SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12073-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

PETER EJOKWOYE OTTO Respondent

Before:

Mr G. Sydenham (in the chair)
Ms A. E. Banks
Mrs N. Chavda

Date of Hearing:
11- 20 January, 29 – 30 March and 15 April 2021

Appearances

Andrew Bullock, barrister in the employ of the Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham B1 1RN, for the Applicant.

Paul Ozin QC, of 23 ES, 1 Gray's Inn Square, Holborn, London WC1R 5AA instructed directly by the Respondent.

JUDGMENT

Allegations

1. The allegations made against the Respondent by the Solicitors Regulation Authority ("SRA") were that while in practice as a sole practitioner at Peter Otto & Co Solicitors of 2nd Floor, 151 Rye Lane, Peckham, London SE15 4TL ("the Firm"):

1.1 He entered into an arrangement on 4 February 2016 in family proceedings whereby his fees were made conditional on Client A winning her case and which further provided for a share in the reward received (15%) and proceeded to take action against Client A for his costs, when such an arrangement was not enforceable by statute and in doing so he thereby breached any or all of Principles 4, and 6 of the 2011 SRA Principles ("the Principles") and failed to achieve Outcome 1.6 of the 2011 SRA Code of Conduct ("the Code").

1.2 - Withdrawn –

1.3 He facilitated three loans for Client A from a third party in the total sum of £60,000 during 2017 without ensuring Client A's interests were protected through the giving of advice by restricting the client retainer and in doing so breached any or all of Principles 4 and 6 of the Principles.

1.4 He acted where there was a conflict or significant risk of a conflict between Client A and Client B in acting for Client B in seeking recovery of the loans he had facilitated between Client A and Client B and in doing so breached any or all of Principles 2, 4 and 6 and failed to achieve Outcomes 3.5 and 4.4 of the Code.

1.5 He deducted monies from the third-party loans to Client A to cover loans/payments he had made to or on behalf of Client A and in so doing breached any or all of Principles 3 and 6.

Documents

2. The Tribunal reviewed all the documents submitted by the parties, which included (but was not limited to):

- Rule 12 Statement and Exhibit SEJ1 dated 31 March 2020
- Respondent's Answer and Exhibits dated 15 May 2020
- Applicant's Reply dated 9 June 2020
- Applicant's Schedules of Costs dated 4 January and 22 March 2021
- Respondent's Schedule of Costs dated 6 January 2021

Preliminary Matters

<u>Application to Withdraw Allegation 1.2</u>

3. Mr Bullock applied to withdraw allegation 1.2. He submitted that given the content of the witness statement of Ms Afolabi, there was no reasonable prospect of the Applicant proving allegation 1.2 to the required standard.

4. Mr Ozin QC supported the application. It was observed that the withdrawal of the allegation did not mean that the evidence was not relevant. Further, there may be an effect on costs.

5. The Tribunal found that it was in the interests of justice for allegation 1.2 to be withdrawn. Accordingly, the application to withdraw was granted.

Factual Background

6. The Respondent was born in 1959 and was admitted to the Roll of Solicitors in February 2003. The Respondent was, at the material time, and remained the sole practitioner at the Firm. The Firm was formed on 1 July 2007. The Respondent was the Firm's Compliance officer for Legal Practice (COLP) and Compliance Officer for Finance and Administration (COFA). The Respondent held an unconditional Practising Certificate for 2019/2020.

Witnesses

7. The following witnesses provided statements and gave oral evidence:

- Client A
- Mr Otto
- Ms A Ezekiel
- Client B

8. The written and oral evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all the documents in the case and made notes of the oral evidence. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

9. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Tribunal considered all the evidence before it, written and oral together with the submissions of both parties.

Integrity

10. The test for integrity was that set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366, as per Jackson LJ:

> "Integrity is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members … [Professionals] are required to live up to their own professional standards … Integrity connotes adherence to the ethical standards of one's own profession".

11. When considering integrity, the Tribunal considered and took account of the testimonials submitted on the Respondent's behalf.

12. **Allegation 1.1 - He entered into an arrangement on 4 February 2016 in family proceedings whereby his fees were made conditional on Client A winning her case and which further provided for a share in the reward received (15%) and proceeded to take action against Client A for his costs, when such an arrangement was not enforceable by statute and in doing so he thereby breached any or all of Principles 4, and 6 of the Principles and failed to achieve Outcome 1.6 of the Code.**

The Applicant's Case

12.1 The Respondent was the sole solicitor at the Firm and was assisted by a number of paralegals. He first represented Client A in 2011 in connection with a conveyancing transaction. Thereafter, in 2012, he was instructed in relation to matrimonial proceedings. Client A obtained a divorce and financial settlement under a consent order dated 21 November 2012. The proceedings took place under the Matrimonial Causes Act 1973.

12.2 In February 2016, Client A instructed the Respondent to challenge the consent order on the basis of material non-disclosure by her ex-husband of a number of properties in the UK and abroad. The basis of the retainer was contained in the client care letter dated 4 February 2016 to Client A. It specified the hourly charge rate and went on to say "We have agreed to handle this case under the Damages Based Agreement. This means we shall only be paid our fee when you win your case and we shall be given a percentage of your award". The letter was signed and dated 10 February 2016 by Client A.

12.3 A letter dated 26 April 2016 confirmed: "… we are entitled to 15 per cent of total award to you in this matter and our costs for sponsoring this case and taking huge litigation risk of likelihood of getting nothing".

12.4 The 2016 proceedings were undertaken under the same matter number as the 2012 proceedings. Client A was successful, and a Financial Order was made on 9 February 2018 ("the Financial Order 2018"). Client A was to receive a lump sum payment of £768,638.00 through the sale of a number of properties. The court also made a costs order in favour of Client A.

12.5 The Respondent obtained a default costs certificate allowing costs in the sum of £181,940.43 against Client A's ex-husband on 16 July 2018 and against the intervener in the proceedings in the sum of £11,868.61 on 13 July 2018. These were to be paid to Client A within 14 days. They remained outstanding.

12.6 Mr Bullock submitted that in the early stages of the retainer, things went well between Client A and the Respondent, however, over time, their relationship deteriorated. The correspondence showed that the relationship was becoming increasingly fraught. Following the adjournment of proceedings on 20 September 2018, Client A wrote to the Respondent alleging negligence and demanding a payment in the sum of £63,500 as compensation. In a letter to Client A dated 2 October 2018, the Respondent stated: "You may wish to be reminded that you have not paid our fee of over £200,000 and disbursements of £44,459.67" and that action would be taken to recover the costs. The letter also stated: "Due to the serious breakdown in solicitor client relationship, we write to inform you that we cannot do any more work unless what is owed by you is paid and you put us in funds for future work. …. We shall send you a formal demand for all that is owed to date for settlement as soon as possible".

12.7 From the sale proceeds of one of the properties the subject of the Financial Order 2018, the Respondent deducted the sum of £44,459.67 for the disbursements he had paid on behalf of Client A throughout the matter and £5,000 as a contribution "towards the outstanding legal costs …". Client A received a letter to this effect on 21 November 2018.

12.8 The retainer terminated on 21 December 2018 before full implementation of the Financial Order 2018 had been effected.

12.9 In a letter to Client A dated 7 January 2019 a formal demand was made by the Respondent for payment of their outstanding fees. This was for the sum of "£144,359.37 together with the 15 percent risk fee in the sum of £115,295.70. … What is now due is £259,655.07 … This work does not account for the work yet to be billed from 9 February 2018 to 21 December 2018". A further demand was made in a letter to Client A dated 30 January 2019.

12.10 In a letter dated 21 February 2019 the Respondent wrote to Client A putting forward a settlement with respect to costs which stated: "We would forgo our 15% funding risk fee".

12.11 A statutory demand for costs dated 2 April 2019 ("the April demand") was served on Client A on 16 April 2019. This was for both judgment and post judgment costs. The balance due for payment was said to be £175,762.20. No claim was included for the 15 percent share in the award made to Client A. Client A applied to have the application set aside.

12.12 A further statutory demand was made on 14 October 2019 ("the October demand"). The only difference between the October demand and the April demand was that the October demand omitted the post judgment costs claimed of £31,412,83. Client A applied to have the October demand set aside.

12.13 The Respondent's client care letter dated 4 February 2016 (signed by Client A on 10 April 2016) agreed "to revisit the financial order by consent dated 21 November 2012, in your divorce matter against your former husband …"

12.14 The letter set out the basis upon which costs would be charged. Details of the hourly rate were given. It was agreed that the case would be handled under the "Damages Based Agreement". (DBA). The letter confirmed that the Firm's fee would only be paid if Client A won her case: "we shall only be paid our fee when you win your case". Further the client care letter also confirmed that the Firm would be given a percentage of the award.

12.15 The percentage was detailed as 15 percent in the letter of 26 April 2016. The letter referred to the percentage share and our costs "for sponsoring this case and taking huge litigation risk of likelihood of getting nothing".

12.16 When Client A requested a copy of the signed DBA, she was informed by the Respondent in a letter dated 11 December 2018: "… we have given you a copy of the agreement letter you signed". Mr Bullock submitted that this could only the letter of 4 February 2016.

12.17 As detailed above, the Respondent pursued recovery of his costs and a share in the award (the share in the award being ultimately dropped).

12.18 The costs were made conditional on Client A winning her case. Whether the fee agreement was a DBA or a conditional fee agreement (incorrectly described as a DBA) neither were enforceable when used in Family proceedings under the Matrimonial Causes Act 1973.

12.19 A conditional fee agreement is a legal funding arrangement between a client and a solicitor in relation to advocacy and/or litigation services under which the client will only have to pay the solicitor's fees and disbursement in specified circumstances. The agreement may provide for payment of a success fee, meaning that the amount of the fee will be increased, in specified circumstances, above the amount which would be payable if it were not payable only in specified circumstances.

12.20 Section 58A of the Courts and Legal Services Act 1990 ("CLSA") stated:

> "(1) The proceedings which cannot be the subject of an enforceable conditional fee agreement are–
>
> (b) family proceedings.
>
> (2) In subsection (1) "family proceedings" means any proceedings under one or more of the following-
>
> (a) the Matrimonial Causes Act 1973"

12.21 A damages-based agreement is an agreement in writing between a solicitor providing advocacy and/or litigation services and a client whereby the client is to make a payment if the client obtains a specified financial benefit, and the amount of the payment is to be determined by reference to the amount of the financial benefit obtained.

12.22 Section 58AA(3) of the CLSA stipulated that:

> "(a) a damages-based agreement is an agreement between a person providing advocacy services, litigation services or claims management services and the recipient of those services which provides that-
>
> (i) the recipient is to make a payment to the person providing the services if the recipient obtains a specified financial benefit in connection with the matter in relation to which the services are provided, and
>
> (ii) the amount of the payment is to be determined by reference to the amount of the financial benefit obtained."

12.23 Mr Bullock submitted that both types of agreements were unenforceable in family proceedings taken under the Matrimonial Causes Act 1973. The case dealt with by the Respondent for Client A was a continuation of the original proceedings relating to the divorce in 2012. The application was issued out of the Central Family Court and was allocated the same case number as the original proceedings. The proceedings were thus under the Matrimonial Causes Act 1973.

12.24 The Respondent's former representatives in their representations made on behalf of the Respondent in a letter dated 27 August 2019, stated: "(Client A) is an intelligent and sophisticated lady ... I do not accept that instructions of that type given four years after a divorce can be regarded as a family proceedings." This, it was submitted, could not be correct. The matter had the same case number and related to the Financial Order which had been made within Divorce proceedings in 2012. Accordingly, the proceedings were under the Matrimonial Causes Act 1973.

12.25 The former representatives also stated that the client care letter dated 4 February 2016 was not a conditional fee agreement (or a damages based agreement). They stated:

> "(client A) was liable for the firm's fees as calculated on an hourly basis, which could be billed quarterly, but on terms that she would not be obliged to make payment until she had won the case. … There is a distinction between an agreement of this type (in which a liability to pay arises but the solicitors promises not to enforce until a specific event occurs) and a conditional fee agreement (in which the liability to pay only arises if specified circumstances occur)."

12.26 Such a contention, it was submitted, was incorrect. It was clear from the letter of 4 February 2016 that it was the mutual intention of the Respondent and Client A when concluding the retainer that Client A should only be liable to pay the Respondent's fees if he succeeded in getting the Consent Order set aside. In any case, the retainer was made on the basis that the quantum of the Respondent's fee should be calculated by reference to the amount which was awarded to Client A after the Financial Order was set aside so that it was correctly described as a Damages-based Agreement.

12.27 Client A's evidence was that she had been informed that there was a DBA in place as she was unable to pay costs during the course of the proceedings. Mr Bullock submitted that Client A was entitled to be believed as:

- The terms of the client care letter specifically referred to a DBA. The Respondent's explanation of a clerical error by Mr S made little sense as was apparent from a comparison between the first and second client care letters. The Respondent used pro-forma client care letters. It was difficult to see why Mr S would cut and paste wording that referred to a non-standard funding arrangement. In any event, even if there had been an error, the letter had been signed by the Respondent. It was reasonably expected that the Respondent would have read through the letter and noticed the error. It was the Applicant's position that the intention throughout was for the matter to be funded under a DBA.

- The letter of 26 April 2016 clearly repeated an already existing agreement – "We would like to reiterate once again that we are entitled to 15 per cent of total award to you in this matter and our costs for sponsoring this case and taking the huge litigation risk of likelihood of getting nothing. Can you please therefore re-confirm that you are happy with this arrangement and fully appreciate the risk and burden taken by this firm on your behalf." This was not the creation of a new agreement, but the confirmation of one that already existed. Mr Bullock submitted that what was being confirmed was necessarily a DBA as any agreement for the Respondent to take 15% of the award fell within the definition of a DBA under the CLSA.

- From 7 January 2019, there was ongoing correspondence from the Respondent regarding the non-payment of costs and disbursements. The Respondent made demands for payment of the 15% risk fee. Such demands, it was submitted, was consistent with the existence of a DBA.

- There was also documentary evidence of Client A requesting a copy of the DBA. (i) On 8 September 2018, Client A emailed the Respondent requesting a copy of the DBA. (ii) In a letter of 12 May 2017, Client A asked for "the notarised copy of the [DBA]". It was the Respondent's case that neither of those documents were genuine documents.

- Mr Bullock submitted that even if the Respondent were correct in his contention that the retainer of 4 February 2016 did not amount to a DBA, there had been a variation of the terms of the retainer evidenced by the letter of 26 April 2016, which made the retainer subject to Section 58AA of the CLSA. By that stage, the Respondent was seeking confirmation of the agreement by Client A to pay a success fee to be determined by the amount of the award, and for Client A to signify that agreement. Mr Bullock submitted that it was difficult to see how, even if the Respondent was correct, a DBA had not come into existence in the course of the retainer and by 26 April 2016.

12.28 Mr Bullock noted that in his Answer, the Respondent sought to place significance on the hourly rate that was detailed in the client care letter. Mr Bullock submitted that this was immaterial. The DBA fell to be determined under the CLSA; there was no prohibition on an hourly rate time charge. Indeed, it was submitted, it would be surprising given the purpose of Section 58AA if it had been intended that the division of the claim fell within that section but the agreement which provided for that and the provision for an hourly rate did not.

12.29 Mr Bullock noted that there was evidence in the documents of discussions regarding monies on account for costs and disbursements. However, once it was realised that the agreement between the parties amounted to a hybrid DBA, such evidence did not assist the Respondent. Such evidence was also consistent with Client A's evidence that she was unable to make any payments towards the Respondent's costs.

12.30 The Respondent sought to place emphasis on a document entitled "Confirmation of Agreement" in which Client A was to agree to pay Court fees and make a contribution towards the Firm's fee and all future disbursements. Upon fulfilling those conditions, the Firm agreed to defer the bulk of its costs until the final decision in the case. As to that, Mr Bullock submitted:

- Given the hybrid DBA, it was unsurprising that there was provision for the deferment of costs. Further, and contrary to the Respondent's Answer, there was nothing inherently objectionable between future and contingent liability. Deferment did not preclude the future agreement of a DBA.

- The Confirmation of Agreement document was both unsigned and undated. There was no evidence that Client A saw this document, let alone agreed with the content of it.

12.31 The Respondent had invited the Applicant to obtain an experts report to confirm the date of creation and authenticity of that document. Mr Bullock did not consider that this was particularly significant. The report showed that the document existed in its current form as at 26 February 2016 and was last printed on 5 February 2016.

12.32 Mr Bullock submitted that it was a matter of obvious concern if a solicitor purported to deal with a client under a DBA which Parliament had decreed was unenforceable. The Client might be required to pay monies when they were not bound to do so. This was inherently serious. Mr Bullock accepted that no monies had in fact been paid so the error made by the Respondent was harmless. Notwithstanding the lack of financial harm, the Respondent's error was culpable. Mr Bullock submitted that whilst the conduct was culpable, it was also inadvertent. It was not the Applicant's case that this was deliberate deception on the part of the Respondent. In his Answer, the Respondent confirmed that he was not aware that a DBA or CFA were not appropriate in connection with family proceedings.

12.33 Mr Bullock submitted that by entering into such a fee arrangement with Client A, the Respondent failed to act in her best interests. Client's A award would have been reduced substantially if the Respondent had pursued the 15 percent share in the award.

12.34 The conduct alleged also amounted to a breach by the Respondent of the requirement to behave in a way which maintains the trust placed by the public in them and in the provision of legal services. There is generally a disparity of knowledge between solicitors and their clients about the permissible means of funding litigation. The public therefore trusts solicitors to enter only into funding arrangements which are permitted by statute and not take advantage of that potential disparity of knowledge by inducing them to enter into agreements which provide for the payment of fees which are not properly recoverable. Public confidence in the Respondent, in solicitors and in the provision of legal services is likely to be undermined by solicitors attempting to enforce

arrangements for funding of litigation which parliament has decided should not be enforced in the public interest. The Respondent therefore breached Principle 6 of the Principles.

12.35 The fee agreement entered into with Client A was unenforceable because Parliament had decided that it was an inappropriate way of funding matrimonial litigation and was therefore obviously unsuitable. The Respondent therefore failed to achieve Outcome 1.6 of the Code.

The Respondent's Case

12.36 In his Answer, the Respondent explained that at the time of instruction, Client A did not have sufficient funds to proceed. Whilst he was reluctant to act, he considered that she was the victim of fraud and was in need of legal advice and assistance. He eventually agreed to act for her on the basis that he would only require her to pay costs at the successful conclusion of the case.

12.37 It was not accepted that the client care letter dated 4 February 2016 was a CFA or DBA. That letter incorporated the Firm's hourly charging rates. Client A was liable to pay fees calculated on the hourly rates. She would be billed quarterly, but on terms whereby she would not be obliged to make any payment until the successful conclusion of the case. The Respondent had only agreed these terms as he was sympathetic to Client A's circumstances. The agreement with Client A was not a DBA, as he had agreed to defer costs, but had not agreed that costs were only liable at the conclusion of the case. The reference in the client care letter to a DBA was an error. Further, and in any event, the letter of 4 February 2016 did not meet the requirements of a DBA as it made no reference to a set percentage uplift and requested payment to meet ongoing disbursements. The letter of 26 April 2016 was, likewise, not intended to be a DBA, but was to reflect the agreement to defer the liability to pay costs.

12.38 The Respondent highlighted emails from Client A dated 10 February 2016 and 24 March 2016 where Client A detailed her financial difficulties.

12.39 The Respondent explained that Client A's understanding of deferred payment was evidenced in her affidavit in support of the application to set aside a statutory demand dated 7 May 2019, in which Client A stated (amongst other things) that the Respondent acted for her pursuant to "an agreement on the basis that he would defer payment of his legal fees to the end and conclusion…" of the case.

12.40 In his Answer, the Respondent accepted that, taken together, the letters of 4 February and 26 April 2016 might give the impression of a DBA or CFA, but that was not the intention. The Respondent explained that had he considered that he was in any way in breach of the Rules, he would not, under any circumstances, have entered into an agreement relating to the payment of his costs that might have been improper.

12.41 Mr Ozin QC submitted that allegation 1.1 was framed on the wrong factual basis, namely, that there was an agreement in place on 4 February 2016 which provided for a 15% share in the reward received, as the client care letter did not specify the percentage of the reward that would be payable in the event of the case being won. It used the phrase "a percentage of your award". As such, standing by itself, that part of the

agreement was not capable of enforcement. The relevant clause was incomplete and, analysed in terms of the law of contract, was void for uncertainty. It could not be applied as it did not specify what was required to be specified in order to reach a figure.

12.42 On any basis, the evidence showed that the specification of a percentage at all (and, in particular, 15%) did not occur until some months later. Accordingly, allegation 1.1 was predicated on factual assertions that were incorrect.

12.43 Client A's position in her statement was that "The percentage rate was provided after the client care letter of February 2016 was signed, shortly after I had found more properties to include into the matrimonial property". She stated in cross-examination that this was a reference to the time of the letter of 26 April 2016. Further confirmation that this was her position was to be found in her clarification note for the purposes of finalising her witness statement, to which she was taken during cross-examination.

12.44 Client A asserted that the notarised copies of the DBA which she claimed she signed contained reference to a 15% fee basis. However, similarly, she asserted that the signing of the notarised copies of the DBA occurred much later.

12.45 Mr Bullock opened the SRA case with the proposition that if the original client care letter was not an unenforceable DBA, then the letter of 26 April 2016 was because "there clearly has been a variation". Mr Ozin submitted that such a contention was misconceived since it was not the allegation particularised in the charge. Had that been the allegation, the cross-examination of Client A would have taken a different course. The Applicant had particularised its allegation and it was not open to the Applicant to invite the Tribunal to find an allegation proved that it had not particularised.

12.46 The breaches alleged were framed on the basis of the act of seeking to enforce an unenforceable agreement when the Respondent, of his own volition, did not pursue the matter. As such, any failing should not be censured with a finding of a breach of the relevant standards when he reflected and chose not to pursue the matter.

12.47 The enforcement action relied upon by the SRA was the action in December 2018 and January 2019 in making a formal demand for sums including the 15% uplift; but culminating, in February 2019, in the notification by the Respondent to the Client A that he would forego the 15% uplift. As the SRA acknowledged, the statutory demand issued by the Respondent with respect to his fees did not include a claim for the 15% uplift.

12.48 Given that the respondent did not follow through with the initial demand for payment of the 15% uplift and, of his own volition, elected to forego the claim, any failings, such as they were, were not capable of being sufficiently grave as to amount to a breach of the relevant standards. If that was correct, allegation 1.1 fell and could not be found proved.

12.49 The client care agreement of 4 February 2016 expressly stated that the fees payable are governed by a DBA and the fees are only payable when they win based on "a percentage of your award". The Respondent's evidence was that he did not notice this element at the time that he signed the agreement; that it did not feature in the discussions between the parties; and he inferred that its inclusion was an error by Mr S.

12.50 The Respondent was right, it was submitted, to point out that there were a number of significant contrary indications to the conclusion that the parties' understanding was that there was a 'no win, no fee' basis to the initial agreement. They were, it was submitted, cumulatively compelling:

- The percentage was not specified, which made no 'business sense' to either party and indicated the real possibility of a drafting error in this part of the agreement, which was not picked up by either party. Whilst Client A was not a lawyer, she did possess some business acumen. The Tribunal might consider that this was a point that Client A would have picked up on.

- If the fees were based on a percentage of the award and not payable unless the case was won, all the detail contained in the agreement relating to the calculation of fees and the liability to pay fees prior to the case being won was completely redundant. Specifically:

  (i) there would be no purpose in specifying the hourly charges (since fees would not be based on the work done but rather the size of the award), but they were specified;

  (ii) there would be no reason to specify the likely fee costs, because similarly the work done would not be referable to the fees, but they were specified in the sum of £25,000 plus VAT;

  (iii) there would be no reason to specify that bills are issued on a quarterly basis and that the solicitor reserves the right to decline to act further if they are not paid, but that is specified;

  (iv) there would be no reason to provide that the solicitor should be put in funds in the sum of £2000 (unless this related only to non-profit fee expenses).

12.51 Mr Ozin QC submitted that on Client A's account of her understanding of the client care letter, the position was starker still. Her evidence was that she believed that nothing was payable at all unless and until the case was won. However, the client care letter clearly and expressly stated that Client A "will be responsible for all disbursements incurred on your behalf".

12.52 The events that followed supported the Respondent's case that the understanding between the parties was that the initial agreement required the payment of profit costs as and when they arose in the ordinary way.

12.53 The Respondent issued schedules of costs setting out the fees payable (e.g. schedule of costs to 25 May 2016). Mr Ozin QC questioned why the Respondent would bother to do so, and why Client A did not object to receiving such material.

12.54 Further, there would be no purpose in the 'side letter' of 26 April 2016, and Client A would not have signed it. It too provided a schedule of costs which included the costs relating to both the work done and disbursements made. It recorded an agreement to pay 15% of the total award and the Firm's "costs for sponsoring the case and taking on

the huge litigation risk of getting nothing". It added that the Firm would be sending "a regular costs update".

12.55 Mr Ozin QC submitted that the fact that the letter specified both a percentage uplift based on the award and that regular cost updates would be provided indicated that there was an agreement to two bases for remuneration: the conventional costs basis and an additional win share basis.

12.56 In evidence the Respondent asserted that if the parties believed that the essence of the original agreement was a 'no win, no fee' basis, there was no point in the letter of 26 April 2016 as it would in effect be bolting on a DBA type arrangement to what was already a DBA type arrangement.

12.57 As to there being a separate DBA document, which Client A claimed existed and was signed by her, Mr Ozin QC submitted that her description of that document was inconsistent. Client A variously described it as:

(i) 2 pages, not on a letterhead;

(ii) an 8-10 page document, stapled with a document corner.

12.58 Further, in her complaint to the Respondent of 11 January 2019, Client A described having signed "20 notarized copies" of the DBA. She asserted that there was something "peculiar" on the DBA, which was why the Respondent had her "move offices so many times during my signing of the 20 copies of the DBA and every time I came back the documents had changed position on the table".

12.59 When asked by Client A for a copy of the DBA, the Respondent asserted in a letter of 11 December 2018, that Client A already had a copy of the agreement letter that she had signed.

12.60 Mr Ozin QC noted that the Respondent, in oral evidence, stated that the only apparent contemporaneous documents recording a request by the complainant for a copy of a separate DBA agreement were the contested documents produced for the first time by Client A as exhibits to her statement of July 2020. That, in itself, it was submitted, raised a question as to why such documents were not included in the original material provided by Client A in support of her complaint.

12.61 The first disputed document was an email purportedly sent by Client A to the Respondent dated 8 September 2018, which Client A relied upon as evidence of her requesting a copy of the DBA and that a DBA did, in fact exist.

12.62 That email stated: "I am not at my usual residence and therefore unable to retrieve the document… I am currently at another location and the document is out of reach. This copy I require via email only."

12.63 The complainant's evidence before the Tribunal was that this email did not indicate that she was accepting, contrary to her general position, that she had a physical copy of the DBA at her home. Mr Ozin submitted that this was "a significant moment where a chink in her armour of duplicity was clear and apparent". That was plainly what she

meant to say. Liars tended to forget the account given as it was not truthful. Damaging inconsistencies of this kind revealed the lie. Client A's evasive answers reinforced that impression.

12.64 It was the Respondent's position that the email was fabricated, and that Client A had given inconsistent accounts about the physical copy of the DBA because her account of seeing and signing such a document was false.

12.65 Mr Ozin QC reminded the Tribunal of Client A's evidence as regards her diary entry. Her firm position at the commencement of cross-examination was that she kept no historic record in the form of a diary in either paper or electronic form. However, in her written complaint to the SRA, Client A stated: "I signed the DBA and I have notes in my diary as per the event…". Such a statement was plainly an assertion that her position was backed up by an historic record which she had access to at the time of the complaint. (An assertion of a contemporaneous note). In cross-examination, Client A claimed that this was a misuse of language. She was unable to counter the fact that she was unable to provide the historic record. In cross-examination, she stated that she had no such record and attempted to assert that she did not intend to say in this passage in her written complaint that she ever had one. Mr Ozin QC submitted that this went to her credibility, and also undermined her evidence that there was a physical copy of the signed DBA. Further, it was strongly indicative that Client A was making false assertions to bolster her case that she signed physical copies of a DBA agreement; and hence that the underlying assertion (that there was a separate DBA agreement and that she signed it) was untrue.

12.66 The second disputed document was the "Acknowledgement Copy" letter, dated 12 May 2017. The document in the evidence was an image in PDF form of a folded and crumpled piece of paper which purported to bear the Respondent's signature. It was provided by Client A to the SRA on 14 June 2020. Mr Ozin submitted that the document was "too good to be true". It conveniently provided evidence of four critical disputed points: that the complainant did not agree to the deduction of £5000 and asked for it back; that she accused him of being abusive at this point in time (bolstering her position of a relationship breakdown preceding September 2018); that she had asked for notarised copies of the DBA; and that he had forgotten the work she had done for him and had not paid for it. The reasons for concluding that it was a false document were:

- It purported to be signed by the Respondent in acknowledgement. It was inherently improbable that anyone, let alone the Respondent, would acknowledge a letter which was nothing but a catalogue of criticisms of him. There was, on the face of it, nothing to acknowledge. It did not invite the acceptance of any facts, so what was it doing?

- It was inconsistent with the general tenor of the contemporaneous correspondence, including correspondence of 30 July 2018 in which Client A was expressing gratitude to the Respondent and apologising for inability to repay her loan. It was also contrary to the review she posted as regards the Firm dated 22 May 2018.

- Also consistent with recent fabrication was that fact that she plainly did not tell the legal ombudsman that she objected to the deduction of £5,000 from the loan (or

that the personal loans were in fact payments on account of sums which she later paid back), since the conclusion of the ombudsman was that the deductions were justified.

- Client A's account in response to further disclosure requests was that the original of the document "could be amongst stuff in Nigeria or shredded". She also stated that the original had been given to her by Ms Ezekiel. When further asked to produce the computer used to generate the document, she stated that it was lost in Nigeria (which she said in evidence occurred in April 2019) and that she made no insurance claim. Mr Ozin QC submitted that it was inherently improbable that she would take an image copy of the original and dispose of the paper original. Her evidence that she did not see the evidential difference between a digital copy and a paper copy bearing a signature was simply not believable.

- Ms Ezekiel disputed that she gave this document to Client A and much else besides as to Client A's account concerning her.

12.67 Mr Ozin QC submitted that for the reasons given above, the documents themselves and Client A's evidence in relation to them was deeply unsatisfactory.

12.68 Prior to the Client A's complaint to the SRA, there was no evidence of any other such requests in the voluminous material before the Tribunal. The evidence did not therefore support Client A's position that the contested documents were examples of her many requests. They were, in fact, the only instances.

12.69 As to the points advanced by the Applicant in support of the contention that a separate DBA agreement existed, they did not withstand scrutiny. The SRA suggested that the reference by the Respondent in correspondence in 2019 to a "risk fee" must be a reference to a defined term in a missing formal notarised DBA agreement. The Respondent rightly noted that the letter of 26 April 2016 expressly referred to the "huge litigation risk of likelihood of getting nothing". He further asserted that it was not ordinary practice to have notarised copies of the DBA.

12.70 The burden of proof was upon the SRA. If it was the SRA's case that there ought to have been a notarised copy of the DBA and that one might expect it to contain the defined term "risk fee", the SRA should have adduced evidence as to an ordinary practice of utilising notarised copies and the ordinary content and defined terms contained within them.

12.71 The SRA suggested that the references in the letter of 26 April 2016 to a previous understanding ("reiterate once again" and "re-confirm") must be references to a missing formal notarised DBA agreement. That, it was submitted, was an odd proposition given that it was the SRA's case that the initial client care letter contained the very conditionality which this subsequent letter reiterated. Mr Ozin QC submitted that a perfectly logical and coherent account of the sequence could be seen from the documents, when it became apparent that Client A was not going to pay any monies at all. Further, it failed to take adequate account of the sequence of internal documents running up to the signing of the letter:

12.72 The confirmation agreement document referred to an agreement to defer the bulk of costs, on the condition that Client A made a contribution to fees and disbursements. The expert evidence was that a draft of the document existed on 5 February 2016.

12.73 An attendance note dated 25 February 2016 recorded the agreement to pay 15% extra for the burden on the Firm of Client A not paying costs and disbursements. It referred to asking Mr S to draft "an agreement" confirming the Client A's agreement and for her signature.

12.74 The attendance note dated 26 April 2016 recorded that "Letter was drafted for [Mr S] to type confirming that [Client A] will pay an additional 15% of her damages towards our fee for failure to keep to original terms of client care letter. [Client A] signed the produced confirmation of agreement letter".

12.75 Accordingly, and contrary to the SRA case, there was no need to look for a missing DBA agreement to find the earlier discussions. They were recorded in the contemporaneous documents going back to early February 2016. Further, that material was strongly supportive of the Respondent's case that the letter of 26 April 2016 came about as a variation of the original agreement because Client A had failed to comply with it by failing to pay the costs and disbursements that fell upon her under its terms.

12.76 Mr Ozin QC submitted that the most likely explanation for the sequence of documents, providing a coherent explanation without the need to look for a missing notarised DBA, was that which was put to Client A in cross-examination – namely that there was discussion in February about the need to adjust the agreement to take account of the failure of the Client A to comply with the terms of the original agreement; there was a planned draft of a confirmation of agreement document; but, in the event, this developed into the execution of the letter instead performing the required function.

12.77 Mr Ozin QC submitted that in the circumstances and for the reasons stated, the Applicant had failed to prove its case as regards allegation 1.1. Accordingly, the Tribunal ought to find allegation 1.1 not proved.

The Tribunal's Findings

12.78 The Tribunal considered that the relationship between the Respondent and Client A had unreconcilably broken down. Their evidence, and the manner in which they gave that evidence clearly showed the level of acrimony and mistrust. Both the Respondent and Client A gave evidence as to matters which the Tribunal did not consider was relevant to the issues that it had to determine.

12.79 The Tribunal noted that there was no dispute between the parties as to the definition of a DBA. Further, and contrary to the submissions of the Respondent in his Answer, the Tribunal found that the application to set aside the consent order and the subsequent recovery were family proceedings as statutorily defined such that the use of a DBA was prohibited. Accordingly, the issues for the Tribunal to determined were whether a DBA existed and whether the Respondent proceeded to take action against Client A in circumstances where the agreement was unenforceable.

12.80 The Tribunal found that the letter of 26 April confirmed the already existing agreement as regards the 15% risk fee. It was plain, on the face of the document, that this was the case. The Respondent wrote: "We would like to reiterate once again that we are entitled to 15 per cent of total award to you in this matter and our costs for sponsoring this case and taking the huge litigation risk of likelihood of getting nothing. Can you please therefore re-confirm that you are happy with this arrangement and fully appreciate the risk and burden taken by this firm on your behalf." (Tribunal's emphasis). The language of the letter clearly demonstrated a pre-existing agreement between the Respondent and Client A.

12.81 The Tribunal did not accept Mr Ozin QC's submission that the issuing of costs schedules of costs was a contra-indication of the existence of a DBA. It had been the Respondent's evidence that costs would be deferred to the conclusion of the case, but that costs schedules would be issued quarterly on the understanding that costs would not be liable for payment until the successful conclusion of the case. Accordingly, the Tribunal found, the issuing of costs schedules was not relevant to the consideration of whether a DBA existed.

12.82 Mr Ozin QC had submitted that the DBA would have been void for uncertainty. The Tribunal did not find that this was the case. There were numerous instances in the contemporaneous documents that the agreed percentage was 15%. That this was the agreed percentage was agreed between the parties. Further, the 15% figure clearly emanated from the Respondent and the Respondent referred in his correspondence to previous conversations between the Respondent and Client A. The Tribunal did not find that a failure to specify the percentage in the Client Care letter evidenced that a DBA did not exist.

12.83 The Respondent had, on numerous occasions during his evidence, referred to how meticulous Client A was, and that she was a sophisticated person, who was fully aware of all of the issues arising in her matter, and knew the detail of her case. She would question any matters that had not been agreed or that she did not understand. In his submissions, Mr Ozin QC submitted that the mention of the DBA without any stated percentage in the client care letter was something that Client A, whilst not a lawyer, would have "picked up on". The Tribunal considered that had there been no DBA, or discussion as regards a DBA, Client A would have queried the inclusion of the DBA in the client care letter. She did not do so. Instead, she signed and returned the letter.

12.84 It was the Respondent's case that all the documents relied upon by Client A to demonstrate that a DBA existed were either fabricated or did not exist. The Tribunal considered the contemporaneous documents, without taking those disputed documents into account.

12.85 The first mention of a DBA was contained in the client care letter of 4 February 2016, a document which emanated from the Respondent. The Tribunal did not accept the Respondent's case that the mention of the DBA was a typographical error, having erroneously been copied from another document by Mr S. The Respondent reviewed the document, as did Client A. Neither of them sought to correct that error.

12.86 In his letter of 26 April 2016, the Respondent documented that the Firm was entitled to 15% of the total award for the Firm's costs for sponsoring the case and the huge litigation risk.

12.87 In his letter of 7 September 2018 Client A, the Respondent stated:

> "As you are doubtless aware you undertake to pay us 15 per cent of the awarded sum … for our risks and funding arrangement".

12.88 In his letter of 24 October 2018 to the SRA, the Respondent stated:

> "It was agreed that we would take the case on the agreement that our fees will be paid when we win and with the reward of 15% of the total award."

12.89 The Tribunal determined that it was clear from the Respondent's letter of 11 December 2018, that Client A had requested a copy of the DBA. In that letter, the Respondent stated (amongst other things):

> "Thank you for your letter requesting your signed DBA, we have given you a copy of the agreement letter you signed."

12.90 The Tribunal concluded that had no DBA existed (be that as a separate document or as a matter of fact), the Respondent would have expressly stated that Client A was mistaken, and that no DBA existed. The Tribunal did not accept that having failed to note the erroneous reference to a DBA in the client care letter, the Respondent would interpret the request for a DBA as a request for a copy of the signed agreement without making it expressly clear that a DBA did not exist.

12.91 The Tribunal considered the provisions of Section 58AA of the CLSA and determined:

(a) there was an agreement between the Respondent and Client A which provided that:

(i) Client A was to make a payment to the Respondent if she obtained a financial award in connection with her litigation, and

(ii) the amount of that payment was to be determined by the amount of the award obtained.

12.92 Accordingly, and for the reasons stated above, the Tribunal found that the undisputed facts evidenced that a DBA existed by virtue of the provisions of Section 58AA of the CLSA. In the circumstances, the Tribunal did not consider the disputed documents.

12.93 Having determined that there was a DBA, the Tribunal then considered whether the Respondent had proceeded to take action against Client A.

12.94 It was accepted that the Respondent had written to Client A seeking payment of the 15% uplift. In a letter dated 7 January 2019, the Respondent wrote to demand payment of costs, including costs in the sum of £115,295.70 for the 15% risk fee.

12.95 On 30 January 2019, the Respondent wrote to Client A stating that without an offer to settle the Firm's outstanding fees, the Firm would instruct Debt Recovery Solicitors. The Tribunal inferred that the letter included the 15% risk fee to which the Respondent was not entitled.

12.96 The Tribunal found that in writing to Client A in the terms that he did, the Respondent had proceeded to take action against Client A as alleged. The Tribunal noted that the Respondent had, in his letter of 21 February 2019, stated that he would forgo the 15% funding fee. However, as found above, the Respondent was not entitled to that fee, and therefore could not forgo an amount to which he was not entitled.

12.97 The Tribunal found that in entering into a fee arrangement that was prohibited by Statute, the Respondent had failed to act in the best interests of his client. It was clearly contrary to Client A's interests to enter into an agreement with the Respondent that was unenforceable. Nor was it in her interests for the Respondent to suggest that they come to an arrangement for Client A to pay monies that she was not liable to pay.

12.98 The Respondent, it was determined, ought to have known what funding arrangements he could enter into with his client. In entering into a funding arrangement that was prohibited by Statute, and in seeking to recover monies owed as a result of the unlawful arrangement, the Respondent had failed to maintain the trust the public placed in him and in the provision of legal services in breach of Principle 6. Members of the public would not expect solicitors to enter into unlawful funding arrangements, and thereafter seek to enforce them.

12.99 Given its finding that the Respondent had entered into a prohibited DBA, it followed that the Respondent had not entered into a fee agreement with his client that was legal and suitable for Client A's needs, taking into account her best interests. Accordingly, the Tribunal found that the Respondent had failed to achieve Outcome 1.6 as alleged.

12.100 The Tribunal accepted (and the Applicant had submitted) that this was a genuine error on the part of the Respondent. He had not set out to breach the Rules. The Tribunal found that the Respondent's conduct was culpable and was sufficiently serious as to amount to misconduct as alleged. The Tribunal rejected the submission that the Respondent's failings were not capable of being sufficiently grave as to amount to a breach of the relevant standards. The Respondent had entered into an unlawful funding arrangement, and had sought to pursue monies due under that unlawful arrangement in circumstances where he should have known that the funding arrangement was prohibited.

12.101 Accordingly, the Tribunal found allegation 1.1 proved on the balance of probabilities.

13. **Allegation 1.3 - He facilitated three loans for Client A from a third party in the total sum of £60,000 during 2017 without ensuring Client A's interests were protected through the giving of advice by restricting the client retainer and in doing so breached any or all of Principles 4 and 6 of the Principles.**

The Applicant's Case

13.1 Loans were facilitated by the Respondent for Client A from another Client of the Respondent, Client B. (Although there is also reference to Person C as having lent part of the loan in a letter of 2 October 2018. The relationship of Person C to the Respondent was unknown). The Respondent drafted the agreements and received the loan monies from Client B to pay to Client A.

13.2 The First loan (Loan 1) was made under an Agreement dated – 8 May 2017, in the sum of £25,000. Client A was to repay Client B the sum of £25,000 plus interest of £2,700 (£450 per month) "at the end of 6 months". Accordingly, Loan 1 was due for repayment on 8 November 2017. The sum of £5,000 was deducted by the Respondent from the loan monies before the balance of £20,000 was paid to Client A through her bank account on 9 May 2017. An attendance note made by the Respondent dated 9 May 2017 recorded that Client A attended the office to sign the loan agreement and that "she agreed for £5,000.00 to be taken to pay off her loan from me and contribution to disbursement", although the loans themselves amounted to £5,600.

13.3 A second loan (Loan 2) was made in September 2017 for £15,000. The sum of £1,000 was deducted from this and Client A received the sum of £14,000 into her bank account on 8 September 2017.

13.4 A third loan (Loan 3) was made under an Agreement dated 30 November 2017, in the sum of £20,000. The sum of £1,000 was deducted from the loan before the payment of £19,000 was received into Client A's bank account on 4 December 2017. Again, Client A was to pay Client B the sum of £20,000 plus interest of £2,160 "at the end of 6 months" (i.e. on 30 May 2018). Additionally, Loan 3 said: "The said loan will be repaid from the share of the Borrowers Divorce Settlement".

13.5 The Respondent wrote to Client A on 7 January 2019 stating that he acted for "Client B in connection of the repayment of the above loans granted you in 3 stages at different dates, totalling £60,000. As you are doubtless aware the schedule date for repayments have long passed. We are therefore requested to demand immediate payment following which a Statutory Demand will be served on you and bankruptcy proceedings commenced thereafter". Further letters before action were sent on 1 March 2019 and 11 March 2019, which stated that the Respondent had received instructions to proceed to court to recover the three loans.

13.6 The Order of 6 February 2018 ordered that the lump sum of £768,638.00, was payable 7 days after completion of the sale of a number of properties or by 9 August 2018, whichever was the earlier.

13.7 The Loan Agreements were prepared by the Respondent and the monies were paid via the Respondent.

13.8 In a letter of 27 August 2019, it was stated on the Respondent's behalf that:

> "In about May 2017 Mr Otto introduced (Client A) to (Client B) … because Client A was looking for a larger loan…. Although (Client B) instructs Peter Otto and Co on his legal matters, Mr Otto was not acting for either (Client B)

> or (Client A) in connection with the potential loan. He was simply making an introduction.
>
> ….
>
> (Client A) and (Client B) held discussions between themselves relating to the possibility of (Client B) making a loan to her, and they reached an agreement between themselves. Mr Otto was not involved in those discussions and he was not acting for either (Client A) or (Client B) in connection with the loan. When they reached an agreement, Mr Otto was asked to record the fact that they had reached agreement for a loan …… he prepared the loan agreement … simply in order to record that fact that (Client B) was making a loan to (Client A)"

13.9 Reliance was put on the SRA's Ethics Guidance issued on 23 July 2019 headed "Unregulated Organisations – conflict and confidentiality", in which it was stated:

> "One way to remove the risk of a conflict of interest or potential conflict will be to restrict your retainer in a matter – so that you are only acting for or advising the client or clients on those aspects of the matter where a conflict is not likely to arise."

13.10 Before restricting the retainer in this matter the Respondent needed to be sure this was in the best interests of the clients. The SRA's Guidance issued 29 October 2019, headed "Conflicts of Interest" – stated:

> "Both clients must understand the limits of your agreed retainer. You should be clear with the clients from the outset which issues you are advising on and what you are not and what risk this entails for them. In relation to what you are not advising on, the clients must understand the meaning and importance of those issues in relation to the matter.
>
> You should not act if it will leave one or more of the clients without advice in a way that is likely to prejudice them. …
>
> The limited retainer should therefore not be put in place so you can avoid giving advice to one or more parties on risks or difficult problems. We would normally expect limited retainers to be entered into only at the clients' request rather than at your suggestion. This is particularly true where the clients concerned are not sophisticated commercial entities.
>
> Where clients come to you with an agreement, you should make sure that they have been advised to take independent legal advice on its terms and have either taken such advice separately or have been clear they do not wish to do so.
>
> It must be in all parties' best interests for you to proceed. For example, if the arrangement is significantly unfair to one party then, even though you are not advising on its merits, it would be inappropriate for you to act. You should advise that party to get independent legal advice. There must also be no real disadvantage to any of the clients of you acting via a limited retainer, rather than them instructing separate solicitors.

> You should also be confident that here has been no undue influence or duress, no imbalance of bargaining power, or no vulnerability or position of weakness on the part of either client that would make it unfair for you to act."

13.11 Mr Bullock submitted that it was uncontroversial that the Respondent did not give Client A any advice regarding the loans. In those circumstances, there were three questions that the Tribunal ought to consider:

Did the Respondent facilitate the making of the loans?

13.12 Mr Bullock submitted that the answer was plain. It was common ground that the introduction of Client A to Client B (& Person C) was effected by the Respondent. But for the Respondent's intervention, there would have been no contact between Client B and Person C as potential lenders.

13.13 The Respondent accepted that he drew up the loan agreements and witnessed those agreements, although there was a dispute as to which signature the Respondent witnessed. It was also uncontentious that the monies were paid to Client A through an account in the Respondent's name and did not go directly from the accounts of the lenders to Client A.

13.14 The reality was that none of the three loan agreements would have come into existence in the way that they did if it had not been for the actions of the Respondent in introducing the parties, drawing up the loan agreements and receiving the loan monies in and paying them out from his own account.

13.15 In the circumstances, it was submitted, there was a degree of unreality in the Respondent denying that he facilitated the three loans. It was plain that he did, and that his involvement was a significant factor in the loans coming into existence. Accordingly, the Respondent, it was submitted had facilitated the loans as alleged.

If the Respondent facilitated the loans, were there matters upon which Client A required advice?

13.16 It was the Applicant's case that Client A ought to have been advised as:

- The loans were private loans being made by individuals who were not regulated under the statutory scheme which existed for the protection of borrowers. There were hazards inherent in such private arrangements due to the ease with which enforcement proceedings could be taken. That was an issue of law upon which Client A required advice. Further, Client A did not know the individuals or what their appetite for enforcement would be. She did not know whether a failure to pay in accordance with the loan agreements would lead to immediate proceedings with the risk of bankruptcy.

- Mr Bullock submitted that the agreements were premised on an assumption that Client A would make a full recovery within the terms of the agreement. Client A only borrowed the monies as the proceedings had not been resolved. It was clear that Client A would only be able to repay the loans out of the proceeds of her

recovery. That that was the position was made explicitly clear in the 3rd loan agreement.

- The difficulty with that however, was that litigation was inherently risky. There could be no guarantee that Client A would make any recovery within the 6 month period of the loan agreements. That was a matter upon which Client A should have received advice. Additionally, Client A ought to have been advised about the reasonableness, or otherwise, of the interest charged on the loans. Accordingly, it was submitted, there were a number of issues upon which Client A required advice regarding the loans.

If advice was required, was the Respondent required to provide such advice?

13.17 It was the Respondent's case that Client A was not a client as regards the loans. Mr Bullock submitted that Client A was an existing client of the Respondent's when all of the loans were granted. Thus the Respondent was bound to advise her under the existing retainer. That was particularly so in circumstances where the loans were not a fresh matter but were ancillary to the existing retainer. Client A was discussing her financial position with the Respondent due to the delay in the proceedings.

13.18 Mr Bullock submitted that the Respondent was duty bound to advise Client A as regards the loans. This was irrespective of whether or not Client A considered that she needed advice. The Respondent was obliged to be proactive in his advice to his client. It was the Respondent's case that Client B specifically asked Client A whether she wanted to obtain independent advice. Client B was not connected with the Firm, and it was the responsibility of the Respondent/Firm to advise Client A, or ensure that Client A took independent legal advice if the Firm was not in the position to advise her.

13.19 It was the Respondent's case that the agreements were drafted by him on the joint instructions of the parties. Mr Bullock did not dissent from the proposition that it was possible for two parties to instruct a solicitor to draft an agreement, or that a retainer could be restricted to the preparation of a document only. That was not the position in this case. Client A was an existing and ongoing client at the time the loans were granted. Client A's retainer with the Respondent was connected to the loan transactions. Accordingly, he was bound to provide her with advice on the hazards of entering into the agreements.

13.20 As a result of the answers to the three questions, it was submitted that the Respondent facilitated three loans for Client A without ensuring Client A's interests were protected through the giving of advice by restricting the client retainer.

13.21 Client A was a private individual engaged in litigation in the Family Court. She was not a sophisticated commercial entity. At the time of the Loan Agreements the Financial Order of 9 February 2018 was not in place. It would not have been known by Client A how the Application was going to conclude. The award under the Order eventually made was not immediately available, so that Loans 1 and 2 (and probably 3) could not have been paid within a 6 month period, Client A being in financial difficulty at the time of the Loans were made. Had the Loans been enforced at the end of 6 months Client A would have been unable to repay the full amount of the debt. The terms of the Loans (Loans 1 and 3) were also contradictory. They said the loan was to

be repaid within 6 months but also referred to "the borrower agrees to pay the lender …. and interest … every month until the loan is repaid". It was prejudicial to the interests of both Client A and Client B for the loans to be made without them having had advice on these matters and there was consequently a real disadvantage to both of them arising from the Respondent acting on a limited retainer as opposed to them both instructing separate solicitors. Despite this the Respondent did not ensure that either Client A or Client B was advised to take independent advice on the terms of the Loan Agreements.

13.22 By the Respondent failing to protect Client A's interests in the Loan Agreements she was entering into he failed to act in the best interests of Client A and had therefore breached Principle 4.

13.23 Further, the conduct alleged also amounted to a breach by the Respondent of the requirement to behave in a way which maintains the trust placed by the public in him and in the provision of legal services. Public confidence in the Respondent, in solicitors and in the provision of legal services was likely to be undermined by failing to ensure his clients' interests were adequately protected by receiving legal advice. The Respondent therefore breached Principle 6 of the Principles.

The Respondent's Case

13.24 The Respondent denied allegation 1.3. In his Answer, the Respondent explained that he facilitated the introduction of Client A to Client B. They discussed the loan between themselves and reached an agreement. The Respondent was not involved in the discussions and was not acting for either Client A or Client B in connection with the loans. Once the parties had reached agreement, the Respondent was asked to prepare the loan agreements. The Respondent reiterated that when he drafted the loan documentation, he was not acting for either party but was trying to assist both by the provision of the written record documenting the loan and the agreed terms.

13.25 The Respondent referred to the SRA Ethics Guidance of 23 July 2019 which stated:

> "One way to remove the risk of a conflict of interests or potential conflict will be to restrict your retainer in a matter so that you are only acting for or advising the client or clients on those aspects of the matter where a conflict is not likely to arise."

13.26 An example cited in the Guidance Note:

> "A debtor and creditor have agreed to settle a dispute over repayment and come to you because they want to have the agreement drawn up by a solicitor. They ask you to act in relation to that aspect only, without advising either party on the merits of the settlement."

13.27 The Respondent submitted that the example cited was similar to the position, save that as he was not acting for either party, he did not need to restrict the retainer. As he was not acting for either party, there could be no conflict of interests.

13.28 The Respondent referred to Client B informing Client A to obtain independent legal advice. That was corroborated by Ms Ezekiel who, in both her witness statement and her oral evidence confirmed that Client A stated that she did not require legal advice.

13.29 Mr Ozin QC submitted that allegation 1.3 consisted of 3 propositions:

1. If the Respondent was going to act, he should have restricted his retainer in a way that made it clear that he was only acting or advising on those aspects of the matter where a conflict was not likely to arise;

2. It was a risky business; there was no good reason to conclude that the divorce settlement order would be obtained successfully or when funds would be available; and so Client A might not have been able to pay within 6 months; and

3. The terms were contradictory in that the agreements stated that the loans were payable within six months but also interest payable until the loan was repaid.

13.30 As to proposition 1 - The loans in question were made in May, September and November 2017. The most fundamental objection to this analysis was that it was based on guidance issued in July 2019 and October 2019, 2 years after the loans. Mr Ozin QC submitted that if there was relevant guidance predating those dates, it would have been relied upon. A check on the SRA website indicated that the 2019 iterations relied upon were the first ones; although they had subsequently both been further amended.

13.31 The guidance could not be retrospective in effect. It was unfair to criticise the Respondent for failing to comply with guidance that did not exist at the time. That, it was submitted could not amount to professional misconduct. The same principle applied to legislation. There was a general legal presumption against retrospectivity.

13.32 Mr Ozin QC submitted that that was determinative of the allegation because it was framed as a failure to ensure that advice was obtained by restricting his retainer. Further, and in any event, neither set of guidance in fact applied to the factual scenario in question.

13.33 The Guidance of 23 July 2019 did not apply to the Respondent as a regulated solicitor. (The Respondent says that he was not acting under a retainer at all for either the lender or the borrower; but even if he was, it would not apply to him as a regulated solicitor).

13.34 The SRA website showed the current version of the Guidance. It stated:

> "**Who is this guidance for?**
>
> Solicitors, SRA registered European lawyers (RELs) and SRA registered foreign lawyers (RFLs) providing services to the public as an employee of or otherwise on behalf of an entity that is not authorised by any of the approved regulators under the Legal Services Act 2007 (a "non-authorised business").
>
> This guidance therefore covers situations where the client's retainer is with the non-authorised organisation and not with you as a solicitor, REL or RFL practising on your own behalf." (Mr Ozin QC's emphasis).

13.35 Accordingly, the Guidance did not apply to the Respondent.

13.36 The relevant part of the Guidance issued 29 October 2019 only applied to situations in which a solicitor acted for 2 clients. It did not mandate that there should be a limited retainer, in fact, the Guidance counselled against that and only permitted that where it had been specifically requested. Further, there was recognition of circumstances where the client did not wish to take independent legal advice.

13.37 The Applicant's case was predicated on the assertion that both Client A and Client B were clients at the time. However:

- Client A was his client in the family proceedings under the second retainer.

- There was no evidence that Client B was a client at the time of the making of the loans and this allegation was fixed at the time of the making of the loans. (There was evidence that the Respondent purported to represent the lender in subsequently seeking to enforce the recovery of the loans but that was in a different time frame. Additionally, the Respondent's evidence was that he was not in fact acting for Client B.)

13.38 Further, the Guidance contemplated the carrying out of legal services in the conventional sense for one or more clients in relation to a transaction; it was not intended to apply to the factual scenario in question, which was where the Respondent was, on his evidence, doing no more than making the introduction and assisting with the mechanics of the transaction; helping out an existing client who needed to borrow money.

13.39 As to proposition 2 – This could not be a freestanding basis for finding the allegation proved. The apparent logic was that the SRA would say that the risk involved in the loan was a reason for requiring the restricted retainer. It was therefore parasitic on proposition 1. The argument, it was submitted, was misconceived: the loan agreements were entirely clear as to the material respects; and so were the risks.

13.40 The first Client B loan was payable with interest within six months. The second was different and conditional upon her receipt of the divorce settlement, which was even more favourable to Client A.

13.41 As to proposition 3 – This, like proposition 2, could not be a freestanding basis for finding the allegation proved. The terms were clear. It had never been asserted that any additional interest following the expiry of the six-month period was payable. Mr Ozin QC submitted that in that respect too, the terms were very generous for Client A.

13.42 Accordingly, and for the reasons detailed above, the Applicant had failed to prove allegation 1.3; the Tribunal ought to find allegation 1.3 not proved.

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

13.43 The Tribunal noted that the parties agreed that the Respondent did not provide Client A with any advice. It was also agreed that the Respondent facilitated the introduction

of Client A to the lenders. It was accepted that at the times the loans were made, Client A was still the Respondent's client, and he was actively working on her proceedings. It was the Respondent's case that Client A was not a client for the purposes of the loans. He was not acting as her advisor, but was solely drafting the loan agreements and acting as a conduit for the loan monies.

13.44 During the course of the evidence there had been much discussion as to which loan agreement was the correct one. There were two different agreements relating to the same loan. Those agreements were identical in every way, save for who had witnessed which signature on the loan. It was the Respondent's case that the agreement produced by Client A was not genuine as he had not witnessed the signature that was purported by that agreement. The Tribunal determined that whilst it was noteworthy that there were different versions of the loan agreement, it was not determinative of the allegation. The parties accepted that the content of the agreements themselves were identical, and that the loan had been granted on the terms contained in both agreements, those terms being identical. The Tribunal found that it was not necessary for it to determine which of the loan agreements was "genuine", as this did not form part of the issues that Tribunal needed to determine in its consideration of whether the Respondent had committed the misconduct alleged.

13.45 The Tribunal did not accept that the example in the Guidance Note cited by the Respondent was akin to the situation as regards Clients A and B. There was nothing in the example that suggested it was contemplated that either of the parties were current clients of the Firm. Further, the Respondent, on his own case, did more than merely draft the agreement. He was the conduit by which loan monies were received from the creditors and then paid to Client A.

13.46 The Tribunal did not accept Mr Ozin QC's submission that the Applicant's case was predicated on Client B being a client of the Respondent's at the times the loans were granted, such that the allegation could not stand if the Tribunal found that Client B was not a client at the time the loans were granted. It was the Applicant's case that having facilitated the loans (with Client A being a current client of the Firm), and the loans being ancillary to Client A's retainer with the Firm, the Respondent was under a duty to advise Client A (or to inform her to take independent legal advice if he was unable so to advise).

13.47 As regards Mr Ozin QC's three propositions, the Tribunal agreed that Proposition 1 referred to guidance that was not in existence when the loans were advanced. The Tribunal did not accept that Proposition 1 was determinative of the allegation. The case against the Respondent was clear and had been answered by the Respondent. It was clear that the Respondent understood the case he faced on allegation 1.3, his Answer being directed at the mischief alleged, and his defence being that of a limited retainer.

13.48 The allegation was that the Respondent had failed to advise his client (or to advise her to obtain independent legal advice). Propositions 2 and 3, the Tribunal found, detailed the reasons that the Applicant suggested advice was required. The Tribunal did not consider it had to decide the allegation based on whether it agreed with the Applicant's particular reasons, rather the issue to be decided was whether, in all the circumstances, in failing to advise Client A (or advising her to take independent legal advice) the Respondent was in breach of his obligations.

13.49 The Respondent denied that he had facilitated Client A in obtaining the loans. During cross-examination when being asked about letters he wrote to Client A demanding repayment of the loans, it was put to the Respondent that he had "no business" in writing such letters in the absence of instructions. The Respondent replied: "Of course I had business writing those letters. But for me she wouldn't have got that money".

13.50 The Tribunal determined that merely introducing parties who then enter into an arrangement, did not amount to facilitation. The Respondent, however, had gone much further. Not only had he drafted the Agreements (which in and of itself did not amount to facilitation), he had also used his own account to receive the loan monies from the lenders and pay it on to his client.

13.51 The Tribunal did not accept that Client A was not a client for the purposes of the loan. The Tribunal agreed with the submissions on that point cited by Mr Bullock. Accordingly, the Respondent, it was found, was under a duty to advise Client A (or to advise her to obtain legal advice). The Tribunal considered that at no point did the Respondent tell Client A that he was not representing her as regards the loan, nor, as was agreed, did he tell her to seek legal advice. The Respondent sought to rely on Client B asking Client A whether she wanted legal advice, or Client B advising Client A to obtain legal advice. He relied on the evidence of Ms Ezekiel who confirmed that Client A stated she did not want advice. This was of no assistance to the Respondent. The duty to either advise Client A or advise her to obtain legal advice belonged to the Respondent. That was not a duty he could abrogate to someone else. Nor could that duty be fulfilled by someone else. It was also of no assistance for the Respondent to say that had Client A asked for advice, he would have informed her that he was not advising her. It was the Respondent's duty, given that he was retained by Client A at the time, to inform her that he was not acting for her for the purposes of the loans.

13.52 The Tribunal found that in facilitating the loans and failing to advise Client A that he was restricting the retainer and was not advising her on the loan, and in failing to advise her to seek independent advice, the Respondent had failed to act in Client A's best interests in breach of Principle 4. Members of the public would expect that a solicitor acting for them would tell them if they were not acting on any matter. Members of the public would also expect a solicitor to give them appropriate advice or inform them to seek independent advice. In failing to do so the Respondent had failed to behave in a way that maintained the trust the public had in him and in the provision of legal services.

13.53 Accordingly, the Tribunal found allegation 1.3 proved on the balance of probabilities.

14. **Allegation 1.4 - He acted where there was a conflict or significant risk of a conflict between Client A and Client B in acting for Client B in seeking recovery of the loans he had facilitated between Client A and Client B and in doing so breached any or all of Principles 2, 4 and 6 and failed to achieve Outcomes 3.5 and 4.4 of the Code.**

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

14.1 After the retainer of Client A had come to an end he acted for Client B in the recovery of the loans. The Respondent wrote to Client A on 7 January 2019 stating he acted for "Client B in connection of the repayment of the above loans granted you in 3 stages at

different dates, totalling £60,000. As you are doubtless aware the schedule date for repayments have long passed. We are therefore requested to demand immediate payment following which a Statutory Demand will be served on you and bankruptcy proceedings commenced thereafter". Further letters before action were sent on 1 March 2019 and 11 March 2019, stating he had received instructions to proceed to court to recover the three loans in the sum of £60,000 and interest.

14.2 There was a clear and obvious conflict, it was submitted, between the position of Client A and Client B with respect to recovery of the loans, in that the interests of the debtor were obviously contrary to the interests of the creditor.

14.3 Mr Bullock submitted that there was very little of substance in issue between the parties as regards the law. In summary, it was submitted, a client conflict could arise notwithstanding that one client was a former client. The Respondent had been a longstanding legal advisor to Client A; he had been dealing with her legal affairs since 2011. He had advised and represented her in relation to her divorce and the subsequent application to set aside the consent order. The relationship between the Respondent and Client A had become increasingly and irrevocably acrimonious towards the end of Client A's retainer, however the effect of the existence of the relationship should not be underestimated. Client A had actively engaged with the Respondent, assisting in litigation and tracing exercises. An inevitable consequence of a relationship of that length and nature was that the Respondent would be conferred an advantage when dealing with Client A on behalf of another client.

14.4 Mr Bullock submitted that the question as to whether a fiduciary relationship between a solicitor and their client continued to exist after the termination of the retainer was ultimately a fact specific exercise dependent on whether the solicitor was in a position of dominance and had special knowledge concerning the client's affairs. It was the Applicant's case that this was the position as regards Client A and the Respondent.

14.5 However, even if the Respondent was not in a position of ascendancy by virtue of the duration of the solicitor client relationship, the Respondent had been conducting enforcement proceedings on behalf of Client A for approximately 2 years. He knew her financial situation and had been instrumental in arranging loans on her behalf. It was plain that Client A's impecuniosity had been regularly discussed. The Respondent was also aware of the precise position as regards the enforcement, and could offer a view as to when recovery was likely. That information was confidential to Client A and was of interest to any creditor pursuing her monies owed. When and how Client A would be in the position to repay the loan to Client B was fundamental to the retainer between the Respondent and Client B.

14.6 That information remained current between the end of the retainer with Client A on 21 December 2018, and 7 January 2019, when the Respondent first wrote to recover monies from Client A on behalf of Client B. Mr Bullock submitted that it was plain that the Respondent had special knowledge as regards Client A's financial affairs.

14.7 A point taken by the Respondent was that there had been no allegations levelled by the Applicant of a breach of confidentiality. Mr Bullock submitted that the fact of the continuing duty of confidentiality was not the same as saying that there had been a breach of that duty. There was no conceptual reason to prevent alleging the existence

of a conflict of interests and stating that a duty of confidentiality existed. The criticism by the Respondent, it was submitted, was misconceived. Mr Bullock referred the Tribunal to Outcome 4.4 of the Code which stated:

> "you do not act for A in a matter where A has an interest adverse to B, and B is a client for whom you hold confidential information which is material to A in that matter, unless the confidential information can be protected by the use of safeguards, and:
>
> (a) you reasonably believe that A is aware of, and understands, the relevant issues and gives informed consent;
>
> (b) either:
>
> (i) B gives informed consent and you agree with B the safeguards to protect B's information; or
>
> (ii) where this is not possible, you put in place effective safeguards including information barriers which comply with the common law; and
>
> (c) it is reasonable in all the circumstances to act for A with such safeguards in place."

14.8 The Respondent was in possession of confidential information belonging to Client A that would have assisted Client B in his recovery of the loans. He would have known how the enforcement of the Order dated 9 February 2018 was progressing and what monies had been recovered at the time the retainer came to an end in approximately December 2018. This information was material to Client B's claim. His duty of client confidentiality to Client A meant that any material information could not be disclosed to Client B. The Respondent should not have acted for Client B or continued to act as he was unable to disclose the material information. In such a small practice it would have been impossible to put in any safeguards to prevent disclosure.

14.9 Mr Bullock submitted that this was clearly a situation whereby the Respondent had special knowledge concerning Client A's affairs. He had a continuing duty to her, which was in conflict with his duty to Client B, and thus prevented him from acting Client B when he purported to do so.

14.10 It was noted that the Tribunal might consider it surprising that a solicitor, having acted for a client for 7 years under a retainer that included the client's financial matters, was able to switch horses in the way that the Respondent did, in a matter of days of the retainer ending. This was unattractive in circumstances where the Respondent was in a position of ascendancy and was privy to Client A's financial affairs and litigation, the outcome of which was bound to be of interest to her creditors. In seeking to recover monies from Client A on behalf of Client B, the Respondent was acting where there was a conflict of interests in breach of Outcome 3.5.

14.11 Mr Bullock submitted that the Respondent's conduct was a flagrant and obvious breach of his duty not to act where there was a conflict of interests. Such a conflict could not have escaped his attention. It was the Respondent's case that he was not, in fact, acting for Client B. Mr Bullock submitted that such a contention could not stand, given the plain wording of the letters that the Respondent accepted were written by him. The Respondent failed to act with integrity in that he acted against a former client knowing that he held confidential information for that client that would have assisted his current client being with their case. A solicitor of integrity would not have put themselves in such a position. The Respondent therefore was in breach of Principle 2.

14.12 The Respondent had placed himself in a position where he could not disclose information to his present client which it was in his best interest to know without breaching the duty of confidentiality which he owed to his former client. Accordingly, the Respondent had breached Principle 4.

14.13 The conduct alleged also amounted to a breach by the Respondent of the requirement to behave in a way which maintains the trust placed by the public in them and in the provision of legal services. Public confidence in the Respondent, in solicitors and in the provision of legal services was likely to be undermined by acting against a former client in the circumstances of this matter. The Respondent therefore breached Principle 6 Principles.

14.14 By acting for Client B in a matter where Client B had an interest adverse to Client A, being a former client for whom confidential information was held which was material to Client B in their matter, the Respondent had acted where there was a client conflict and had therefore failed to achieve Outcome 3.5 and 4.4 of the Code.

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

14.15 The Respondent denied allegation 1.4. The Applicant relied on letters written by the Respondent subsequent to his retainer with Client A being terminated. Accordingly, Client A was no longer the Respondent's client. The Respondent submitted that the fiduciary relationship between a client and solicitors came to an end with the termination of the retainer. As such, there was no longer any obligation on the Respondent to defend and advance the interests of his former client. The only duty that remained following the termination of the retainer, was for the Respondent to preserve the confidentiality of the information imparted during the retainer.

14.16 The Respondent noted that the Applicant had not alleged that he had disclosed confidential information. Accordingly, the allegation of a conflict between clients (when Client A was no longer a client) was misconceived.

14.17 Mr Ozin QC noted that the Legal Ombudsman did not consider the letters seeking recovery of the loans to be threatening. Nor was the Firm providing an unreasonable service when it sent the letters to Client A.

14.18 The Respondent's evidence was that, despite the wording of the letters seeking recovery of the loans, he was not in fact acting for the lender; it was a pretence to try to encourage Client A to pay up now that she was in funds. Mr Ozin QC submitted that if that was, or might be, the position, allegation 1.4 was not made out.

14.19 In support of that position Mr Ozin QC submitted that the letter contained an important error, which it would be unlikely to contain if he was formally instructed, namely that all the loans were made by Client B. Additionally, no enforcement action was in fact taken, as threatened.

14.20 Further, the basis upon which the SRA case was framed was misconceived as a matter of principle. Paragraph 64 of the Rule 12 statement stated: "The Respondent had placed himself in a position where he could not disclose information to his present client which it was in his [lender's] best interest to know without breaching the duty of confidentiality which he owed to his former client."

14.21 Mr Ozin QC submitted that on analysis, that did not make sense. The breach was said to consist of a conflict arising because it would be of benefit to the lender to know the progress of the confidential Family Court proceedings. No doubt, it could be to the lender's benefit to know whether the borrower was in funds.

14.22 However, the lender had no right to demand that the Respondent disclose to him the confidential information of another former client. Thus, the lender had no legitimate complaint in not getting that benefit. It was not put to Client B in cross-examination that he asked for or was given that information.

14.23 In its Reply, the Applicant asserted that there was a fiduciary relationship such that a conflict might arise by virtue of the duty owed to Client A as a former client. The SRA asserted that a client conflict situation might arise with respect to former clients. Caselaw was cited concerning the circumstances in which a fiduciary relationship might subsist post termination of retainer; essentially where the solicitor possesses both relevant legal expertise and relevant special knowledge about the affairs of the client; and, in the result, the client might continue to defer to them.

14.24 That would be all very well if the factual scenario concerned a contentious issue relating to the matrimonial proceedings in which he had acted for Client A. However, the alleged conduct in this matter was unrelated to the matrimonial proceedings; it was entirely related to action to enforce the repayment of a loan. The Respondent did not provide any advice at the time of the making of the loans. Loans were not the Respondent's speciality, a fact that was known to Client A.

14.25 As set out above, the only factual basis alleged for such special knowledge was that the Respondent would be beholden to the lender with respect to useful knowledge about the state of funding of Client A. However, the argument was misconceived because the Respondent would not be beholden to the lender to disclose any confidential information that he did possess. The allegation, it was submitted, was tenuous and fanciful.

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

14.26 The Tribunal noted the agreed position that a client conflict could arise notwithstanding that one client was a former client, and that Mr Ozin QC had not made any submissions to the contrary.

14.27 The Tribunal examined the correspondence from the Respondent to Client A. On 7 January 2019, the Respondent wrote:

> "We act for [Client B] in connection of (sic) the repayment of the above loans granted you in 3 stages at different dates, totalling £60,000. As you are doubtless aware the schedule dates for repayments have long passed. We are therefore requested to demand immediate payment following which a Statutory Demand will be served on you and bankruptcy proceedings commented thereafter."

14.28 In a letter dated 1 March 2019, the Respondent stated (amongst other things):

> "You have been silent on the three loans … from [Client B]. Accordingly, we are inviting you to confirm when you will pay these loans and interest."

14.29 In a letter dated 11 March 2019, the Respondent stated:

> "We refer to the above loans and hasten to remind you that we now have instruction (sic) to proceed to court for recovery unless we hear from you on how you intend to repay these loans."

14.30 In his evidence, the Respondent explained that he was not acting for Client B, contrary to what was stated in the correspondence sent to Client A. The letters were written from "a moral standpoint". The Respondent stated that he felt it was right to remind Client A of her duty to meet her obligation. He had not been instructed by Client B. He had written three letters to Client A regarding the repayment of the loans and had done nothing more. The letters had been written on his own volition.

14.31 When it was put to the Respondent that the content of the letters was untruthful if he was not acting for Client B when the letters were written, the Respondent explained that his motivation for writing the letters was to encourage Client A to pay. He did not consider that it was untruthful to encourage her to pay. Mr Bullock suggested to the Respondent that in saying he was acting in circumstances when he was not, the Respondent had been untruthful, the Respondent stated that he had told her that she had borrowed money and was required to repay it.

14.32 Mr Bullock asked: "Do you accept that if you are right and you do not have instructions, it is a very serious matter for a solicitor to write in the terms that you did?"

14.33 The Respondent explained that he had answered the questions to the best of his recollection and that his "primary intention was to motivate [Client A] to pay … My main motivation whether instructed or not was to get her to pay. I don't think it is good to borrow money and then not pay. This has nothing to do with being a solicitor. Right is right and wrong is wrong".

14.34 When pressed as to why it was his business to write in the terms that if he was not acting for either Client A or Client B, the Respondent explained that it was "morally his business to remind her" and that it was "morally my business to give assistance" as he had introduced Client A to Client B. The Respondent later stated that he was happy to review his file for instructions.

14.35 It was suggested that the Respondent's evidence was untrue, and that the accurate position was that detailed in the letters. The Respondent stated that that was incorrect. If he had instructions, he would have a folder containing those instructions.

14.36 When being asked questions about the letter dated 12 March 2019, the Respondent stated "I may or may not have instructions. My primary goal was to get her to pay. Mr Bullock noted the Respondent's answer and asked whether the letter of 12 March 2019 was written on instruction. The Respondent replied "I wrote the letter. I must have had instructions". Mr Bullock put to the Respondent that by 11 March 2019, he was acting for Client B. The Respondent stated that he was not acting, "but may have been asked to do something along these lines. I can't recollect vividly."

14.37 Mr Bullock asked the Respondent if he accepted that it was a serious matter to say he was instructed when that was not the case. The Respondent stated: "No, not in this particular context". The Respondent did not accept that saying he was instructed when he was not, was misleading or untrue.

14.38 The Tribunal found that the Respondent's answers as detailed above were inconsistent and evasive. The Tribunal did not accept that the Respondent considered that he was acting consistently with his obligations as a solicitor when sending letters stating that he was acting in a matter when that was not true. The Respondent's case was, in essence, that he had been dishonest in his correspondence with Client A to satisfy what he considered to be his moral obligation. The Tribunal found such an explanation to be incredible.

14.39 The Tribunal found that the position was as documented by the Respondent in his letters to Client A; the Respondent was acting for Client B at the times he sent the letters to Client A seeking recovery of the loans. The fact that he did not pursue the recovery of the monies as detailed, was not, it was found, evidence that he was not instructed as stated. Accordingly, the Tribunal found that Client B was a client at the time the Respondent sought recovery of the loans.

14.40 As detailed at allegation 1.3 above, the Tribunal found that the Respondent was retained by Client A as regards the loans, notwithstanding his failure to provide advice.

14.41 The Tribunal determined that a fiduciary relationship existed between Client A and the Respondent by virtue of knowledge he had as regards her affairs, given the length of time he had been representing her. Further, it had been the Respondent who had facilitated Client A getting the loans (as detailed in the Tribunal's findings at allegation 1.3 above).

14.42 The Tribunal did not accept the Respondent's submission that when he wrote the enforcement letters, and in particular the letter of 7 January 2019, the information on the Respondent's file was "no longer current". The retainer with Respondent A had terminated on 21 December 2018. Further, as the Respondent stated in his oral evidence, he was aware that Client A had sold a property and that "she had quite a lot of money". The Tribunal found that the knowledge gained by the Respondent as regards Client A's affairs and litigation remained current when he was acting for Client B to recover the loan monies.

14.43 The Tribunal found that there was a clear conflict between the interests of Client B and Client A as regards the recovery of the loan monies. It was clearly in Client B's interests to know when Client A received monies, or when she was likely so to do. That information, of which the Respondent was aware, was confidential to Client A. The Respondent had acted for Client A when the loans were obtained, and had acted for Client B in seeking to recover the loans. Accordingly, he had acted for Client B when a clear and obvious conflict of interests had arisen. The Tribunal found, as had been submitted, that there were no safeguards that the Respondent could have put in place. Further, and in any event, the Respondent had not sought informed consent form either client. Accordingly, the Tribunal found that the Respondent had failed to achieve Outcomes 3.5 and 4.4 of the Code as alleged.

14.44 The Tribunal found that by acting as he did, the Respondent had failed to act in the best interests of his client in breach of Principle 4. The Respondent knew that it was in his client's best interests to disclose confidential information which he also knew that he was under a duty to disclose. The Tribunal considered that by acting as he did, the Respondent had breached Principle 6 of the Principles. Members of the public would not expect a solicitor to act where there was a conflict of interests as between clients, particularly where the breach was as clear as it was in this matter.

14.45 The Tribunal found that the Respondent's conduct was in breach of Principle 2. A solicitor acting with integrity would not act against a former client in the circumstances in which the Respondent did. The Tribunal found that the conflict between Clients A and B was clear and obvious, such that the Respondent ought to have been aware that he should not act for Client B in the recovery of the loans.

14.46 Accordingly, the Tribunal found allegation 1.4 proved on the balance of probabilities.

15. **Allegation 1.5 – the Respondent deducted monies from the third-party loans to Client A to cover loans/payments he had made to or on behalf of Client A and in so doing breached any or all of Principles 3 and 6.**

The Applicant's Case

15.1 The Respondent facilitated loans for Client A from which he deducted £7,000 in total before the Respondent transferred the loan monies to Client A. £5,000 was made from Loan 1 (for which there is an attendance note recording Client A's consent) and £1,000 from each of the further two loans. The deductions were made to repay the Respondent expended by the Firm and the Respondent personally.

15.2 Mr Bullock submitted that in making deductions from loans that he was instrumental in arranging, the Respondent had necessarily impeded his ability to provide Client A with the independent advice that she required regarding those loans. Thus, the Respondent's conduct was in breach of Principle 3 as alleged. Further, public confidence in the Respondent, in solicitors and in the provision of legal services was likely to be undermined by facilitating loans which would enable monies due to the facilitator to be paid from any loan. The Respondent's conduct was therefore in breach of Principle 6.

The Respondent's Case

15.3 The Respondent denied allegation 1.5 on the basis that the deductions were made from the loans in the knowledge and with the consent of Client A.

15.4 Mr Ozin QC submitted that the essential thrust of the reasoning in the Rule 12 statement was that there was an impropriety in facilitating loans with the purpose of enabling payments to be made to himself. However, the principal purpose of the loans was to meet the personal financial needs of Client A. In her statement, Client A explained that she needed the loan monies for various matters of personal expenditure.

15.5 The deductions represented a small proportion of the total loans and were not the main purpose for Client A taking out the loans.

15.6 The Respondent, it was submitted, had been entirely candid in asserting that he was also out of pocket as a result of the personal loans that he had made and the disbursements that he had covered. It was his case that Client A agreed to the deductions in each instance and never raised any objection at the time. The oral evidence demonstrated that at the time of the deductions, the Respondent was owed a great deal more for the disbursements already paid. The Respondent distinguished between personal costs and those he sought to recover. What the Respondent asked for was a very small sum set against the disbursements. He only asked for his own personal out of pocket sums. Not only did Client A know that this was the position, but the surrounding evidence supported that.

15.7 That being the case, there was no reason that the Respondent and Client A could not come to an arrangement as to repayment. The benefit was not only to the Respondent (and one to which he was entitled) but also to Client A as it contributed to the willingness of the Respondent to continue representing her, notwithstanding that she was in breach of the terms of the client agreement (by not paying expenses and disbursements). Mr Ozin QC invited the Tribunal to note that no authority or guidance was cited by the SRA in support of the proposition that it was inappropriate for them to agree to the return of monies owed to him.

15.8 Client A made a similar complaint to the Legal Ombudsman who found that most of the deductions were justified. It was submitted that the Legal Ombudsman was right to conclude that, if there was any real criticism, it was the lack of a record. The Tribunal, it was submitted, should follow that approach and conclude that there was nothing wrong in making the deductions.

15.9 Accordingly, allegation 1.5 should be dismissed.

The Tribunal's Findings

15.10 The Tribunal considered that the primary purpose of the loans was to assist Client A with her extremely precarious financial position. That this was the case was plain on the face of the documents and in particular in emails sent by Client A to the Respondent. This was also plain from Client A's oral evidence when she explained the financial crisis she was facing throughout the proceedings to set aside the Consent Order and recover monies from her ex-husband.

15.11 The Tribunal noted that at the time of the deductions, Client A made no complaints. It also noted that the Respondent documented the deductions in attendance note. The Tribunal was satisfied, on the balance of probabilities, that the Respondent and Client A had come to an arrangement whereby Client A would reimburse some of the monies spent by the Respondent in the pursuance of her matter.

15.12 The Tribunal did not find that having facilitated the obtaining of the loans, the private agreement between the Respondent and Client A was such that it impeded the Respondent's ability to act independently, nor was it likely to diminish the trust placed in the Respondent or the provision of legal services by members of the public. The Tribunal found that there was no impropriety in the Respondent's conduct and the arrangement with Client A. Accordingly, the Tribunal found allegation 1.5 not proved and thus dismissed that allegation.

Previous Disciplinary Matters

16. None.

Mitigation

17. Mr Ozin QC submitted that the Tribunal had found 3 of the 4 matters proved. In broad terms the Tribunal found that the Respondent had sought to enforce an unlawful agreement and had facilitated and sought to recover loans where a client conflict existed. Further, in attempting to enforce the loans, the Respondent had demonstrated a lack of credibility.

18. Mr Ozin QC submitted that the circumstances were unusual, the relationship between the Respondent and Client A being sometimes volatile. It was plain that Client A did not have access to sources to fund the litigation, but if successful, she had the potential to come by significant assets.

19. The Respondent had undertaken a vast amount of work over a number of years and had achieved good results for Client A. He had found and traced assets to her advantage and had obtained court orders to secure those assets. Client A had not paid the Respondent for the work he had undertaken and had used the benefit of the specific debt owed to the Respondent for his costs, to secure certain financial advantages. It was, it was submitted, unsurprising that there was a degree of enhanced volatility in their relationship.

20. Mr Ozin QC submitted that this was a fact specific scenario relating to a single client. The Respondent's conduct was uncharacteristic. The Respondent was a professional of unblemished character and unblemished professional standing. The Tribunal had read and would take account of the testimonials submitted on the Respondent's behalf, which attested to how uncharacteristic the Respondent's conduct was.

21. As regards allegation 1.1, the Respondent did not, in fact, follow through with the attempt to obtain the additional 15%. The Tribunal could properly conclude that this was the result of a genuine mistake by the Respondent.

22. As regards allegations 1.3 and 1.4, Mr Ozin QC invited the Tribunal to conclude that the Respondent acted out of a genuine desire to assist his client with the cash difficulties she faced. The Respondent knew that whilst she was asset rich, she was cash poor. The Tribunal had found that the Respondent ought to have been conscious of the conflict in seeking to recover the loans and that such conduct was inappropriate, particularly in circumstances where the Respondent had facilitated the loans. Similarly, whilst recovery of the loans had been threatened, the Respondent did not enforce recovery and Client A retained the benefit of the loans, their having not been repaid. It was open to the Tribunal to conclude that the Respondent's conduct in this regard was not a deliberate flouting of the Rules and standards, but was a reckless or inadvertent disregard of the Rules. That being the case, the Respondent's breach of Principle 2 was at the lower end of the scale.

23. Mr Ozin QC submitted that the Respondent's culpability was low. His conduct had arisen from the unusual circumstances related to a single client. His conduct was misguided as opposed to being cynical and manipulative. That being so, this was conduct that was remediable.

24. The harm caused was also low. Client A did not pay the 15%, nor did she repay the loans or any interest.

25. As regards aggravating factors, it was for the Tribunal to consider whether Client A was vulnerable. She had relied upon the Respondent, as was the case in any client solicitor relationship. Whilst the Tribunal might consider that Client A was naïve in some respects, she was also, it was submitted, resourceful, sophisticated, and tough. Client A had not suffered a great deal of harm. Further, the context of the allegations was unusual, if not exceptional.

26. The Respondent, it was submitted, had been open in his approach to the allegations. The essential facts had been largely admitted by him.

27. As regard his personal circumstances, the Respondent was married and was the father to seven children. His home was subject to a mortgage, business had been slow and he had suffered the effects of the non-payment by Client A. It was not submitted that the Respondent would not be able to pay a fine if the Tribunal considered that a financial penalty was appropriate.

28. As regards sanction, the Tribunal could consider the lesser sanctions as a mark of its disapproval or censure. The misconduct, it was submitted, notwithstanding the Tribunal's finding of a breach of Principle 2, did not pass over the threshold for anything more serious than a financial penalty. Restrictions on practice or a suspension would be disproportionate.

Sanction

29. The Tribunal had regard to the Guidance Note on Sanctions (8th Edition). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

30. The Tribunal found that the Respondent was entirely culpable for his misconduct. His actions, it was determined, were spontaneous. As regards allegation 1.1, the Respondent's misconduct arose as a result of his failure to understand his obligations. The Tribunal did not find that the Respondent's misconduct as regards allegation 1.1 was deliberate, however, for the reasons stated above, that misconduct was sufficiently serious to amount to professional misconduct. The Respondent was in breach of his position as a trusted advisor to ensure that he did not act where there was a conflict and did not enter into unlawful funding arrangements.

31. The Respondent's conduct had caused harm to Client A who would have considered that she was liable to pay monies that the Respondent was not lawfully entitled to, and that the Respondent would take enforcement action against her to recover those monies. The Tribunal considered that the Respondent ought reasonably to have known that he was in breach of his obligations.

32. In mitigation, the Tribunal noted that Client A did not suffer any financial harm, and that the Respondent did not take enforcement action. Nor was there any evidence that the Respondent, whilst acting where there was a conflict, had breached Client A's confidentiality. The misconduct related to one client in an otherwise unblemished career.

33. The Tribunal considered that the seriousness of the Respondent's misconduct was such that lesser sanctions such as No Order or a Reprimand were disproportionate. The Tribunal did not consider that the Respondent's misconduct was such that there should be any interference with his right to practise. The Tribunal found that a financial penalty was the appropriate and proportionate sanction that adequately reflected the seriousness of his misconduct. The Tribunal assessed the Respondent's misconduct as more serious such that it fell within the Tribunal's Indicative Fine Band Level 3. The Tribunal found that a fine in the sum of £10,000 was proportionate and adequately reflected the seriousness of the Respondent's misconduct.

Costs

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

34. Mr Bullock submitted that it was clear that the Applicant was entitled to its costs. The sole issue for the Tribunal to determine was the quantum that should be awarded. Mr Bullock submitted that the Applicant was entitled to costs in the sum of £33,041.58. It was acknowledged that there should be some reduction in costs as:

- The Tribunal found allegation 1.5 not proved. Any reduction, it was submitted, should be extremely modest as (i) allegation 1.5 was not substantial in the proceedings, and had taken up minimal time in the hearing; and (ii) it was not the most significant allegation that the Respondent faced.

- Allegation 1.2 was withdrawn at the outset of the proceedings. Any reduction in costs as a result of the withdrawal of allegation 1.2 should only relate to pre-hearing costs. There had been no time taken up during the hearing as a result of allegation 1.2. Further, the Respondent had not incurred additional costs as Mr Ozin QC worked to a brief fee. Allegation 1.2 did not alter the amount of that brief fee.

- Costs claimed in the sum of £43.33 were not pursued on the basis the Respondent should not bear the cost of the Applicant requesting further time to file and serve its Reply.

- Costs claimed in the sum of £195 for the drafting of submissions as to the admissibility of the Respondent's character evidence were not pursued. The Tribunal ruled that the testimonials were admissible prior to sanction. Having lost the argument, the Applicant did not seek to recover those costs.

35. Mr Bullock submitted that it was the Tribunal's role to consider the reasonable and proportionate figure that the Applicant should recover. Mr Bullock noted that the Respondent had submitted a costs schedule in the sum of £96,836.00. The Applicant's costs, it was submitted, were modest in comparison, and it had been conceded that those costs should be subject to some reduction.

36. The Respondent had fiercely contested the matter. The Tribunal found three of the four allegations proceeded with proved against the Respondent. The Respondent's case included the extremely lengthy cross-examination of Client A. Further, the Respondent had been reluctant to make any concessions as regards the Applicant's case.

37. The manner in which the Respondent unsuccessfully defended the proceedings had inevitably driven up the costs. The Respondent's conduct in that regard should be taken into account when assessing costs. It was significant that the crux of the Respondent's case was that Client A was a serial complainer who made complaints that were without merit. Further, she fabricated documents in order to support her case. In putting his case in that way, the Respondent had inevitably driven up the pre-hearing costs and the hearing time.

38. It was the Applicant's position that whilst it was proper that there was some reduction in costs, that reduction should be modest reflecting the limited amount of work undertaken regarding allegations 1.2 and 1.5.

39. As regards criticisms relating to disclosure costs, the figure claimed was not for the work actually undertaken; it had been capped at an amount that the Applicant considered was reasonable in the circumstances of the case. Accordingly, there had already been a reduction in the amount claimed.

40. Much of the criticism levelled at the Applicant was premised on the assumption that the case was thrown into disarray due to the late service of Client A's witness statement. That assumption was rejected. The Tribunal's Standard Directions in this matter directed that witness statements be filed and served on 13 July 2020. That was the date on which the Applicant filed and served the statement of Client A. It was, therefore, incorrect to suggest that the statement had been filed late. It was not accepted that disclosure failings contributed to the derailing of the hearing. The Respondent's disclosure request was sent on 20 July 2020. The Respondent received an out of office response. He did not re-send the email to any other officer at the SRA. By 28 July 2020, it became apparent that a wider disclosure exercise was required. In fairness to the Respondent, the Applicant applied to vacate the substantive hearing which was listed for 11 August 2020. The matter was next before the Tribunal on 5 October 2020 to deal with any outstanding disclosure issues.

41. The Respondent submitted that the Applicant should not be entitled to the costs of obtaining an expert report. The Respondent had expressly invited the Applicant to obtain that report. Mr Bullock submitted that it was somewhat harsh of the Respondent, having extended the invitation for the Applicant to obtain a report, to then criticise the Applicant for having done so. The costs of the report were incurred specifically due to the position the Respondent adopted as regards the fabrication of documents.

The Respondent's Submissions

42. Mr Ozin QC submitted that the issues between the parties as regards costs were narrow. The Tribunal's discretion to award costs was regulated by rule 43 of The Solicitors (Disciplinary Proceedings) Rules 2019. Rule 43(1) provided for the general principle, namely, that "the Tribunal may make such order as to costs as it thinks fit".

43. Rule 43(3) and (4) materially provide that:

> "(3) Without prejudice to the generality of paragraph (1), the Tribunal may make an order as to costs in circumstances where—
>
> (a) any application, allegation or appeal is withdrawn or amended;
>
> (b) some or all of the allegations are not proved against a respondent;
>
> ….
>
> (4) The Tribunal will first decide whether to make an order for costs and will identify the paying party. When deciding whether to make an order for costs, against which party, and for what amount, the Tribunal will consider all relevant matters including the following—
>
> (a) the conduct of the parties and whether any or all of the allegations were pursued or defended reasonably;
>
> (b) whether the Tribunal's directions and time limits imposed were complied with;
>
> …
>
> (d) whether any hourly rate and the amount of disbursements claimed is proportionate and reasonable;
>
> (e) the paying party's means."

44. Mr Ozin QC referred the Tribunal to the relevant caselaw contained in the Tribunal's Guidance Note on Sanctions.

45. As regards allegation 1.2, the Applicant informed the Respondent in an email dated 20 December 2020, that as a result the evidence contained in the witness statement of Client A, it would be applying to withdraw allegation 1.2. It seemed, therefore, that there was a delay of approximately 5 months in reviewing the matter following receipt

of Client A's account. By the time of the withdrawal, the Respondent had invested considerable resources in preparing to defend that matter. Further, it was submitted, the allegation was misconceived. This had been brought to the Applicant's attention by the Respondent's former advisors in 2019.

46. As regards allegation 1.5, it was accepted that there was a nexus between that allegation and allegations 1.3 and 1.4. It could not be said that allegation 1.5 was trivial, nor could it be said that the costs incurred were trivial in the overall context of the case.

47. As regards case management issues, the matter was originally fixed for hearing in August 2020. A late joint application by the parties was made to adjourn the substantive hearing on the basis that disclosure requests occasioned by the service of the critical statement of Client A had not yet been dealt with (with the result that the case could not fairly proceed until such time as disclosure had been adequately addressed) and that the time estimate was inadequate.

48. A CMH took place on 12 October 2020. It was the Respondent's position that the CMH had been occasioned by the Applicant's failure to deal timeously with requests for disclosure; and, consequently, the Respondent applied for an order that the Applicant pay for the costs of the CMH. The Tribunal, in its determination declined to make such an order, directing that the costs of the CMH be costs in the case.

49. The essential criticisms made by the Respondent with respect to these matters were:

- Firstly, that the need for the adjournment of the substantive hearing was that the Applicant failed to provide Client A's witness statement until very proximate to the time of the original listing of the substantive hearing and was then tardy in responding to inevitable disclosure requests; and

- Secondly, that ongoing disclosure continued to be late and too close to the date fixed for the CMH for the CMH to be avoided. The further underlying complaint was that the Applicant had insufficient regard to its own duties to make proper enquiry of Client A in relation to the disclosure of material of obvious relevance within her possession, with the result that it was left to the Respondent to take the initiative.

50. As to the specific work itemised by the Applicant in its Schedule of Costs:

- The Respondent should not bear the costs of the Applicant's application for an extension of time to file and serve its Reply, claimed in the sum of £43.33

- Total costs in the sum of £7,800 claimed by the Applicant relating to the costs of disclosure, further disclosure and preparation for the CMH's on 11 August and 5 October 2020 should not be borne by the Respondent in circumstances where those costs were created by the Applicant's failings.

- The Respondent should not bear the cost of the expert's report in the sum of £6,168.00 in circumstances where it was the Applicant's decision to challenge the Respondent's position that the document in question was not authentic. In fact, the

report did not bear out that belief. In all the circumstances, the disbursement was unjustified and disproportionate.

- Drafting submissions on the issue of the admissibility of testimonials at the findings stage -£195.00. The Tribunal indicated at the time that it delivered its findings that it accepted the Respondent's counter submissions on this issue. Accordingly, these costs were not properly or reasonably incurred, and they caused the Respondent to incur considerable costs.

51. Mr Ozin QC noted Mr Bullock's assertions as to the manner in which the Respondent defended the allegations. Mr Ozin QC reminded the Tribunal that for the Tribunal was bound by the caselaw in that regard. For the Tribunal to take that into account, it would need to find that the Respondent's defence amounted to a culpable departure in the way that his case had been advanced.

52. As to the Respondent's means, he had provided a statement of means that demonstrated that he had considerable outgoings as a result of his family and had substantial business and personal debt. The Tribunal had imposed a financial penalty in the sum of £10,000. The Tribunal would also be mindful of the substantial costs the Respondent had incurred in defending the proceedings. Rule 43(4)(e) expressly stated that the Tribunal should have regard to the Respondent's means when considering both whether to make an order for costs and the amount in which any such order should be made.

The Tribunal's Decision

53. The Tribunal considered that the costs claimed by the Applicant at the outset were reasonable and proportionate given the nature of the case and the issues involved. The Tribunal agreed that there should be some reduction for the withdrawal of allegation 1.2, and its finding that allegation 1.5 was not proved. The Tribunal did not accept that allegation 1.2 was misconceived. It noted that that allegation was withdrawn once a full review of the statement of Client A was undertaken. The Tribunal noted that the Respondent had not particularised the additional cost incurred by the Applicant not informing him of its intention to withdraw allegation 1.2 until December 2020, the Applicant having filed and served the statement of Client A in July 2020.

54. The Tribunal also noted that the Applicant accepted that the costs claimed for the application to extend time for service of its Reply, and the preparation of submissions on character evidence should not be borne by the Respondent.

55. The Tribunal did not find that there should be a reduction due to tardy service of Client A's witness statement. That statement had been filed and served in accordance with the Tribunal's directions. In the circumstances, there could be no criticism of the Applicant.

56. The Respondent had invited the Applicant to obtain an expert report. The Respondent was at liberty to obtain that report himself. The Tribunal did not consider that it was appropriate for the Applicant to bear the cost of that report, when it had only been commissioned at the request of the Respondent.

57. The Tribunal noted the submission that the costs of the disclosure and further disclosure exercise had already been discounted by the Applicant. The Tribunal had seen some of the extensive correspondence in this matter. The Tribunal did not consider that those costs had been unreasonably incurred, or that the Respondent should not be responsible for those costs. The Applicant had undertaken the disclosure searches in accordance with its duties and at the Respondent's request. As regards the cost of the CMH's, the Tribunal noted that an application had been made by the Respondent for the costs of the CMH. That application had been fully considered and refused by a previous division of the Tribunal who ordered costs in the application.

58. The Tribunal considered that much of the cross-examination of Client A was conducted so as to diminish Client A's credibility with respect to allegation 1.1. As detailed above, the Tribunal's findings were based on the uncontroversial contemporaneous documents. The Tribunal noted that in the original certificate of readiness, it had been estimated that the cross-examination of Client A would take a day, when, in fact, it had taken 4 days.

59. The Tribunal took account of the Respondent's means. It noted his income and expenditure. The Tribunal also noted that the Respondent owned 10 rental properties. He had provided details of his income and expenditure as regards those properties, but had not provided any information as to the equity he held in those properties.

60. The Tribunal determined that there should be a reduction of the costs to take account of allegations 1.2 and 1.5. Further, there should be a full reduction for the specific expenditure in relation to the Applicant's application as regards its Reply and its submissions as regards the admissibility of the Respondent's character evidence. The Tribunal did not consider that there should be any reduction on the basis of the Respondent's means.

61. The Tribunal determined that costs in the sum of £29,000 adequately and proportionately reflected the reasonable amount of costs for with the Respondent should be liable.

Statement of Full Order

62. The Tribunal Ordered that the Respondent, PETER EJOKWOYE OTTO, solicitor, do pay a fine of £10,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £29,000.00.

Dated this 28th day of June 2021
On behalf of the Tribunal

JUDGMENT FILED WITH THE LAW SOCIETY
28 JUN 2021

G Sydenham
Chair