Neutral Citation Number: [2023] EWHC 349 (Admin)

Case No: CO/1291/2021

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/02/2023

Before :

THE HONOURABLE MRS JUSTICE COLLINS RICE

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Between :

MR NAIM LONE **Appellant**

- and –

SOLICITORS REGULATION AUTHORITY LTD **Respondent**

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- -

Mr Stuart Cutting (instructed by direct access) for the Appellant
Mr Benjamin Tankel (instructed by Capsticks LLP) for the Respondent

Hearing date: 20th December 2022

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Approved Judgment

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

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Mrs Justice Collins Rice :

Introduction

1. Mr Lone is a practising solicitor. He exercises his right of appeal, under section 49 of the Solicitors Act 1974, against a decision of a Solicitors Disciplinary Tribunal dated 15th January 2021.

2. He had faced allegations by his professional regulator, the Solicitors Regulation Authority (SRA), of mismanaging some aspects of the business of two of his clients. He was represented before the Tribunal. He elected not to give evidence. The Tribunal found most, but not all, of the allegations proven. It imposed a fine of £8,000, and made a costs order against him of £29,359.05.

Regulatory framework

3. At the relevant time, solicitors were subject to a statutory code of conduct which, among other things, required them to achieve 'outcomes', including that '*you comply with court orders which place obligations on you*' (Outcome 5.3 of the SRA Code of Conduct 2011).

4. Solicitors were also bound to comply with the Solicitors Accounts Rules 2011, in relation to the handling and record-keeping of money belonging to their practice and to their clients respectively.

5. Solicitors had to comply with a set of mandatory SRA Principles, requiring them to:

    1. uphold the rule of law and the proper administration of justice;
    2. act with integrity;
    3. not allow their independence to be compromised;
    4. act in the best interests of each client;
    5. provide a proper standard of service to their clients;
    6. behave in a way that maintains the trust the public places in them and in the provision of legal services;
    7. comply with their legal and regulatory obligations and deal with their regulators and ombudsmen in an open, timely and co-operative manner;
    8. run their business or carry out their role in the business effectively and in accordance with proper governance and sound financial and risk management principles;

9. run their business or carry out their role in the business in a way that encourages equality of opportunity and respect for diversity; and

10. protect client money and assets.

Decision challenged

(a) The allegations

6. Mr Lone was a sole practitioner at the firm Attiyah Lone & Associates Solicitors. He had acted for a client (known in the case as C) in divorce proceedings. There was a financial settlement, involving the sale of two properties and the division of the proceeds between the parties. Client C disputed the level of fees Mr Lone charged him. So Mr Lone sought a 'third party order' in the matrimonial proceedings, to recover fees in the region of £134,000 from Client C's share of the sale of the properties. By an interim Order of DDJ Butler of 29th November 2016, Client C's share of the net proceeds of the sale of the properties was to be paid to Mr Lone's firm subject to the following arrangements. The *undisputed* amount of the fees (£29,000) was to be paid into Mr Lone's 'office account' as pre-payment of the 'outstanding legal costs' owed by Client C. The balance of the total was to be held in Mr Lone's 'client account' until further order in the fees litigation or by written agreement between Client C and Mr Lone. That sum represented roughly the amount of additional fees Mr Lone was pursuing.

7. The property sales were completed by April 2017. But in the meantime, on 28th December 2016, Mr Lone's firm of Attiyah Lone & Associates Solicitors had found itself unable to obtain new professional indemnity insurance cover and had to close. The SRA received notification on 13th February 2017 that it had stopped holding or receiving client money. Mr Lone instead set up a new firm, AL Law, which was authorised by the SRA on 27th February 2017. By the time the proceeds of the property sales came through, AL Law did not yet have a client account.

8. Mr Lone therefore had a problem about how to comply with the court order, since he did not have any operational client account. Instead, he initiated a series of transactions having the effect of placing £29,000 into his office account, and the balance into the client account of another solicitors firm –Firm B.

9. The SRA intervened into Firm B in May 2018 (one of the grounds being the suspected dishonesty of the sole manager of Firm B – Person B – who was eventually struck off the roll on 3rd December 2019). Further to that intervention, it charged Mr Lone ("**Allegation 1**") that:

> He acted improperly in respect of dealing with monies in which Client C had an interest in that –
>
> - on or around 25 April 2017, he inappropriately caused or allowed to be transferred the sum of £24,043.28 from Attiyah Lone to Firm B;

- in or around May 2017, he inappropriately caused or allowed to be transferred the sum of approximately £80,560, alternatively approximately £73,000, from Attiyah Lone to his business account;

- on or around 18 May 2017, he inappropriately caused or allowed to be transferred the sum of approximately £73,000 from his business account to Firm B;

and in doing so breached one or more of Principles 2, 4, 6 and 10 of the SRA Principles 2011, failed to achieve Outcome 5.3 of the SRA Code of Conduct 2011, and breached any or all of Rules 1.2(b), 13.1, 14.1 of the SRA Accounts Rules 2011.

10. The SRA intervention into Firm B was also the backdrop to a second set of allegations it brought against Mr Lone in relation to a different client matter. Client D was the sole executor under her deceased mother's will, and she had instructed Firm B to administer the estate. Person B had acquired a 'personal loan' out of the estate money to the extent of some £44,000. In light of the intervention, and the suspension of Person B's practising certificate, Client D authorised the transfer of the probate matter to Mr Lone's firm. Mr Lone and Person B made arrangements for the handover of the file, which involved Person B attending Mr Lone's office and helping prepare the estate accounts.

11. By July 2018, Client D was expressing her dissatisfaction with the preparation of the estate accounts and with the fees she was being charged. On 21st July, Person B wrote to Client D to say he would repay the 'loan'. He authorised Mr Lone to register the outstanding debt against his (Person B's) property if he did not repay the money within two months. That deadline passed, but Mr Lone did not register a legal charge against Person B's property. The loan was, however, eventually repaid.

12. The SRA brought the following further charges against Mr Lone:

> Between May and November 2018, he inappropriately caused or allowed Person B to work or assist on Client D's matter when Person B held £43,561.99 belonging to Client D, and in doing so breached one or more of Principles 3, 4 and 6 of the SRA Principles 2011. ("**Allegation 2**")
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> From 21 September until 29 October 2018, he failed to take any or any adequate steps to register a legal charge over Person B's property, and in doing so breached Principles 3, 4 and 6 of the SRA Principles 2011. ("**Allegation 3**")
>
> In October 2018, he failed to take any or any adequate steps to recover an outstanding sum of £500 and interest payments due from Person B to Client D, and in doing so breached Principles 3, 4 and 6 of the SRA Prcinples 2011. ("**Allegation 4**")

(b) The Tribunal's findings

13. In relation to Allegation 1, the Tribunal considered the terms of the court order clear, but noted Mr Lone faced a genuine practical problem in complying with it, because he did not have an operative client account of his own. In the circumstances he found himself in, two courses were properly open to him. He could have reached a written agreement with C about alternative arrangements, which would have complied with the order. Or he could have applied for a variation of the order. He did neither, but placed the money into the client account of another firm, Firm B, instead. The Tribunal found Mr Lone '*had believed that he was attempting to comply with the Order but had been inept in doing so*'. It found a failure to comply with the order, and with the Accounts Rules, and breaches of Principles 4, 6 and 10. But this had been through incompetence and not lack of integrity; there was no breach of Principle 2.

14. In relation to Allegation 2, the Tribunal found Person B did work on Client D's business following his suspension and the transfer of the file to Mr Lone. It found Mr Lone allowed him to do so in the knowledge that there was an outstanding dispute between Person B and Client D about the 'loan'. The work Person B did went beyond mere clarification as part of the handover, and involved working on the estate accounts – a 'fundamental aspect' of the work required on the file. This level of involvement was held inappropriate in the circumstances of the loan, and Mr Lone had compromised his independence in permitting it. Breach of Principles 3, 4 and 6 were found proved.

15. In relation to Allegation 3, it found that in failing to register a charge as invited, Mr Lone had not acted in Client D's best interests, as the monies were unprotected for five weeks. Breach of Principles 3, 4 and 6 were found proved.

16. The Tribunal found Allegation 4 unproven. Mr Lone had taken responsibility for rectifying the £500 shortfall, and the matters alleged did not cross the threshold into professional misconduct.

(c) Sanction

17. The Tribunal addressed itself to the applicable guidance notes on sanction. It concluded as follows:

> 41. In assessing culpability the Tribunal identified the following factors:-
>
> - The Respondent had not been motivated by personal gain, but by an intention to try to comply with the Order (Allegation 1.1) and to take on files after the intervention (Allegations 1.2 and 1.3). The fault lay in his incompetent execution of those matters;
>
> - The transfers of monies and the involvement of Person B was planned but not thought through;

- There was no breach of trust, but there was a breach of duty to the Court and to his clients;

- The Respondent had direct control and responsibility over the circumstances giving rise to his misconduct as he was a sole practitioner;

- The Respondent was significantly experienced and so should have known better.

42. In assessing harm, the Tribunal noted the following:-

- The Tribunal had seen no evidence that any clients actually lost any money.

- However, the potential for significant losses to Clients C and D was high and the fact that nobody lost any money was down to luck rather than judgment.

43. The Tribunal identified no aggravating factors.

44. The misconduct was mitigated by the Respondent's co-operation with the SRA. He had sought guidance in respect of the transfer of files and had assumed responsibility for the repayment of the £500 shortfall. The misconduct was of a relatively limited duration.

45. The Tribunal found that making 'no order' or imposing a reprimand was insufficient to reflect the seriousness of the misconduct. The level of culpability and the potential for significant harm meant that the reputation of the legal profession and the protection of the public required a greater sanction.

18. The Tribunal decided that the appropriate penalty was a financial sanction at level 3 ('more serious'). It took into account that it was essential for solicitors to protect client money and to comply with court orders. But it placed the misconduct at the lower end of this range, to reflect that there had been no lack of integrity and the mitigation advanced on Mr Lone's behalf. That is how it arrived at a fine of £8,000. It considered Mr Lone's statement of means, noted there was substantial equity in his property and that he would continue to work, so saw no basis for reducing the fine imposed. It made no further order, on the basis that it was satisfied there was unlikely to be any repeat of the misconduct.

(d) Costs

19. The Tribunal was not invited to refer costs for detailed assessment, and made a summary assessment. It noted Mr Lone had '*raised a large number of issues which were not directly relevant to the allegations he faced, but which the [SRA] had nonetheless had to consider*'. He had served over a thousand pages of evidence. The hearing had lasted three days. The allegations which were not proved had all been properly brought, and the time spent on them had not made any significant difference

to the overall time spent on the case. It saw no basis in Mr Lone's statement of means for reducing his liability. It awarded costs against him in the sum sought by the SRA.

Mr Lone's appeal

20. Mr Lone filed a set of grounds of appeal on 13th January 2022, drafted by himself, which made broad allegations against the impartiality, propriety and fairness of the Tribunal's approach to, and conduct of, the proceedings before it, and which advanced 26 particularised grounds of appeal, altogether challenging the entirety of the outcome. He also filed a 62-page skeleton argument ahead of his appeal hearing, again, drafted by himself.

21. At the hearing, he was represented by Counsel, Mr Cutting (instructed at short notice), who had prepared a succinct 'supplemental skeleton'. This proposed:

(1) the Tribunal's findings that any of the allegations were found proven against Lone should be overturned on grounds of error of law and/or fact;

(2) The Tribunal's sanction should in any event be set aside on grounds of error of law and/or fact in relation to (a) the finding that the proven allegations were 'serious' and (b) the exercise of its discretion to impose a fine of £8,000.

(3) The Tribunal's decision on liability and/or quantum of costs should be set aside as disclosing error of law. Instead, there should have been a costs order in favour of Mr Lone.

22. At the hearing, Mr Cutting confirmed that, of the 26 particularised grounds of appeal, three were not being pursued and a further five were being pursued in part only.

Legal principles

23. My attention was drawn to the guidance distilled from the authorities by Morris J in *Ali v SRA [2021] EWHC 2709* as to how to approach appeals from decisions of a Solicitors Disciplinary Tribunal. I gratefully adopt the summary at [91]-[94] of his judgment.

> [91] As regards the relevant principles which apply to appeals to this Court under s.49, first, the SRA bears the burden of proof and the relevant standard of proof is the criminal standard.
>
> [92] Secondly, CPR 52.10 and 52.11 apply to an appeal under s.49 of the 1974 Act. It is an appeal by way of review and not by way of rehearing: see special provision for a s.49 appeal is not made in CPR Practice Direction 52D. However where the appeal court is being asked to reverse findings of fact based on oral evidence, there is little, if any difference, between "review" and "rehearing": see *Assicurazioni Generali SpA v Arab Insurance Group* [2002] EWCA Civ 1642 §§13, 15 and 23.

[93] Thirdly, the Court will only allow the appeal if the decision of the Tribunal was "wrong" or "unjust because of a serious procedural or other irregularity in the proceedings in the lower court" (CPR 52.21(3)(a) and (b)).

[94] Fourthly, as regards the approach of the Court when considering whether the Tribunal was "wrong", I refer in particular to *Solicitors Regulation Authority v Day* [2018] EWHC 2726 (Admin) at §§61-78, *Solicitors Regulation Authority v Good* [2019] EWHC 817 (Admin) at §§28-32, the *Naqvi* Judgment at §83, citing *Solicitors Regulation Authority v Siaw* [2019] EWHC 2737 (Admin) at §§32-35, and most recently, *Martin v Solicitors Regulation Authority* [2020] EWHC 3525 (Admin) at §§30-33. From these authorities, the following propositions can be stated:

> (1) A decision is wrong where there is an error of law, error of fact or an error in the exercise of discretion.
>
> (2) The Court should exercise particular caution and restraint before interfering with either the findings of fact or evaluative judgment of a first instance and specialist tribunal, such as the Tribunal, particularly where the findings have been reached after seeing and evaluating witnesses.
>
> (3) It does not matter, with whatever degree of certainty, that the appellate court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge would have reached. That is a high threshold. That means it must either be possible to identify a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence. If there is no such identifiable error and the question is one of judgment about the weight to be given to the relevant evidence, the Court must be satisfied that the judge's conclusion cannot reasonably be explained or justified.
>
> (4) Therefore the Court will only interfere with the findings of fact and a finding of dishonesty if it is satisfied that the Tribunal committed an error of principle or its evaluation was wrong in the sense of falling outside the bounds of what the Tribunal could properly and reasonably decide.
>
> (5) The Tribunal is a specialist tribunal particularly equipped to appraise what is required of a solicitor in terms of professional judgment, and an appellate court will be cautious in interfering with such an appraisal.

Finally, as regards reasons, decisions of specialist tribunals are not expected to be the product of elaborate legal drafting. Their judgments should be read as a whole; and in assessing the reasons given, unless there is a compelling reason to the contrary, it is appropriate to take it that the Tribunal has fully taken into account all the evidence and submissions: *Martin*, supra, §33.

Analysis

(a) General

24. Notwithstanding Mr Cutting's assistance in bringing focus to this appeal, and even shorn of its wider-ranging allegations of incompetence or bad faith in the grounds abandoned or narrowed, this remains a root and branch challenge to almost every aspect of the Tribunal's decision. I am left in no doubt of the vehemence with which Mr Lone objects to the whole experience and outcome of his appearance before the Tribunal. But in these circumstances I suggested to Mr Cutting that he would help me, and Mr Lone, if he identified the *principal* objections to the Tribunal's decision Mr Lone wanted me to concentrate on, so I could at least be sure of an opportunity to analyse in full the main points of this appeal. Very many errors of law, fact and discretion are alleged. To guide me through them, I listened with particular attentiveness to what Mr Cutting had to say about the *core* of Mr Lone's complaints that the Tribunal went wrong and did not do a proper job of determining the case before it.

25. In the analysis which follows, my focus has been principally guided by Mr Cutting's oral submissions on each successive stage of the Tribunal's decision, as well as what is set out in Mr Lone's own written material. I was considerably assisted by the focus Mr Cutting brought to the appeal, and I am entirely satisfied he put Mr Lone's case comprehensively and at its highest.

(b) The determination of Allegation 1

26. What Mr Lone had originally said about the Tribunal's determination of the allegations against him in relation to Client C was that it had gone wrong in the following respects:

> *Ground 1 – wrongly concluded that the transfers made were improper transfers and failed to consider that they were beyond the Appellant's control because the Appellant followed the specific instruction of the Respondent in closing his client account.*
>
> *Ground 2 – failed to reject Client C's evidence which showed that he was aware of the transfers made yet denied this even in the face of documentary evidence. The Tribunal seriously erred in not considering this crucial and material evidence which went to the crux of the allegations made by Client C, or to infer that he had not objected to the transfers and, accordingly, they were not improper.*
>
> *Ground 3 – failed to consider at all that Client C had not raised any objection at the time to the transfers, it being reasonable to infer that there was no objection that 3rd party Solicitors were holding funds in a client account as prescribed in the Court order.*
>
> *Ground 4 – failed to consider factors beyond the Appellant's control as to the reasons for placing funds into another Solicitor's client account; having accepted that the transfers were not 'for personal gain' or that there was no impropriety regarding the transfer or ulterior motives regarding them.*

> [*Ground 5* – not pursued]
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> *Ground 6 – The Tribunal wrongly concluded that the allegations against the Appellant were in breach of the Solicitors Accounts Rules when, by its own admission, there was no loss to any client. Such a finding is contradictory and plainly wrong.*
>
> [*Ground 7* - relevant to sanction; see below]
>
> *Ground 8 – failed to consider when weighing up the evidence, that Client C had committed fraud, lied on oath to every question put to him and his motives for doing so to avoid paying his outstanding legal costs*

27. I note in the first place that it does not appear to be disputed in this appeal that, as the Tribunal found, the wording of the court order was clear, Mr Lone did not place the relevant money into his client account (because he did not have one at the time), he did place it into Firm B's client account, and he did not do so in pursuance of any written agreement with Client C. On the face of it, those undisputed facts amount to a plain breach of the order.

28. What Mr Lone's grounds appear to take issue with, however, is the finding that he acted 'improperly' in doing so. They draw attention to the knowledge the SRA surely had that he was 'between firms' at the time, and that his old firm's client account was closed. They rely on evidence of Client C's awareness of the transfers, lack of objection, and perhaps presumed consent. They point to the finding that there was no lack of integrity, underlying motive, or personal gain involved. They emphasise that there was in the end no loss to Client C, and that Client C's own motives should be suspected bearing in mind the hostile and disputatious context of the disagreement over quantum of fees.

29. Mr Cutting confirmed that the focus of the challenge to the outcome on Allegation 1 is that the Tribunal was wrong to find the transfers 'improper' when there was evidence before it, with which it did not deal, supporting an inference that Client C had in effect – albeit informally – authorised the payments, by way of knowledge and lack of objection. Simply being in breach of a court order was not sufficient for a finding of impropriety.

30. Instead, Mr Cutting said, it was necessary to look at the realities of the series of transfers Mr Lone caused to be made. He accepted there was some risk to the client in paying his money into Firm B's account. That risk was the more prominent because of the SRA intervention and suspension of Person B. But there was no evidence before the Tribunal that Mr Lone could or should have foreseen that Person B would eventually be struck off for dishonesty. And no risk in fact materialised to the client's disadvantage. The transfers were not 'improper' in these circumstances, and the Tribunal's finding that they were fell outside the bounds of what the Tribunal could properly and reasonably decide.

31. Mr Cutting additionally asked me to bear in mind that evidence was before the Tribunal to the effect that, at an earlier stage in the 'third party' proceedings, Mr Lone

had tried unsuccessfully to have a 'third party order' varied, and had been refused on grounds that he was neither a party to the matrimonial dispute nor had made payments into court. So, he said, the Tribunal's view that he could or should have thought about varying the order was not a practical proposition – or at any rate that Mr Lone had good reason for not thinking it worth pursuing. The Tribunal erred in not dealing with that point in its reasoning and conclusions.

32. Mr Cutting advised me to read very carefully the Tribunal's findings on Allegation 1, including that part of the analysis which led it to reject the allegation of lack of integrity. I have done so.

33. Returning to the undisputed facts that Mr Lone did not comply with an order of the court, I find no basis for impugning the Tribunal's evident starting point that that, in and of itself, was a matter of impropriety. It is entirely obvious, on the face of the order, that its purpose was to ensure that Mr Lone was paid the minimum amount of agreed fees without further complication and delay, but otherwise to safeguard what was a substantial sum of Client C's money and hold the ring while the final amount of fees owed was worked out. That was the interim balance the court struck between their respective interests. It allowed variation by *written agreement* between them, but not otherwise. The point of that was to maintain and entrench the balance struck, to protect both sides, and indeed to avoid precisely the kind of evidential dispute as to unwritten assent, consent or authorisation of other arrangements with which I am now invited to engage. It may indeed be that an even stricter interpretation of the order was correct – namely that there was no provision at all for variation, and that the 'written agreement' referred to the settlement of final sum of the fee liability itself. On either basis, the order made provision for Mr Lone to have access to the minimum sum on clear conditions, and did not on its face give him any other latitude to deal with Client C's money than as directed.

34. I am satisfied the Tribunal took full account of Mr Lone's predicament, acknowledged on the face of the decision, and understood the problem he faced in complying as directed. But it found he had no *legal* entitlement to make the arrangements he did. Unlawfulness is the paradigm of impropriety. In the absence of a written agreement, he had no entitlement to consult his own judgment as to what best to do. The obvious course, apparently provided for in the order, was to obtain Client C's written consent to an alternative arrangement. If there had been evidence that Mr Lone had used best endeavours to obtain Client C's written consent but that Client C had unreasonably withheld it, then that evidence could have been placed before a court with an application for further directions, and would have required the court to consider the merits of the matter whatever previous history there may have been about refusal of variation. Instead, Mr Lone adopted a course of action which amounted, from an objective viewpoint, to maximising his own prospects of accessing the money and any proper interest he was found to have in it, while exposing Client C to a risk – which, as it turned out, was not fanciful or negligible – outside the purview of the court's supervisory controls and the balance the court had struck. As the Tribunal put it, Mr Lone's unilateral solution meant he lost control of the funds he was supposed to be safeguarding.

35. I find no error of law or fact in the Tribunal's conclusion that the breach of the court order and the substitution by Mr Lone of his own judgment for that of the court as to the protection of the competing interests in the money was improper. The matters

raised in this appeal as suggesting otherwise go to mitigation of the impropriety only. The Tribunal accepted them as such, in particular in its findings that Mr Lone's integrity was unimpeached, that Client C did not take such opportunities as he had to challenge Mr Lone's actions or bring about any other outcome, and that the money in the event stayed safe. But the submission of solicitors to the supervision of the court as expressed in its orders is fundamental to professional propriety, and the finding of impropriety in the present case was well within the range of evaluative conclusions properly open to the Tribunal on the materials before it and for the reasons it gave.

36. In calibrating the precise degree of impropriety involved, the Tribunal took the mitigating features into account, and in exonerating Mr Lone of a failure of integrity went a long way towards accepting his account. But removing the funds from the purview of the controls imposed by the court, and exposing them to risk, were inherently weighty matters, and Mr Lone's judgment was at fault in doing so, notwithstanding his intentions, the lack of dissent from Client C, and lack of eventuation of the risk. The precise management of risk to client funds was the clear focus both of the court order and more generally of the accounts rules. Limited latitude is permitted by either for ad-hoc alternatives. That is for the good reason that both the court and the rules guarantee the *detailed* control of risk not only to the individual client but to the public at large, when money is placed into solicitors' hands. The Tribunal labelled Mr Lone's substitution of other arrangements as significant, or manifest, ineptitude or incompetence: a course of conduct not objectively in his client's best interests and worthy of public concern. Again, I find no error of law, fact or discretion in that.

37. In reaching these conclusions, I bear in mind the guidance of the authorities that I should show appropriate respect to the Tribunal (a) in its findings of the underlying facts, having heard oral evidence and given Mr Lone an opportunity to contribute to it which he did not in the event take, and (b) in its evaluative conclusions based on those findings, to which it brings professional expertise and experience. I have been given no sufficient basis for interfering with the Tribunal's findings on Allegation 1. It accepted Mr Lone was in a difficult position and well-intentioned for various reasons in how he responded. That did not preclude its proper censure of breach of a court order, and of Mr Lone's judgment. Mr Lone is adamant he did the right, or at least a perfectly acceptable, thing. The Tribunal explains why it disagrees. In a regulated profession, a professional's own best judgment, however passionately defended, can never be the final word. It is the Tribunal's statutory job to assess these matters and I must not interfere unless I am persuaded it has gone wrong and reached a conclusion not properly open to it. I am unpersuaded, for the reasons I have given, that I must find Mr Lone right, and the Tribunal wrong, in this matter.

(c) The determination of Allegations 2 and 3

38. The determination of Allegations 2 and 3 was challenged in Mr Lone's grounds on the following basis:

> *Ground 9 – the Tribunal made no enquiry to the fact that there was no complaint, witness statement from Client D and therefore, it should have concluded that there was no foundation to the prosecution. What evidence was there from client D?*

Ground 10 – the Tribunal erred in not evaluating 'live' evidence given by the Respondent witnesses in which crucial admissions [… withdrawn] *was given that had a material bearing on the outcome. It is averred that this is the sole basis for the Tribunal being involved.*

Ground 11 – the Tribunal failed to consider the evidence of the forensic investigator who prosecuted in circumstances [… withdrawn] *which cast serious doubt as to the veracity and integrity of the investigation. The two matters are mutually exclusive.*

Ground 12 – the Tribunal wrongly accepted at 'face value' the forensic investigator's response to three critical questions which, if answered truthfully, would have destroyed the entirety of her investigation and the prosecution before it. [… withdrawn]

[*Ground 13* – not pursued]

Ground 14 – the Tribunal wrongly concluded that the Appellant failed to secure a legal charge in circumstances where he acted in accordance with Client D's instructions, and the loan which such a legal charge would have protected had been repaid two weeks prior to the agreed deadline which rendered the charge unnecessary. In doing so, the Tribunal erred in their judgment of upholding this allegation contrary to the evidence and wrongly interpreted the fundamental duty of a solicitor to follow his client's instructions regardless of the rights and wrongs of those instructions.

[*Ground 15* – not pursued]

Ground 16 – the Tribunal failed to dismiss the allegation that the Appellant worked with Person B or compromised his independence, despite formal admissions by the forensic investigator in evidence that it was reasonable for the Appellant to work with Person B on handover of files spanning 9 years, and that there was no other evidence to support the allegation other than the initial handover. The Tribunal applied no weight to the fact that the Appellant had sought guidance from the Law Society before any steps were taken and therefore, any criticism now levelled at the Appellant is a criticism of the Law Society that it was wrong.

Ground 17 – wrongly concluded that the Appellant had compromised his independence in circumstances where he, rather than the grossly incompetent forensic investigator, had recovered a loan (£43,000) on behalf of the estate that the forensic investigator had argued did not exist and delaying the administration of the estate with her failure to detect that a

> *loan agreement was in existence. She further failed to ascertain that a payment of £30,000 had been double counted at the expense of her findings that £30,000 from Firm B's account was missing. It is entirely perverse that the Appellant was found to have compromised his independence when he saved the Respondent £73,500.*
>
> *Ground 18 – plainly wrong in interpreting that the Appellant had not 'acted in the best interest of Client D' which was contradicted by the fact that* […withdrawn] *Client D refused to transfer her matter to the intervener's solicitors despite prompting by the forensic investigator and an interim account had been produced for the estate within 4 months of instruction of a 9 year case without access to intervention papers (ledgers, cheque books, reconciliations, etc).*
>
> *Ground 19 – wrongly relied on a historic email from the client in which she protested to Person B that she was unhappy with the client Person B's bill of costs and failed to recognise that this was superseded by correspondence showing an agreement of her costs with the Appellant.*

39. What Mr Cutting asked me to focus on in relation to Allegations 2 and 3, in the first place, is the detail of the documentary evidence about the loan between Client D and Person B and that was before the Tribunal. We looked at a letter dated 21st November 2017 from D to B which said, in its entirety, '*About the £45,000 loan to you. I agree to borrow the sum of £45,000 out of my interest in the estate of my mother* [name] *deceased. The £45,000 is to be paid to me within six months from today*.' Following the SRA intervention into Firm B, we next looked at a handwritten letter from Person B to Mr Lone, dated 21st July 2018, and headed 'Loan Agreement of November 2017 with [Client D] for £43561'. Person B wrote to inform Mr Lone that he would be in funds to repay that sum '*within the next two months*' with interest. It continued '*If for any reason I am unable to do so within that time the amount is to be registered against my property* [address specified] *until paid*'.

40. I was then taken to a handwritten attendance note, made by Mr Lone, apparently of a phone call he had with Person B on 22nd August 2018. I am told it was Mr Lone's evidence to the tribunal that this note showed a new plan superseding the 21st July letter. Mr Cutting accepted that it does not say so on its face, and indeed that it is not altogether easy to understand what it does say. But I can see that it records '*I urged him to make payment asap as per his proposal – 2 months*'. We then looked at a letter of 11th October 2018 from Mr Lone to Client D confirming that he had received '*repayment of the loan of £43, 061*'. He noted that that was £500 short and that he would ask Person B to make the additional payment. It enclosed a cheque and observed that it had been made payable to her personally, but still formed part of the estate, and ideally should be held on trust for her and the other beneficiaries until the estate funds were finally distributed. He said Person B had asked him '*to extend his gratitude for the loan*'.

41. The relevant allegations here proceeded on the basis that in these circumstances Mr Lone should not have permitted Person B to continue to work on the case after it had

been transferred to him to the extent that he did, and that he should have registered the charge over Person B's property as he suggested.

42. Mr Cutting said, in the first place, the Tribunal erred in finding that Mr Lone had permitted Person B to continue to work on the file. He took me to the oral evidence of the SRA's witness, Ms Taylor, at the Tribunal hearing. In the passages he showed me, the witness confirmed that, when a file is handed over, she would expect there to be 'some information provided' by the transferor to the transferee. But, reading on, she also said that, when a transfer is the result of a regulatory intervention into the transferring firm, the transferee should have dealt with the intervention agent, so there was no need for a handover at all. Mr Cutting drew my attention to the following ensuing exchange under cross-examination of the witness:

> Q: So would it be fair to say that contact with Firm B was necessary, not only for source of information over the previous six years; it was necessary to sort the client ledger and to sort the matter of the loan to Client D?
>
> A: Correct.
>
> Q: Insofar as efficiency is concerned, that would save initially [Mr Lone] having to trawl through six years of files in respect of the matter. Would you agree with that?
>
> A: Well, yes, it does, yes.
>
> Q: And in addition to that, it would save duplication of costs to the estate.
>
> A: Correct.

43. Mr Cutting invited me to conclude that there was no evidence before the Tribunal that Person B had done anything on the estate file other than handover liaison, and the SRA witness had accepted that handover liaison was appropriate and necessary. Mr Lone had, he said, acted throughout in Client D's best interests and on her instructions, and had worked hard on her behalf to secure recovery of the loan and to finalise the administration of the estate. He at no point in fact compromised his independence in doing so. He directed me to Mr Lone's narrative of events at [253]-[265] of his skeleton argument, where he sets out the detail of the work he did on the file – in D's interests and on his own professional initiative. I have read this carefully. Mr Lone concludes it shows he '*had not compromised his independence, the above shows that following the initial meeting with Person B to effect handover of the file, [he] worked exclusively for the benefit of Client D and the Estate. [The SRA] was unable to point to any other evidence which remotely showed that A worked with person B, and accepted this in evidence.*'

44. I have looked again to see how the Tribunal dealt with this evidence. It recorded (at [29.3]) that the SRA witness, Ms Taylor,

> agreed that where a client file was transferred to another firm, a handover note would be expected and so there would have been some information given to [Mr Lone] by Firm B. Mr Fullerton [Counsel for Mr Lone] put to Ms Taylor that if [Mr Lone] had needed clarification of some matters it was reasonable to approach Firm B. Ms Taylor told the Tribunal that those queries should have gone to the intervention agent, but she accepted that if the client gave the appropriate authority then that may not be necessary.

It is clear therefore that it directed itself to the material on which Mr Lone places particular weight in this appeal. It also noted the submissions made on Mr Lone's behalf that seeking clarification from Person B about the accounts was entirely proper and was in Client D's interests.

45. It is clear from its decision, however, that the Tribunal gave particular weight to other evidence before it, in making its findings. It said this, at [34.9]:

> The Tribunal found that Person B clearly did work on Client D's matter during the material period. [Mr Lone] had told Client D as much when he sent her the estate accounts on 29 June 2018 and, in the covering letter, stated "If there are any queries, please do not hesitate to contact me or [Person B] who helped me with the attached bill given that the matter was commenced in 2011 and he has worked on that file since that date". [Mr Lone] had also confirmed this was the case in his interview with the FI Officer.

46. I have looked at the letter mentioned, and I have not seen it anywhere contradicted that the evidence cited here was accurately described. It is not inconsistent with Ms Taylor's evidence that initial handover interaction could have been proper. But it *is* inconsistent with the submissions made in this appeal that there was *no* evidence before the Tribunal of further working with Person B on the file afterwards. There clearly was.

47. So the first challenge on this ground is essentially to the way the Tribunal assessed and weighed the totality of the evidence before it, and found as fact that Person B worked on the file after handover. I approach interrogation of the Tribunal's fact-finding function with suitable circumspection. I cannot find error of law or irrationality of fact-finding in the passage cited above. It was a matter for the Tribunal how it evaluated, balanced and weighed the totality of the evidence before it. It had documentary evidence that Mr Lone himself had accepted that he had allowed Person B to do further work on the file after handover. It had been given no good reason to doubt that evidence. Mr Lone had not made himself available for cross-examination and explanation on this point, by deciding not to give evidence. The finding the Tribunal made was within the range of conclusions available to it on the materials before it and for the reasons it gave.

48. I did not hear it disputed that, on the basis of that finding of fact, it was properly open to the Tribunal to consider that Mr Lone had acted inappropriately in permitting this state of affairs. There was a clear conflict of interest, apparent on the face of the file,

between the patent existence of the 'loan' between Client D and Person B on the one hand (it had evidently become a matter of dispute between them), and Person B having professional involvement in the administration of the estate in which, as a result, he had a direct personal interest, on the other. That is what the Tribunal meant by finding that Mr Lone had 'compromised his independence' and 'not acted in Client D's best interests'.

49. Those criticisms did not, so far as I can see, carry any necessary implication that Mr Lone had done anything other than his best to administer the estate well and secure the repayment of the loan in the interests of Client D. They meant simply that Mr Lone had permitted Person B to do professional work on the file, beyond the formalities of handover, when Person B had a clear conflict of interest with Client D – and indeed for a time was in active dispute with her – over the repayment of the loan he had obtained out of estate funds. It is *inherent* in a situation of conflict of interest of this nature that the professional independence of the solicitor responsible, and the best interests of the client, are compromised. Again, it is *precisely* to avoid the problems that arise when a client later disputes the existence or propriety of a loan of this sort, or arrangements for its repayment, that the professional duties of solicitors to administer an estate should be exclusive of the involvement of personal interests. This was identified as a 'problem that came with the file' at the point of handover.

50. Mr Lone had an alternative. Beyond handover, and indeed not excluding handover, he could have consulted and worked with the intervention agent rather than continuing to involve Person B. Interventions in solicitors' firms are made for a reason, and are designed in detail to operate for the full protection of clients and former clients of the intervened firm. The fact that the estate in Client D's case may in the event have been effectively administered and the loan repaid goes to mitigation of the extent of the problem and the non-eventuation of all the risks. It does not mean the problem and the risk did not exist. The Tribunal was entitled to find, on the undisputed facts and the factual findings it had made, that Mr Lone had acted improperly to the limited, but important, extent it did.

51. On the question of the (undisputed) fact that Mr Lone did not take steps to secure the loan by taking a charge over Person B's property, as he had been invited to do, Mr Cutting invited me to concentrate on the following factors. First, Person B's proposal of a charge was conditional on the loan becoming overdue, and did not envisage any action before that point. Second, registering a charge would at all times have required either Person B's co-operation or formal legal proceedings. Third, I should understand from the handwritten attendance note that Person B had replaced his proposal about a charge with a proposal to repay the loan in full by way of a lump sum. And fourth, I should note Mr Lone's position that Client D had said she did not want him to take a charge over the property, she wanted the loan repaid in cash and was not interested in anything involving 'legal proceedings' – in other words, that in failing to register a charge he was acting on Client D's instructions.

52. The difficulty I see with this, from the Tribunal's point of view, is the apparent lack of any clear evidence that Mr Lone was acting on Client D's instructions. The records to which Mr Cutting took me, and which I have set out above, are at best ambiguous about what arrangements were being made. Mr Cutting showed me there was evidence before the Tribunal that Mr Lone had said in his original interview that the process of recovering the loan after it had become overdue had been unlikely to take

long, and that he had said '*Client D didn't want to get involved in legal proceedings. She thought it would just take longer. It's better to make a claim on the compensation fund*'. If Client D had instructed Mr Lone not to execute a charge over Person B's property, it might have been expected that a clear record would have been made of that, but it does not seem that anything was produced. I was not shown anything, either, to indicate clearly that Person B had withdrawn consent to registering a charge.

53. I can see from the Tribunal's determination that it had addressed itself to the ambiguous material to which Mr Cutting directed my attention. The Tribunal found as a fact that Person B had given consent for the registering of a charge and that Mr Lone '*knew that the charge was available to him as a means by which Client D's monies could be protected*'. Person B's original consent is set out in the handwritten letter of 21st July 2018. There is no clear evidence I have seen that that consent was withdrawn, or that Person B had taken any unambiguous step to prevent a charge being registered, and I have not heard it suggested that the finding that Mr Lone *knew the charge was available to him* was wrong in fact, or indicated subjective mistake on Mr Lone's part. It also appears to have been open to the Tribunal to find, as it did, that the loan was in fact repaid some five weeks after it had become due.

54. The key challenge on this point appears to be not to the finding of this set of facts, which, on the materials I was shown, was clearly open to the Tribunal, but to the conclusions it drew from them about what Mr Lone should have done that he did not do. The essential context for that is, of course, the problematic conflict of interests which beset this situation.

55. Whatever the precise detail of the arrangement, including how it may have evolved over time, Person B had obtained from one of his own probate clients a substantial amount of estate money for his personal use. He presumably was indeed putting it to personal use, since he entered into a period of default on the loan, and was apparently in a position of (temporary) impecuniosity. He was in evident dispute with Client D about the nature and terms of the loan. So Person B had a clear interest in the retention of the money for his personal use on *his* terms, and Client D had a clear interest in the protection and repayment of the money on *hers*.

56. Mr Lone's subsequent assumption of professional responsibility for administering the estate, and of duties to Client D when she became his client, thus did not take place in a vacuum. In a situation like this, the Tribunal was entitled to infer that he had a specific duty – in addition to his duties to the estate and Client D more generally – to protect this estate money *from Person B's conflicted interests*. He could in these difficult circumstances properly have been expected *either* to take such steps as were available to him to secure the loan *or* to obtain and record in the clearest possible terms an agreement between the parties, or Client D's instructions to him, to do something different. I cannot see that the Tribunal was otherwise than properly entitled to conclude, on the evidence before it, that he did neither.

57. It appears that Mr Lone had sought before the Tribunal to make something of the fact that he knew Person B professionally and had acted reasonably in taking that into account in forming a judgment about the practical extent of the risk to the funds in real life. If so, I have no hesitation in confirming that it was properly open to the Tribunal to conclude, as it did, that '*The fact of a previous professional relationship*

between Person B and [Mr Lone] made this more of a risk, not less'. Person B's personal interest in the money was an inherent risk to the estate and to Client D. If Mr Lone was inclined to make judgments about that risk which favoured taking fewer steps to protect the money because he knew Person B, that added a further dimension of conflict of interest (from Client D's point of view) in itself.

58. Again, I do not understand the Tribunal to have gone further than that limited, albeit important, point. It did not find that the estate had otherwise been wrongly administered or had ultimately sustained loss, or that the practical steps Mr Lone took were otherwise than successful in limiting the period of default on the loan and securing its ultimate repayment in full to Client D. He sorted things out. The Tribunal did not find him to have been otherwise than well-intentioned, assiduous and hard-working, focusing on getting the administration work done and getting a satisfactory result for his client. Its conclusions were that he had made a mistake in not handling a situation of conflict of interest more meticulously. For the reasons it gave, and on the materials before it, I am satisfied that this conclusion was not vitiated by error or otherwise 'wrong'. It was within the range of conclusions properly open to it.

(d) The determination of sanction

59. Mr Lone's grounds of appeal which are most relevant to sanction – and necessarily, of course, secondary submissions based on the Tribunal's finding that the allegations against him stand – are these:

> *Ground 7 – no consideration was given to the impeccable record of the Appellant's firm in reporting unqualified reports since it was founded in 2001, and that the said transfers were made because of the Respondent's instructions to the Appellant to close his client account. But for this direction, the Appellant was able to hold the monies in his own client account.* [This of course refers to Allegation 1 specifically.]
>
> *Ground 21 – wrongly concluded that the allegations against the Appellant were 'serious' and contradicting their own conclusions that there was no evidence of any dishonesty, recklessness or lack of integrity (which was thrown out by the Tribunal itself). Further, that the transfers made were not for personal gain and ordering a low category fine is inconsistent with 'serious misconduct' finding.*
>
> *Ground 22 – wrongly applied the test for assessing harm to others and wrongly concluded that the Appellant's misconduct was serious. The test for 'harm' was considered on 'potential' rather than 'actual' harm which is wholly unrealistic and plainly wrong. The test applied for potential harm is 'subjective' and open ended when the duty of the Tribunal is to adjudicate on evidence produced before them which is plainly wrong.*

> *Ground 23 – in all the circumstances, the entirety of the decision was unsound, unsafe and unreliable with the overall conclusion ought to have been 'no order' advanced by the Appellant's Counsel.*

60. Mr Cutting asked me to consider in the round whether the sanction imposed was, as the Tribunal found, at a level of 'seriousness' which properly corresponded to the evidence and the Tribunal's own findings.

61. What was before the Tribunal at this stage were three findings of misconduct: knowing breach of a court order, and two examples of management of a situation of conflict of interest which fell below professional standards.

62. The Tribunal addressed itself to the Guidance Note on Sanctions published in November 2019, which was in force at the time. That indicates a three-stage approach to sanction:

> The first stage is to assess the seriousness of the misconduct. The second stage is to keep in mind the purpose for which sanctions are imposed by such a tribunal. The third stage is to choose the sanction which most appropriately fulfils that purpose for the seriousness of the conduct in question.

It is, in other words, a process of matching an evaluation of the seriousness of the misconduct with an equivalently serious sanction, working from the lowest upwards. When it has identified a starting point in this way, then it can consider aggravating and mitigating factors and increase or reduce the sanction accordingly.

63. Seriousness, according to the guidance, is determined by a combination of factors including the respondent's level of culpability for their misconduct; the harm caused by the respondent's misconduct; the existence of any aggravating factors; the existence of any mitigating factors. The Guidance explains that:

> Culpability ("responsibility for fault or wrong") will be influenced by such factors as (but not limited to):
>
> - the respondent's motivation for the misconduct
> - whether the misconduct arose from actions which were planned or spontaneous
> - the extent to which the respondent acted in breach of a position of trust
> - the extent to which the respondent had direct control of or responsibility for the circumstances giving rise to the misconduct
> - the respondent's level of experience
> - whether the respondent deliberately misled the regulator.

> The Tribunal will determine the harm caused by the misconduct and in doing will assess:
>
> - the impact of the respondent's misconduct upon those directly or indirectly affected by the misconduct, the public, and the reputation of the legal profession. The greater the extent of the respondent's departure from the "complete integrity, probity and trustworthiness" expected of a solicitor, the greater the harm to the legal profession's reputation.
>
> - the extent of the harm that was intended or might reasonably have been foreseen to be caused by the respondent's misconduct.

64. In assessing culpability, the Tribunal went through the checklist, and noted a number of matters in Mr Lone's favour: no motivation for personal gain; a genuine intention to comply with the Court Order in the case of Client C; no breach of trust. On the other side of the balance sheet were the findings of incompetence of execution and breach of duty to his clients in all three respects; breach of duty to the Court in the first; that this was Mr Lone's sole responsibility (being a sole practitioner with direct control over the circumstances); and that he '*was significantly experienced and so should have known better*'.

65. In assessing harm, the Tribunal confirmed that it had no evidence before it that any client had actually lost any money. '*However, the potential for significant losses to Clients C and D was high and the fact that nobody lost any money was down to luck rather than judgment*'.

66. There were no aggravating features. In mitigation, the Tribunal noted that Mr Lone had co-operated with the SRA. He had actively sought guidance from the SRA in respect of the transfer of files. He had taken responsibility for the payment of the £500 shortfall on the loan. The misconduct was of a relatively limited duration.

67. The Tribunal's overall conclusion was the misconduct was serious enough to require no sanction less than a fine. It was serious enough to have to be marked by more than a rebuke. It then addressed itself to the Guidance on the level of fine. The Guidance sets out five indicative bands of fine, graded by the *overall assessment of seriousness of conduct*. It placed Mr Lone in the middle band (between 'moderately' and 'very' serious). That gave a range of £7,501 - £15,000. It placed him towards the bottom of the range because it had found no lack of integrity, and because of the mitigating features it had found. That is how it reached a fine of £8,000.

68. I cannot see, on the face of it, fault in this decision. The Tribunal addressed itself to all the relevant circumstances, including those Mr Cutting identified as being the most favourable to Mr Lone. I have been given no 'compelling reason' to doubt it took them fully into account. It applied the Guidance to them step by step. It evaluated the relevant factors in a balanced way. Its conclusion overall, that the seriousness of the misconduct was if not 'very' then more than 'moderate', was consistent with, and supported by, the findings it had made in its determination of misconduct.

69. The breach of the court order alone was capable of being described as more than moderately culpable: Mr Lone had acted without lawful authority. He had taken an unwarranted decision to substitute his own judgment about how to protect client funds for the specific provision the court had made; faced with a problem of compliance he had taken neither of the professionally proper routes open to him. Mr Lone's lack of greater wariness about the issues raised by the conflict of interest situation in Client D's case was also capable of being described as more than moderately culpable. Again, faced with a professional problem, he had on two occasions taken none of the professionally proper options for resolving it. All of these were well-intentioned mistakes, or errors of judgment. But they were capable of being described as of more than moderate seriousness. Compliance with court orders, and the avoidance of conflicts with clients' interests, are professional fundamentals.

70. As to harm, the Tribunal acknowledged that no actual loss to client money had occurred. But significant sums were involved and they had been exposed to unwarranted and avoidable risk. Mr Cutting emphasised to me the steps that Mr Lone himself had taken to manage the risk and ensure that all turned out well. Perhaps it was not quite fair for the Tribunal to attribute that entirely to 'luck', but in each case risks with client money were being managed ad-hoc where either a specific court order or the general rules had imposed their own solution to risk management. No harm was done, but the Tribunal was entitled, in accordance with the Guidance, to take into account *the extent of the harm that might reasonably have been foreseen to be caused* by Mr Lone's actions, as well, of course, as the impact on those directly or indirectly affected, on the public, and on the reputation of the legal profession.

71. Determining the seriousness of the misconduct, and the consequently appropriate seriousness of the penalty, are evaluative and highly fact-sensitive matters to which the Tribunal's expertise was particularly relevant, and with which I should hesitate to interfere, in a case in which I cannot see error in the application of the Guidance or in attention to all the relevant facts. I am unable to conclude that this was a wrong or irrational decision, outside the range of decisions properly available to the Tribunal.

(e) The determination as to costs

72. Mr Lone's objections to the costs order were these:

> *Ground 24 – the costs awarded were completely disproportionate and excessive to the issues at hand, the Tribunal failed to consider, properly or at all, the means of the Appellant and his prevailing financial resources without regard to the 'means' form submitted by the Appellant.*
>
> *Ground 25 – failure to consider the enormous amount of irrelevant material advanced by the Respondents which largely related to the intervention of Firm B and the fact that, even ignoring financial means, the Respondent failed to prove two of the allegations which were thrown out. This included a falsified allegation that the Appellant 'lacked integrity' which was not reflected in the order made and conceded before the hearing.*

Ground 26 – the Respondent was simply taken at 'face value' over costs.

73. The summary assessment of costs at the end of a trial is a highly discretionary exercise in which a broad brush is usually appropriate. The starting point is generally to identify whether either party can be described overall as having been 'successful' or 'unsuccessful'. Here, the Tribunal found the SRA had succeeded in establishing all of its charges except in two respects: the aspect of lack of integrity in relation to breach of the court order, and failing to take proper steps to recover the £500 shortfall in the loan to client D. The former went to the calibration of Mr Lone's blameworthiness; the Tribunal exonerated him of lack of integrity, but found him to have been seriously inept and manifestly incompetent. The latter related to a relatively minor detail relating to the repayment of the loan.

74. It was within the scope of the Tribunal's discretion in these circumstances to conclude that the SRA was, overall, the successful party; that the aspects on which the SRA had not succeeded had been properly charged; and that the alternative of an issues-based approach to costs would involve disproportionate effort and cost for the likely adjustment potentially at stake ('*the time spent solely on those matters had not made any significant difference to the overall time that had been spent on the case as a whole*') and was therefore impractical and inappropriate. I cannot identify error in the exercise of the Tribunal's discretion as to liability for costs in this respect.

75. As to quantum, the Tribunal reviewed the SRA's investigation costs and the litigation costs and found them not to be excessive. It found that the litigation bill had been significantly inflated by Mr Lone's unfocused approach to the issues and unnecessarily voluminous documentation. It considered the evidence Mr Lone had provided about his means; it noted there was substantial equity in his property. It had in mind that it had placed no restrictions on his practice. These were all relevant considerations. The summary assessment of quantum of costs is broad brush, and a matter within the Tribunal's expertise and regular practice, and I have been given no basis warranting a conclusion that the decision it reached was improper or 'wrong'.

Procedural issues

76. The SRA drew my attention to a number of procedural objections they had to the conduct of this appeal, the most significant of which was that, on its account, the appeal was brought out of time and no formal application for relief from sanctions was made (Mr Cutting made a brief, informal application at the hearing in so far as it might be considered necessary).

77. There has been a full trial of the merits of this appeal, and this judgment sets out my conclusions. In the circumstances it is neither necessary nor proportionate to make findings on all the procedural issues raised. In fairness to the SRA, I acknowledge that it raised some points of concern to which I did not hear a full answer, including on limitation. However, I am satisfied that, in circumstances in which the SRA has succeeded in full on this appeal, there are no outstanding issues which cannot fairly be addressed in the submissions on costs which the parties will have an opportunity to prepare on the hand-down of this judgment.

Conclusions

78. Mr Lone strongly feels himself to have been shabbily treated, if not victimised, by the regulatory proceedings that were brought against him. He feels that in the matters with which he was charged – all of which were raised as a byproduct of the SRA intervention into Firm B – he had acted with integrity and worked hard and imaginatively to get the best results for his clients in difficult situations. He feels that not only did they come to no practical harm as a result of his actions, he helped them with solutions that saved them from worse outcomes. He does not recognise the labels of impropriety and misconduct attached to what he did. He is particularly offended by the assessment of seriousness which landed him with a non-trivial fine. And he is even more offended to have been landed with an 'eye watering' costs bill which makes him pay for the very procedure to which he takes such exception.

79. I have, in the exercise of the appellate function he has invoked, read the Tribunal's decision carefully in the light of the objections made to it, and I have looked at the materials before it to which my attention has been drawn. I see the Tribunal did deal with the matters urged in this appeal, but it did not agree there was no real problem with Mr Lone's conduct. That does not mean it ignored evidence and submissions to the contrary; I have been given no compelling reason to find it did. The Tribunal throughout acknowledged Mr Lone's good faith and good intentions. It acknowledged that in the end no client had lost money. It noted his unblemished record and had no reservations about his future practice. These are all important outcomes for him. But it did identify three specific points of professional misjudgement which it assessed relatively (but not 'very') seriously because they involved breach of a court order and a degree of inattentiveness to the inherent problems of conflict of interest – both of which go to the fundamentals of the legal profession and to the public's confidence in it. In each case he was found to have substituted his own solution to the management of risk for that which was, for good reason, professionally indicated.

80. For the reasons I have given, I have not been able to find that the Tribunal's decisions were 'wrong' in the sense relevant to an appeal. I cannot see that it went wrong in law, made unsupported findings, or made discretionary and evaluative decisions that were off the scale of choices properly available to it. That conclusion is consistent with the possibility that it could also, properly, have decided at least some of these matters differently. But I cannot find that it had to.

81. The appeal is dismissed.