent.
67. I turn to my reasoning and conclusions on this ground. First, I cannot see anything in Ms McCarthy’s email that encourages Mr Wareing to take on the role of solicitor’s agent. The most that could reasonably be taken from it is that it does not refer to any outright prohibition against doing so. It left open the question whether in the course of acting as a solicitor’s agent, Mr Wareing could be in breach of his suspension by holding himself out as a barrister, practising as one, holding himself out as authorised to provide legal services or describing himself as a barrister without disclosing the suspension.
68. I therefore reject the first part of this ground, in which Mr Wareing contends that the tribunal should have accepted that he acted reasonably by relying on the permission “ostensibly granted” by Ms McCarthy to undertake work as a solicitor’s agent “without transgressing the terms of suspension”. I come to the second part of this ground where he asserts, in the alternative, that disbarment was decided upon without proper consideration of lesser sanctions such as a further suspension.

69. It was not a breach of the suspension for Mr Wareing, without more, to act as a solicitor's agent where the solicitors were on the record in the litigation. That is consistent with Ms McCarthy's email, consistent with the tribunal's decision and common ground in this appeal. In *Badloe*, the solicitors (Precision Solicitors and then Brown & Co) were on the record. Further, in *Allen and Carr*, there was no express breach of the suspension merely by appearing in an employment tribunal, without more, since a right of audience is not required in an employment tribunal.
70. Those points were noted by the tribunal and reflected in its decision. The tribunal also decided that filing a skeleton argument, without more, did not amount to exercising a right of audience. The BSB has not challenged that finding in this appeal. There is no respondent's notice. The tribunal dismissed the first charge, declining to find that Mr Wareing acted without honesty. It dismissed the fifth charge because there was insufficient evidence to prove Mr Wareing had supplied services to lay clients while acting as a barrister.
71. However, that is where the findings in Mr Wareing's favour end and the adverse findings begin. The tribunal still had to address whether Mr Wareing breached his suspension by holding himself out as a barrister, practising as one, holding himself out as authorised to provide legal services, exercising a right of audience, accepting instructions on a public access basis or describing himself as a barrister without disclosing the suspension; whether he acted without integrity; and whether in such a manner as to diminish trust and confidence in Mr Wareing and in the profession.
72. It is not correct to say that the tribunal failed to consider lesser sanctions than disbarment. At paragraphs 121-122 of its long report dated 30 May 2024 (quoted above), the tribunal referred to the relevant Sanctions Guidance stating their purposes, the requirement of proportionality and the six step approach. At paragraphs 123-134 (quoted *in extenso* above), the tribunal went through the six steps, applying them to the findings against Mr Wareing. I can see no procedural fault in that exercise. I will return to the question of proportionality shortly, when considering the third ground. The first ground fails.
73. For completeness, I accept from the transcript of the hearing that Mr Davidson did not, or not directly, accuse Mr Wareing of any criminal offence under the Legal Services Act 2007. The tribunal did not have to decide and did not decide whether Mr Wareing's conduct was criminal; though if it were, that could an aggravating factor. It is not generally helpful to focus, in a case of this kind, on whether an offence under section 14 of that Act has been committed. The tribunal has no criminal law jurisdiction and the standard of proof it applies is lower than in a criminal court.

Second ground: suspension pending extant appeal

74. The second ground of appeal is that having decided to disbar Mr Wareing, the decision to suspend him from practice pending the outcome of this appeal, as soon as his booked appearances were at an end, was procedurally and substantively wrong, within CPR 52.21(3) because it had "the effect of applying that sanction with immediate effect irrespective of the outstanding appeal".
75. In his skeleton argument, Mr Wareing's point was that by the time of the tribunal's decision on sanction in April 2024, there was no further risk of him misleading any client,

opponent or court about his status, as he had been back in practice after the suspension for well over a year without any issue arising. The interim suspension pending the outcome of this appeal then put him back into suspension without good reason. It was wrong and “not a little vindictive”, he said, to impose an interim suspension knowing that the harm they sought to prevent would not arise.

76. Mr Davidson, for the BSB, pointed out that (as is common ground) the sanction of disbarment does not take effect until after expiry of the deadline for appealing to the High Court or, if an appeal is brought, it has been determined. Regulations E225 to E233 of the Disciplinary Tribunal Regulations 2017 in the BSB Handbook make provision (inter alia) to the effect that where a barrister is disbarred in disciplinary proceedings, the tribunal must seek representations from the barrister on whether temporary suspension is appropriate and unless satisfied that it would be inappropriate to impose it, must do so and can impose terms on any continuing practice as it thinks fit.
77. As Mr Davidson showed me in the transcript of the sanctions hearing on 26 April 2024, he invited HHJ Meston KC to seek representations from Mr Wareing on this issue. The judge did so: “[i]s there anything you want to say about this Mr Wareing?” The latter did address the judge, focussing on outstanding work and other dates in his diary. The tribunal retired and then returned saying they would give him until 10 May 2024 to conclude pre-booked work provided he accepted no further instructions up to that date.
78. Mr Davidson submitted that this was a procedurally fair exercise and the legitimate exercise of the power to impose an interim suspension unless it would be inappropriate to do so. The presumption in the rules was in favour of interim suspension and it was an important provision whose purpose is to protect the public and uphold public confidence in the profession and its regulation.
79. In my judgment, Mr Davidson’s submissions are correct. First, it cannot be said that the tribunal’s decision was procedurally wrong. The judge followed the course ordained by the rules. The presumption was in favour of interim suspension, but could be rebutted if representations from the barrister persuaded the tribunal it would be inappropriate. The judge invited representations from Mr Wareing and he spoke of his concern about his existing diary commitments, rather than seeking permission to take on new ones.
80. Next, I cannot see why the decision was “substantively wrong, within CPR 52.21(3)”. It is true that Mr Wareing had been back in practice for over a year without attracting any adverse reports of his conduct during that period. But that is not a complete answer to the tribunal’s question whether it should find that interim suspension would be inappropriate. It is a factor on which Mr Wareing could have relied had he made a concerted attempt to persuade the tribunal that it should find interim suspension inappropriate.
81. The tribunal’s ruling on interim suspension at paragraph 135 of its full report (quoted above) is brief. I have already referred to the discussion shown to me from the transcript of the hearing on 26 April 2024, which Mr Wareing attended. The tribunal recorded that it had heard representations from Mr Wareing. It then referred to paragraphs 6.44 and 6.45 of the relevant Sanctions Guidance. The latter includes the power to impose interim suspension, for example, from a future date where “the barrister can demonstrate that the immediate imposition of an order would have an undue detrimental effect on a client ...”.

82. That was exactly the point raised by Mr Wareing with the judge when he was invited to make representations. Although the hearing took place on 26 April 2024, interim suspension was postponed until 10 May 2024 because of commitments in Mr Wareing's diary. There is nothing wrong with the decision to postpone the interim suspension until that date. I find no merit in the second ground of appeal.

Third ground: sanction of disbarment

83. In his third ground of appeal, Mr Wareing contends that the harm the tribunal sought to mitigate or prevent by imposing the sanction – namely, that Mr Wareing could mislead a client or the court by presenting himself as a solicitor's agent – no longer existed. There was no risk that he would do so and therefore no further need to mitigate or prevent that harm. The decision to disbar Mr Wareing rather than impose a lesser sanction was therefore “disproportionate, unnecessary and wrong, both substantively and procedurally, pursuant to the provisions of CPR 52.21(3).”

84. In an echo of the second ground, he submitted that he had acted for over 240 clients since his return to practice in January 2022, without any concerns arising. Against that background, the sanction of disbarment was disproportionate and excessive. There was “zero possibility of the potential harm described recurring” and an absence of evidence that he had acted “wilfully or negligently in contravention of the rules of conduct, or ... had done so negligently and capriciously knowing that I was doing wrong”.

85. Mr Davidson countered that the tribunal was well entitled to find that, far from not existing, the danger of repetition was very real. The tribunal found he had engaged in repeated misconduct, giving rise to:

“harm, or potential harm to public confidence in the profession and in the administration of justice, and a risk of harm to the respondent's clients.” (decision, paragraph 127).

86. The aggravating features included previous disciplinary findings, a lack of insight and a failure to engage properly with the disciplinary process. The tribunal had applied the sanctions guidance correctly, Mr Davidson submitted. Its evaluation of the robust findings it made was a matter for the tribunal, to whose judgment this appellate court should defer. A further suspension would not have sufficed: there had already been one and it had not worked.

87. This ground of appeal effectively amounts to a contention that disbarment was too severe a penalty. I have already rejected the submission that the tribunal approached its task of considering sanction in a wrong procedural way. The decision that nothing less than disbarment was appropriate would have to be outside the bounds of the tribunal's reasonable exercise of judgment, for this ground to succeed.

88. In my judgment, that is not a realistic argument. The tribunal's findings of fact were detailed. The case was complex. The findings were nuanced, including some in Mr Wareing's favour, as I have mentioned. The reasoning was careful and detailed. The tribunal was well placed to measure the seriousness of the misconduct it had found and to conclude, having gone through the steps required of it under the Sanctions Guidance, that only disbarment would suffice to protect the public and the profession.

89. Contrary to Mr Wareing’s submissions, the tribunal attached particular weight to the risk of repetition of the offending behaviour. It was entitled to do so; it had already found as aggravating features that there was a pattern of behaviour intended to circumvent the suspension; that he had a bad previous disciplinary record; that there was a lack of insight or remorse during the suspension and a continuing lack of insight; and that there had been a failure to engage with the disciplinary process.
90. These factors considered in the light of the findings of misconduct clearly justified moving upwards from the normal starting point, which was suspension for at least 12 months. The decision to disbar was not disproportionate; I am very far from persuaded that it was wrong; and I dismiss this ground of the appeal.

Fourth ground: proceeding in absence on 18 March 2024

91. The fourth and final ground of appeal is that the tribunal should not have proceeded to hear and determine the charges in Mr Wareing’s absence on 18 March and the days following. This is expressed in some detail in the amended grounds:

“Despite immediately notifying the Tribunal on discovery of the listed dates, (those being fixed three days after I had paid for the flight tickets and hotels, all of which were non-refundable and would have therefore caused me significant financial losses if I had not travelled) that email having been found in my spam file, that I would not be in the Country on those listed dates because I would be visiting my son for the first time since he emigrated to Canada more than two years before and despite submitting an application for adjournment as soon as I was advised I needed to; that application was refused and so the hearing was held in my absence, meaning I was unable to participate in it and which therefore meant that I was not given a fair trial and my Article 6 rights were breached; so those decisions to refuse the adjournment and hear the case in my absence were both procedurally and substantively wrong pursuant to CPR 52.21(3).”

92. Both parties reminded me of the principles applicable when a tribunal is invited proceed in the absence of a party (see Rose LJ’s judgment in *R. v. Hayward* [2001] QB 862 (heard with other appeals) at [22], endorsed (with one exception) in Lord Bingham’s judgment in *R. v. Jones* [2003] 1 AC 1, at [6]; discussed in *General Medical Council v. Adeogba* [2016] EWCA Civ 162, per Sir Brian Leveson, PQBD, at [13]-[15]. Mr Davidson referred to those cases on 18 March 2024 and the tribunal duly directed itself as quoted above and that “[t]he discretion to proceed in the absence of a respondent must be exercised with great care particularly where the absent party is unrepresented.”
93. Mr Wareing submitted that the BSB should have recognised the importance of his family trip to Canada from 20 March 2024 and deferred the hearing as it had done the previous October. In December 2024, without having been notified of a hearing date, he had incurred non-refundable expenditure of about £20,000 for the trip. He and his wife had not seen their son in Vancouver for some two years. He did not receive notification of the hearing dates until early March 2024 because the emails went into his spam folder.
94. He made a written application to adjourn the forthcoming hearing, which the tribunal refused in writing. He submitted that it was reasonable to expect the tribunal to agree to an adjournment, applying the principles referred to by the House of Lords in *R. v. Jones*, which I have just mentioned. Only a short adjournment was requested and it was an

“improper and totally wrong exercise of that discretion” to refuse the adjournment sought; there were no “special circumstances” to justify the decision to proceed in his absence.

95. For the BSB, Mr Davidson said the decision was one of case management for the tribunal and fell well within the permissible bounds of their discretion to manage the proceedings fairly, balancing the interests of Mr Wareing against those of the BSB and the wider public. The hearing had already been adjourned once at Mr Wareing’s behest. There was considerable liaison about hearing dates in November and December 2023. Mr Wareing was copied into that correspondence but did not respond to it until March 2024.
96. Mr Davidson submitted that the tribunal was correct to say he took the risk when booking his trip to Canada that the tribunal might fix clashing dates for the hearing. The hearing was fixed on dates on which he had previously said (apart from 18 March 2024) he would be available, namely 19-21 March. Even after the tribunal had refused his written application in early March, Mr Wareing still stayed away from the hearing which started on 18 March, before he left for Canada which he said was on the morning of 20 March.
97. The disciplinary charges were very serious and the arrangements for determining them should have been, but were not, treated with commensurate seriousness by Mr Wareing. Instead, he had proceeded with insouciance, putting domestic issues above his obligation to inform himself about and cooperate in the disciplinary process. The tribunal properly applied the tests and reached a conclusion that was not flawed. It is therefore not for this appellate court to interfere, Mr Davidson submitted.
98. Again, I find myself unable to fault either the process or the outcome. The tribunal was entitled for the reasons it gave to refuse the adjournment. As for the decision to proceed in Mr Wareing’s absence, there is no dispute that the tribunal was taken to the relevant case law and there can be none that it applied that body of law, as is plain from the detailed reasoning in its report. He took the risk that the hearing could proceed in his absence. He was aware of that possibility, as the tribunal pointed out.
99. He could, contrary to his submission in oral argument, have asked to attend remotely from Canada on 18 and 21 March 2024, after flying out on 20 March. The tribunal was prepared not to sit on 19 March because Mr Davidson had another professional commitment that day. If Mr Wareing had joined in the correspondence about dates in November and December 2023 – and it was his responsibility to be aware of that correspondence which was copied to him – he might well have persuaded the tribunal not to sit on 20 March, as Mr Davidson’s clerk had done for 19 March.
100. Unfortunately, I am driven to the conclusion that his head was in the sand in relation to fixing dates. It cannot assist him to say that he missed the emails in November and December 2023 and did not pick them up until early March 2024 because they were in his spam folder. If he could not avoid overlooking the need to check his spam folder, he should proactively have sought from the tribunal and the BSB, before the Christmas break, information about when the case was to be heard; and provided afresh his dates of availability and unavailability.
101. The procedural history fully supports the tribunal’s conclusion that Mr Wareing was not properly engaging with the disciplinary process, a point it (later) found was an aggravating feature and evidence of a lack of insight. I do not think that reasoning is

open to criticism and it supports the tribunal's view that a second adjournment, which the BSB strongly opposed, would not be justified and that it was right to proceed in Mr Wareing's absence. The detailed reasoning shows that the tribunal exercised its discretion with great care. The fourth ground of appeal does not succeed.

Conclusion and disposal

102. For those reasons, all the grounds of appeal fail. The tribunal's decision was not wrong, nor unjust because of a procedural or other irregularity. The decision was correct and there is no basis for interfering with it. I am sorry to say I agree with the tribunal that Mr Wareing is not fit to be a member of the barrister's profession. The appeal must be dismissed. I will consider brief written argument on any unagreed consequential matters.