The Respondent appealed the Tribunal's decision dated 15 January 2021 to the High Court (Administrative Court). The appeal was heard by Mrs Justice Collins Rice on 20 December 2022 and Judgment handed down on 20 February 2023. The appeal was dismissed. Mr Naim Lone v Solicitors Regulation Authority [2023] EWHC 349 (Admin).

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12120-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

NAIM IBRAR LONE Respondent

Before:

Mr P Jones (in the chair)
Ms A E Banks
Dr P Iyer

Date of Hearing: 21-23 December 2020

Appearances

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

Michael Fullerton, barrister of Church Court Chambers Central Court, 25 Southampton Buildings, London. WC2A 1AL for the Respondent.

JUDGMENT

Allegations

1. The Allegations against the Respondent, were that, while in practice as a recognised sole practitioner at Attiyah Lone & Associates LLP and, subsequently, AL Law & Associates Solicitors LLP:

Matter involving Client C

1.1 He acted improperly in respect of dealing with monies in which Client C had an interest in that:

1.1.1 On or around 25 April 2017, he inappropriately caused or allowed to be transferred the sum of £24,043.28 from Attiyah Lone to Firm B;

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

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

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

Matter involving Client D

1.2 Between May and November 2018, he inappropriately caused or allowed Person B to work or assist on Client D's matter when Person B held £43,561.99 belonging to Client D, and in doing so breached one or more of Principles 3, 4 and 6 of the SRA Principles 2011;

1.3 From 21 September 2018 until 29 October 2018, he failed to take any or any adequate steps to register a legal charge over Person B's property, and in doing so breached Principles 3, 4 and 6 of the SRA Principles 2011; and

1.4 In October 2018, he failed to take any or any adequate steps to recover an outstanding sum of £500.00 and interest payments due from Person B to Client D, and in doing so breached Principles 3, 4 and 6 of the SRA Principles 2011.

Preliminary Matters

Respondent's Application to adduce documents served out of time

2. Mr Fullerton applied to rely on approximately 200 pages of documents that had been served on 14 December 2020, five days after the expiry of the deadline for doing so pursuant to the Tribunal's directions. Mr Fullerton explained that the Respondent had been in difficulty accessing his papers due to the lockdown restrictions caused by the Covid-19 pandemic. Mr Fullerton told the Tribunal that he would only be relying on

documents that were relevant to the Allegations faced by the Respondent. Until very recently the Respondent had been a litigant in person.

3. Mr Mulchrone told the Tribunal that this was not satisfactory, and he referred the Tribunal to authorities to the effect that litigants in person were not subject to different rules in proceedings. However, he told the Tribunal that he did not want to take up time arguing the matter at length.

The Tribunal's Decision

4. The Tribunal noted that the difficulties of access to the office had been the reason for the extension until 9 December in the first place. The Tribunal reviewed the index to the documentation and was concerned much of it appeared irrelevant to the issues that fell to be determined at this hearing.

5. The Tribunal decided that a pragmatic approach was appropriate. While the Tribunal was not minded to admit the documents wholesale, should Mr Fullerton wish to rely on a particular document within that bundle of additional material, he could address the Tribunal at that stage as to its relevance.

Factual Background

6. The Respondent was a recognised sole practitioner and COLP and COFA at AL Law & Associates Solicitors LLP ("AL Law"), 55 Church Road, Wimbledon Village, London, SW19 5DQ, which was a licensed body. He was admitted as a solicitor on 15 November 1996. The Respondent's previous firm was Attiyah Lone & Associates Solicitors ("Attiyah Lone"), until it closed in December 2016. At the time of the hearing the Respondent held a practising certificate free from conditions.

Relevant Bank Accounts

7. There were four bank accounts relevant to the Allegations;

Account Holder	**Account**
The Respondent	Business Account
Attiyah Lone	Client Account
AL Law	Office Account
Firm B/Person B	Client Account

Client C matters – Allegation 1.1

8. The Respondent acted for Client C in relation to a divorce and other matrimonial matters including a financial settlement with his ex-wife. Attiyah Lone acted for both Client C and his ex-wife in the conveyancing of their former matrimonial home. The financial settlement provided that Client C was to receive £134,241.53, subject to deductions including costs. The settlement monies were generated by the sale of two properties, one in France ("the French Property") and one being the former matrimonial home ("the Former Matrimonial Home").

9. Following conclusion of the settlement and before receipt of all the settlement costs, a dispute arose between Client C and the Respondent as to the level of fees payable by Client C to the Respondent for the work undertaken. Client C's case was that he understood that the fees were £29,000. The Respondent considered that Client C owed him fees in the region of £134,000. The proceedings relating to the dispute over fees was referred to the court, and the matter is currently still before the Supreme Court Costs Office.

10. The Respondent sought to recover the fees that he believed to be due from Client C's settlement, and sought an order from the court accordingly. On 29 November 2016, a third-party order ("the Order") was made at Central Family Court, by Deputy District Judge Butler in which Attiyah Lone was listed as the third party.

11. Paragraph 1 of the Order stated:-

> "Forthwith upon completion, and in any event within 14 days of the sale of the French Property, [Mr A] shall transfer to the Third Party, Attiyah Lone & Associates Solicitors, half of the proceeds of sale of the French Property after payment of the solicitors' conveyancing costs and disbursements in connection with the sale; the estate agents' charges; and, any capital gains tax (or such equivalent tax payable under French Law) payable upon sale… those monies shall then be applied as follows:
>
> a) £29,000 shall be paid into the Third Party's 'office account' in part-payment of the outstanding legal costs owed by the Respondent.
> b) The balance shall be held on the Third Party's 'client account' until further order from the Senior Courts Costs Office or by written agreement between [Client C] and the Third Party, whichever shall be the sooner, and for the assessed sum to be paid from the monies held on account to the Third Party with any residual balance being paid to [Client C]".

12. Paragraph 2 stated:-

> "Upon sale of the Former Matrimonial [sic], the lump sum of £80,560.00 (representing the sum owing to [Client C] pursuant to paragraph 2(f) of the order of HHJ O'Dwyer dated 17 February 2016) shall be paid directly to the Third Party, Attiyah Lone & Associates Solicitors, to be held on the Third Party's 'client account'' until further Order from the Senior Courts Costs Office or by written agreement between the Respondent and the Third Party, whichever shall be sooner".

13. The effect of this Order was that following the sale of the properties:-

- £29,000 would be transferred to Attiyah Lone's office account representing the undisputed amount for the Respondent's fees;

- approximately £100,000-£130,000 would be transferred to Attiyah Lone's client account, representing the disputed sum;

- the disputed sum would remain in the client account until ordered otherwise by the Senior Courts Cost Office or by written agreement between Client C and the Respondent.

14. On 28 December 2016, Attiyah Lone closed after it had been unable to obtain new professional indemnity insurance cover. On 13 February 2017, the SRA received Firm Closure Notification form from the Respondent for Attiyah Lone, which stated that it had stopped holding or receiving client money. On 27 February 2017, the SRA authorised AL Law. AL Law did not have a client account.

15. The effect of this was that the relevant terms of the Order could not be complied with, namely the transfer of client's share of the property sales into Attiyah Lone's client account, because such an account no longer existed.

16. By about April 2017, the sales of the French Property and the Former Matrimonial Home had completed. The terms of the Order provided that Mr A, a French lawyer, was to transfer the relevant funds following the sale of the French Property to Attiyah Lone. However, it appears that, before they were transferred to the Respondent, the funds were held by Firm A (the conveyancing solicitors acting for Client C and his ex-wife).

17. On 25 April 2017 the Respondent emailed Firm A stating "the sum due to me is £29,000.00 from the £48,484.00 below". The Respondent asked Firm A to transfer £29,000 to his office account and the remaining £29,484.00 to the client account of Firm B. On 3 May 2017 the Respondent emailed Firm A stating that the total sums payable to him were: "(1) approximately £48,500 representing 50% of the French proceeds and (2) £80,560.00, (3) if anything is left in respect of [Client C's] share, £5,600.00 costs. The total amount is £134,160.00. However the total amount due to [Client C] is absorbed by the first two payments. There is nothing to pay [Client C]". The email continued: "as you will see from the Order, I am to hold all the proceeds of sale from both properties".

18. On or around 5 May 2017 Firm A transferred £24,043.28 to Firm B's client account. The Applicant's case was that the transfer was inconsistent with the terms of the Order and contrary to Rule 14.5 of the Solicitors Accounts Rules 2011.

19. On 18 May 2017, Firm B received the sum of £73,000.00 from the Respondent's business account. The transaction was described on Firm B's ledger as "[Client C] – on account of costs". The Applicant's case was that the sum of £73,000.00 represented Client C's share of the Former Matrimonial Home. The Applicant had noted that this is not the £80,560 referenced in the Order; the Applicant's case was that that the sum of £80,560 was transferred by Firm A to the Respondent's business account, and the Respondent applied a deduction before transferring the balance of £73,000 to Firm B. Alternatively, a deduction had been made prior to transfer. The Applicant's case was that the transfer of the £80,560 from Firm A to the Respondent's business account and the transfer of £73,000 from the Respondent to Firm B was not consistent with the terms of the Order and was contrary to Rule 14.5 of the Solicitors Accounts Rules 2011.

20. On 13 July 2017, Person B, the sole manager of Firm B, wrote to the Respondent to confirm it was holding £93,521.53 relating to Client C's matter and on 11 August 2017, Firm B wrote to the Respondent to confirm it was holding £93,528.03 in its client account on the Respondent's behalf.

21. On 9 May 2018, the SRA intervened into Firm B and one of the grounds for the intervention was suspected dishonesty on the part of Person B.

Client D matter - Allegations 1.2-1.4

22. Person E died on 8 February 2011. Client D, Person E's daughter, was appointed as the sole executor under her will. Firm B was initially instructed to administer the estate. On 7 September 2017 Person B took a purported loan from the estate of £43,561.00. On 29 March 2018, Person B asked Client D if he could borrow £44,000.00 from the estate. Client D refused, however by this time the money had already been taken. The file contained an email dated 2 April 2018 from Client D to Person B which stated, "Further to my visit to your office on Thursday evening with my son when you asked me to loan you £44,000 out of my mum's money! The same money you have constantly told me that I cannot get/have/touch/use until the finalization of her estate is complete. Therefore I do not see how you can get/have/touch/use my mum's money before her estate is complete. How do you get the benefit of my mum's money and her family can't." In his interview, the Respondent had stated he had not seen the email of 2 April 2018 when Person B assisted him in preparing the final bill.

23. On 9 May 2018, the SRA intervened into the practice of Firm B and Person B was struck off the Roll on 3 December 2019. On 3 May 2018 a letter of authorisation had been signed by Client D for the probate matter to be transferred to the Respondent. The Respondent had told the FI Officer that he could not recall when he had received the file, but believed it was after the intervention into Firm B.

24. Following the intervention into Firm B, Person B's practising certificate had been suspended. However Person B attended at the offices of the Respondent and assisted in preparing the estate accounts for Client D. In his interview with the FI Officer, the Respondent denied knowing that Person B had been suspended but confirmed he was aware that Firm B had been intervened into. He had not made further enquiries as to this.

25. On 18 July 2018 Client D wrote to the Respondent and Person B expressing her objections to the bill and draft estate account:

> "I got a letter with a bill for some ridiculous amounts. This is to let you know that I wont be signing it. How can you charge us more than FORTY GRAND for £40.000 you should have finished my mums stuff a long time ago how can you do that [Person B] I see on the bill that I loaned you the money last year November really [Person B] I don't no what to think why is the barristers money so high and the money for the process server please send me bills for everything that needs to be paid. Where is my mums money do you have it does this Mr Lone have it. I don't think you deserve to be paid [Person B] theres just something not right I dont trust you I haven't heard from any other

> solicitor about this only Mr Lone. I want my mums money paid out to my brothers and sisters soon this has gone on to long. please write to me and let me no when we will be paid you did say back in May it would take about two months well thats nearly finished and still nothing. Please pay now the money due to my family. I don't want to talk to you on the phone anymore as nothing is ever sorted out or see mr lone just send my mums money now please all of it. I wait to hear from you in writing". [sic]

26. On 21 July 2018 Person B wrote to the Respondent advising that the transfer of £43,561.00 from Person E's estate was a loan that he would repay. Person B authorised the Respondent to register the outstanding debt against his property if he failed to repay this sum to Client D within 2 months. The funds were not repaid within this timescale and the Respondent did not register a legal charge over Person B's property.

27. Client D had attended at the Respondent's office on 2 August 2018 in the presence of the FI Officer. A handwritten note made by the Respondent recorded Client D stating that "she never agreed a loan payment with [Person B]". On 15 August 2018, the Respondent wrote to Client D and enclosed a claim form to enable Client D to make a claim on the SRA's Compensation Fund for £43,561.00.

28. The loan was eventually repaid to Client D and no claim was in fact made on the SRA Compensation Fund.

Witnesses

29. Sarah Taylor – FI Officer

29.1 Ms Taylor confirmed that her FI report and witness statement were true to the best of her knowledge and belief.

29.2 In cross-examination, Ms Taylor told the Tribunal that Client D had not responded to the most recent correspondence concerning the disputed loan. Ms Taylor told the Tribunal that she had not asked Client D to make a witness statement.

29.3 Ms Taylor agreed that where a client file was transferred to another firm, a handover note would be expected and so there would have been some information given to the Respondent by Firm B. Mr Fullerton put to Ms Taylor that if the Respondent had needed clarification of some matters it was reasonable to approach Firm B. Ms Taylor told the Tribunal that those queries should have gone to the intervention agent, but she accepted that if the client gave the appropriate authority then that may not be necessary. Ms Taylor was unaware that the Respondent had contacted the SRA ethics line on this point at the time.

29.4 Ms Taylor was taken through various passages in the Respondent's interview and confirmed that the Respondent had given the account set out in that interview.

30. Michael Petrou (Client C)

30.1 Dr Petrou confirmed that his witness statement was true to the best of his knowledge and belief.

30.2 Dr Petrou confirmed that he only became aware that the money had been moved in April 2018. He further confirmed that he had never provided a written instruction to the Respondent in respect of the Court order.

Findings of Fact and Law

31. 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.

32. The Tribunal considered carefully all the documents, witness statements and oral evidence presented. In addition it had regard to the oral and written submissions of both parties, which are briefly summarised below.

33. **Allegation 1.1**

Applicant's Submissions

33.1 The Applicant's case was that the Respondent, in making the transfers contrary to the Order and in using Firm B's client account to hold the sums, had failed to act with integrity. He had also breached Rule 14.5 of the Solicitors Accounts Rules. Mr Mulchrone submitted that the Respondent should have notified the court that he no longer had a client account and made an application to vary the Order or seek a written agreement with Client C in relation to how the monies should be held.

33.2 Mr Mulchrone submitted that the Respondent breached Principle 4, because in transferring the monies to Firm B, the Respondent could not guarantee that Client C's monies were secure.

33.3 The Respondent had further breached Principle 6 as he had breached the terms of the Order and therefore not met his obligations to the Court.

33.4 The Applicant alleged a breach of Principle 10 and submitted that this was aggravated by the fact that the SRA had to intervene into Firm B and Person B's practice, due to suspected dishonesty on the part of Person B.

Respondent's Submissions

General

33.5 Mr Fullerton told the Tribunal that the Respondent had elected not to give evidence. The Respondent had been interviewed by the FI Officer, had provided an Answer to the Allegations and had filed two witness statements. Mr Fullerton submitted that the

Respondent had said all he could in those documents. The Tribunal drew the Respondent's attention to Rule 33 of the SDPR 2019, which states as follows:-

> "Adverse inferences
>
> 33. Where a respondent fails to—
>
> (a) send or serve an Answer in accordance with a direction under rule 20(2)(b); or
>
> (b) give evidence at a substantive hearing or submit themselves to cross-examination;
>
> and regardless of the service by the respondent of a witness statement in the proceedings, the Tribunal is entitled to take into account the position that the respondent has chosen to adopt and to draw such adverse inferences from the respondent's failure as the Tribunal considers appropriate."

33.6 Mr Fullerton submitted that there the Tribunal had discretion as to whether to draw an adverse inference. Mr Fullerton noted that in criminal proceedings, such an inference was not regularly drawn where a Defendant has given full answers in an interview. Mr Fullerton submitted that the Tribunal should seek to determine the Allegations without drawing such an inference.

33.7 In his written documents the Respondent had made a number of submissions and assertions that were not directly relevant to the Allegations he faced. In the absence of an Abuse of Process submission there was no need for the Tribunal to address those points, which were not advanced at the hearing. The Tribunal confined itself to the parts of those documents that were relevant to the Allegations as well as the submissions made by Mr Fullerton.

Allegation 1.1

33.8 In relation to Allegation 1.1, Mr Fullerton told the Tribunal that the transfers had been as follows:

- £24,043.28 was transferred from Firm A to Firm B;
- £80,560 was transferred from Firm A to the Respondent's business account;
- Approximately £73,000 was transferred from the Respondent's Office Account to Firm B.

33.9 Mr Fullerton submitted that the absence of an ability to transfer the funds into a client account, which he noted was not a requirement of practise, had been caused by the following factors, which he set out in his written submissions as follows:-

> "(1) a difficulty obtaining professional indemnity insurance from 29th December 2016 before the closure of the Firm Attiyah Lone & Associates on 28th December 2016;

(2) The authority to open the practice AL Law & Associates LLP was not granted until 27th February 2017;
(3) Professional Indemnity Insurance was not obtained until 8th May 2017;
(4) The SRA requirement not to use for additional deposits before closing the Client Account as authorisation had been given to open the new practice;
(5) Not entitled to make deposits the Client Account closed on 19th May 2017;
(6) Not entitled to make deposits the Office Account closed on 7th July 2017;
(7) Transfer to Client A/c of Firm B to hold until costs proceedings concluded."

33.10 Mr Fullerton submitted that the Respondent had deducted the sum of around £12,958 to which he was entitled before transferring £73,021 to Firm B. On 25 April 2017, Firm A had transferred £85,979 to the Office Account of the Respondent to enable him to claim his costs with the balance of around £73,000 transferred by the Respondent to Firm B be held in its Client Account on account of costs pending further order. Mr Fullerton submitted that the Allegations of breach of Principle 10 and of the Solicitors Account Rules were "difficult to challenge".

33.11 Mr Fullerton submitted that in the absence of a client account, the Respondent had three options. He could have applied for a variation of the Order; he could have obtained the written agreement of Client C; or he could have asked Firm B to act for him in the costs proceedings to enable Firm B to hold funds in its client account. Mr Fullerton submitted that the Respondent had made an "error of judgment" in not taking any of these steps.

33.12 Mr Fullerton submitted that there had been no deception by the Respondent and no issue raised by Client C's solicitors asserting a breach of the Order. Mr Fullerton submitted that the transfers to Firm B were "well-intended and made in good faith to secure the funds pending further order of the Senior Courts Costs Office". It also secured his own costs in the proceedings.

33.13 Mr Fullerton reminded the Tribunal that the Applicant had specifically acknowledged that there was no dishonesty or recklessness pleaded against the Respondent.

The Tribunal's Findings

33.14 The Tribunal noted that the terms of the Order were clear. The requirement was for the monies to be held in the Respondent's client account. Mr Fullerton had listed three possible courses of action that the Respondent could have taken. The first had been to seek a variation of the Order on the basis that he could not comply with its terms in the absence of a client account. The second was to seek the consent of Client C for an alternative arrangement. The third option suggested by Mr Fullerton was one that had not been proposed previously, namely that the Respondent could have instructed Firm B to act for him and thereby Firm B could have held the monies in its client account. The Tribunal rejected the premise of this submission. The Order did not state that the monies could be kept in any client account – they had to be kept in the Respondent's client account. It was clear to the Tribunal that nobody at the time had considered

there to be a third option and it did not address the terms of the Order in any event. The Respondent should have either sought a variation of the Order or reached a written agreement with Client C, which would have been compliant with the Order. The Respondent had taken neither of these steps.

33.15 The Tribunal found that the Respondent had believed that he was attempting to comply with the Order but had been inept in doing so. The transfers that he caused or allowed that were detailed in Allegations 1.1.1, 1.1.2 and 1.1.3 were all in contravention of the Order and the Solicitors Accounts Rules. They were therefore improper transfers and should not have taken place. In placing the funds that should have been held in his client account with another firm, the Respondent had effectively been using Firm B as a banking facility.

33.16 The Tribunal was entitled to draw an adverse inference from the Respondent's failure to give evidence. The result of the Respondent not giving evidence was that he could not be cross-examined on the lengthy written statements he had made and so that evidence could not be tested. However the Tribunal was able to find the Allegation proved without needing to consider drawing an adverse inference, as the contemporaneous documentary evidence of the Order, the transfers and the Solicitors Accounts Rules was clear and unambiguous.

33.17 The Tribunal found the factual basis of Allegation 1.1 proved on the balance of probabilities together with the breaches of Rules 1.2(b), 13.1 and 14.1 of the Solicitors Accounts Rules. The Tribunal also found on the balance of probabilities that the Respondent had failed to achieve Outcome 5.3 as he had failed to comply with a Court order.

33.18 *Principle 2*

33.18.1 In considering whether the Respondent had lacked integrity the Tribunal applied the test set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366. At [100] Jackson LJ had stated:-

> "Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse".

33.18.2 At [101] and [102] the Judgment continued:-

> "101. The duty to act with integrity applies not only to what professional persons say, but also to what they do. It is possible to give many illustrations of what constitutes acting without integrity. For example, in the case of solicitors:
>
> i) A sole practice giving the appearance of being a partnership and deliberately flouting the conduct rules (Emeana);

ii) Recklessly, but not dishonestly, allowing a court to be misled (Brett);
iii) Subordinating the interests of the clients to the solicitors' own financial interests (Chan);
iv) Making improper payments out of the client account (Scott);
v) Allowing the firm to become involved in conveyancing transactions which bear the hallmarks mortgage fraud (Newell-Austin);
vi) Making false representations on behalf of the client (Williams).

102. Obviously, neither courts nor professional tribunals must set unrealistically high standards, as was observed during argument. The duty of integrity does not require professional people to be paragons of virtue. In every instance, professional integrity is linked to the manner in which that particular profession professes to serve the public. Having accepted that principle, it is not necessary for this court to reach a view on whether Howd was correctly decided."

33.18.3 The Tribunal found that the Respondent had been inept in his handling of the situation and seriously so. The Respondent had demonstrated a significant level of incompetence and as a result had caused and allowed improper transfers of large sums of money to take place in breach of a Court order. However the Tribunal was not satisfied on the balance of probabilities that the impropriety envisaged in Wingate equated to the conduct in this case. The Tribunal considered that to find that an incompetent breach of a Court order to amount to a lack of integrity risked requiring the Respondent to be a "paragon of virtue". The Tribunal did not consider the Respondent's actions to be similar in nature to the examples set out in paragraph 101 of the Wingate case. As set out in paragraph 105 of the Wingate case, Principle 6 "is aimed at a different target from that of Principle 2"… A solicitor acting carelessly, but with integrity, will breach Principle 6 if his careless conduct goes beyond mere professional negligence and constitutes "manifest incompetence"." The Tribunal considered that such was the case here. This was reflected in the Tribunal's finding that Principles 4, 6 and 10 had been breached as set out below. The Tribunal considered that these principles rather than principle 2 were breached, and found the allegation of lack of integrity not proved.

33.19 *Principles 4 and 10*

33.19.1 It followed as a matter of logic from the Tribunal's findings that it was not in the best interests of his client for the Respondent to lose control of the funds that he was supposed to be safeguarding. The Tribunal noted that the principal at Firm B was subsequently struck-off for dishonesty. The Tribunal found the breaches of Principle 4 and Principle 10 proved.

33.20 *Principle 6*

33.20.1 The Tribunal had set out its findings on the extent of the Respondent's ineptitude when considering Principle 2. The public would clearly be

concerned by a solicitor being so incompetent was to transfer significant sums of client money out of the Firm in breach of a Court order. The Tribunal found the breach of Principle 6 proved on the balance of probabilities.

34. **Allegation 1.2**

Applicant's Submissions

34.1 Mr Mulchrone told the Tribunal that the Respondent knew that Person B's firm had been intervened into and that this was due to a shortfall on the client account. He submitted that had the Respondent made proper enquiry he would have known that this was due suspected dishonesty and that Person B's practising certificate had been suspended.

34.2 The Respondent also knew that Person B had taken a purported loan of £43,561.99 from Client D. The Respondent should have appreciated that there was a significant risk of conflict between a lender and the recipient of a loan. In those circumstances it was submitted that he should not have caused or allowed Person B to work or assist on Client D's matter.

34.3 Mr Mulchrone submitted that the Respondent had breached Principle 3, as he had a long-standing relationship with Person B and had failed to maintain his independence.

34.4 He further submitted that the Respondent had not acted in the best interests of his client in breach of Principle 4 and that this failure inevitably meant there had been a breach of Principle 6.

Respondent's Submissions

34.5 Mr Fullerton submitted that there had been no breach of Principles 3, 4 and 6. He told the Tribunal that the handover of the estate files and the handwritten accounts of Firm B acknowledged and recorded the loan to Client D, which Person B had stated must be repaid. Mr Fullerton submitted that this was not an undisclosed loan that was discovered during the course of administration by the Respondent. It was the Respondent who had established that the loan was in fact for £500 more. He had also reconciled a double counting error of £30,000 and ascertained that two payments of £5,000 had been made to Client D without the benefit of financial records retained by the intervening solicitors. Mr Fullerton submitted that this demonstrated that the Respondent's independence had not been compromised and that he was acting in the best interests of the client, consistent with his duty to maintain the trust the public placed in the provision of legal services.

34.6 Mr Fullerton submitted that seeking clarification from Person B about the accounts was entirely proper and was in Client D's interests.

34.7 Mr Fullerton submitted that it was clear that Ms. Taylor had not been aware of the email dated 16 August 2018 from Person B attaching the loan letter signed by Client D. This was a reasonable basis for the Respondent to infer that the loan had been authorised, despite the initial recollection of Client D.

34.8 Mr Fullerton reminded the Tribunal that the loan was, save for £500, repaid on 18 October 2018.

The Tribunal's Findings

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

34.10 The next question for the Tribunal was whether it was appropriate for the Respondent to have allowed Person B to work on the Client D matter. The Tribunal noted that there was a purported loan to Person B from Client D and this was clear from the face of the file upon transfer in May 2018. The email disputing the loan was dated 2 April 2018 and was on the file at the time of the transfer. The Tribunal was able to infer that the Respondent would have read the file as he would have had to do so in order to ascertain that he needed help from Person B.

34.11 The Respondent was also aware of a shortfall in the client account as he had been told as much by Person B, something he had confirmed in his interview with the FI Officer.

34.12 The Tribunal was satisfied on the balance of probabilities that the Respondent had allowed Person B to work on the file in the knowledge that there was a dispute between Person B and Client D concerning the loan. The work that Person B did went well beyond mere clarification of matters and involved Person B working on the estate accounts, which was a fundamental aspect of the work required on the file. This was reflected in the fact that in the covering letter of 29 June, Client D was invited to contact Person B directly if she had any queries about the estate accounts. The Tribunal was satisfied on the balance of probabilities that this level of involvement by Person B was inappropriate in the circumstances of the loan.

34.13 The Tribunal was able to find the Allegation proved without needing to consider drawing an adverse inference, as the contemporaneous documentary evidence of the emails and correspondence on the client file was sufficient. The Tribunal therefore found the factual basis of Allegation 1.2 proved on the balance of probabilities.

34.14 *Principle 3*

34.14.1 The Tribunal found on the balance of probabilities that by involving Person B in work on Client D's file when there was a conflict between them concerning the loan, the Respondent had compromised his independence. The breach of Principle 3 was therefore proved.

34.15 *Principle 4*

34.15.1 It followed from the Tribunal's factual findings that the Respondent had not acted in Client D's best interests as he had inappropriately allowed Person B to work on her file. The Tribunal found the breach of Principle 4 proved on the balance of probabilities.

34.16 *Principle 6*

34.16.1 It again followed as a matter of logic that, where a solicitor allowed his independence to be compromised and failed to act in the best interests of a client, a breach of Principle 6 would arise and the Tribunal found the breach proved on the balance of probabilities.

35. **Allegation 1.3**

Applicant's Submissions

35.1 Mr Mulchrone submitted that from 21 September 2018, the Respondent failed to take any or any adequate steps to register a legal charge over Person B's property as a security for the £43,561.00 which Person B still owed to the Estate. He submitted that the Respondent's failure to act favoured Person B's interests over those of Client D. Mr Mulchrone submitted that the Respondent had again breached Principles 3, 4 and 6.

Respondent's Submissions

35.2 Mr Fullerton submitted that there has been no breach of Principles 3, 4 and 6. He reminded the Tribunal that on 22nd August 2018 Person B had made a further offer to the Respondent explaining that, instead of three instalments, he intended to pay by lump sum from a pension fund. The Respondent urged B to make payment "ASAP as per his proposal – 2 months."

35.3 Mr Fullerton submitted that given that Client D did not want to get involved in legal proceedings the alleged failure to register a charge was an unfair allegation, having regard to the previous "professional relationship" between the Respondent and Person B.

The Tribunal's Findings

35.4 There was no dispute that the Respondent had not registered a charge despite Person B having given consent for him to do so. The Respondent knew that £43,000 was at risk, that there had been a shortfall on the client account and that the loan was disputed. The Respondent also knew that the charge was available to him as a means by which Client D's monies could be protected. The Respondent did not take this step and in doing so the Tribunal found that he had not acted in the best interests of his client as the monies were unprotected for five weeks. In failing to put Client D's interests first and ahead of Person B's, the Tribunal found on the balance of probabilities that the Respondent had allowed his independence to be compromised. The fact of a previous professional relationship between Person B and the Respondent

made this more of a risk, not less. The Tribunal was able to find the Allegation proved without needing to consider drawing an adverse inference based on the contemporaneous documents. The Tribunal therefore found the factual basis of Allegation 1.3 proved on the balance of probabilities.

35.5 The Tribunal found the breaches of Principles 3 and 4 proved on the balance of probabilities. It also found the breach of Principle 6 proved on the same basis that it had done so in relation to Allegation 1.2, in circumstances where there had been a breach of Principles 3 and 4.

36. **Allegation 1.4**

Applicant's Submissions

36.1 Mr Mulchrone told the Tribunal that the Respondent had accepted that the cheque from Person B to Client D was £500 short of what was owed. The Respondent had failed to approach Person B for payment of the £500 or the outstanding interest payments, which Person B had agreed to make to the estate. The Respondent had accepted this in his interview with the FI Officer. Mr Mulchrone submitted that the Respondent had breached Principles 3 4 and 6. He submitted that Client D, did not receive all monies that she was due and that the Respondent had acted in a way which undermined the trust the public placed in solicitors and in the provision of legal services.

Respondent's Submissions

36.2 Mr Fullerton submitted that there had been no breach of Principles 3, 4 and 6. He submitted that it was the Respondent who had noted the discrepancy of £500 in his letter dated 11 October 2018 to Client D. In that letter he had stated his intention to Client D to ask Person B to make the additional payment. On 20th March 2019, as a result of difficulties contacting Person B, he had requested the intervening solicitors to deduct the £500 from his own costs.

36.3 Mr Fullerton noted that Client D had chosen to remain with the Respondent when given the opportunity by Ms. Taylor to transfer the file. He submitted that this was evidence of the Respondent maintaining the trust of the public in the provision of legal services.

36.4 Mr Fullerton told the Tribunal that the loan agreement did not provide for interest. Even if there was such a provision, it would only be payable from the expiry of the six-month period and would be minimal, it existed at all.

The Tribunal's Findings

36.5 The Tribunal noted that the Respondent had assumed the responsibility for rectifying the £500 shortfall and discharged that in March 2019. The Tribunal was also not satisfied that there was an interest requirement. However if there was one, the sums involved were likely to have been minimal. The Tribunal was not satisfied that on the balance of probabilities any of the matters pleaded in Allegation 1.4 crossed the threshold into professional misconduct. The Tribunal did not need to consider whether

to draw an adverse inference as it would be inappropriate to find an Allegation proved wholly or mainly on the basis of such an inference.

36.6 The Tribunal therefore found Allegation 1.4 not proved.

Previous Disciplinary Matters

37. There was no record of any previous disciplinary findings by the Tribunal.

Mitigation

38. Mr Fullerton made the following points in mitigation:-

- The Respondent was of good character, having been a solicitor for 25 years;
- The Respondent had been a sole practitioner for most of his career and this was particularly arduous;
- The Respondent had no intention to practise again without a client account;
- The Tribunal may want to consider imposing a condition of having a client account on the Respondent's practising certificate;
- The Respondent wished to continue practising and if the Tribunal was considering a sanction higher than a financial penalty, it should be kept as limited as possible.

39. Mr Fullerton referred the Tribunal to the written submissions already before it and to the Respondent's statement of means. Although the statement of means had been served late, the Tribunal agreed to allow it to be filed out of time on this occasion. The Respondent had a mortgage balance on his property of £360,000 and was £20,000 in arrears. There was also a second charge of £25,000 and he was in arrears of £2,800 in respect of that matter. In addition he had a costs order against him in other proceedings of £16,000. Mr Fullerton submitted that the Respondent was therefore in a difficult financial circumstance, even though he has equity in property.

Sanction

40. The Tribunal had regard to the Guidance Note on Sanctions (November 2019). The Tribunal assessed the seriousness of the misconduct by considering the Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.

41. In assessing culpability the Tribunal identified the following factors:-

- The Respondent had not been motivated by personal gain but by an intention to try to comply with the Order (Allegation 1.1) and to take on files after the intervention (Allegations 1.2 and 1.3). The fault lay in his incompetent execution of those matters;

- The transfers of monies and the involvement of Person B was planned but not thought through;

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

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

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

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

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

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

43. The Tribunal identified no aggravating factors.

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

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

46. The Tribunal determined that the seriousness of the misconduct was such that the appropriate sanction was a financial penalty. The Tribunal considered the level of the fine with reference to the Indicative Fine Bands. The misconduct required a significant fine be imposed and the Tribunal determined that the appropriate level was Level 3 as the Tribunal found the conduct to be 'more serious'. It was essential that solicitors protected client monies and complied with Court orders. However the Tribunal placed this matter at the lower end of that range to reflect the fact that there had been no lack of integrity and the mitigation advanced on his behalf by Mr Fullerton. The Tribunal concluded that the appropriate sanction was a fine of £8,000.

47. The Tribunal considered whether to impose a Restriction Order. It was not satisfied that it was necessary for the protection of the public to do so. While it was difficult to assess the Respondent's level of insight as he had not given evidence, based on the Tribunal's findings as to the circumstances of the breaches it was satisfied that there was unlikely to be a repeat.

48. The Tribunal reviewed the Respondent's statement of means. It noted that there was equity in the Respondent's property. The Respondent would continue to work and so the Tribunal saw no basis to reduce the level of fine on the grounds of the Respondent's means.

Costs

49. Mr Mulchrone applied for the Applicant's costs in the sum of £29,359.05. Mr Mulchrone told the Tribunal that the fixed fee for the legal costs had originally been £34,500. However this had been reviewed in the run-up to the hearing and been reduced to £18,500. There were no addition costs for Counsel as the matter had been dealt with in-house at Capsticks.

50. Mr Mulchrone submitted that although not all matters had been proved, there was no particular rationale to hive-off a proportion of the cost. The most serious of the charges were proved apart from the alleged breach of Principle 2.

51. In relation to the Respondent's means, Mr Mulchrone submitted that there was substantial equity in the Respondent's property.

52. Mr Fullerton described the Applicant's costs as "eye watering" given that this was not the most serious of cases. He submitted that the hours were excessive, particularly the investigation costs where 13 hours had been claimed for information review and the preparation of the report where 28 hours had been incurred.

53. Mr Fullerton referred to the Respondent's statement of means and submitted that he was not in a position to pay such sums.

54. The Tribunal was not invited to refer the matter for detailed assessment.

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

55. The Tribunal reviewed the schedule of costs carefully. The Tribunal did not consider the investigation costs to be excessive. There had been a lot of work to undertake and the Tribunal did not find that the time spent was disproportionate.

56. In relation to the legal costs, the Tribunal noted that the Respondent had raised a large number of issues which were not directly relevant to the Allegations he faced, but which the Applicant had nonetheless had to consider. The Respondent had served over 1000 pages of evidence, which, again, the Applicant would have needed to review in order to prepare for the hearing. The hearing itself had lasted three days, as estimated. The Allegations that had not been proved had all been properly brought. The time spent solely on those matters had not made any significant difference to the overall time that had been spent on the case as a whole.

57. The Tribunal again reviewed the Respondent's statement of means. The Tribunal recognised that a responsible regulator, the Applicant would take a proportionate and sensible approach to enforcement. This could include a charging order on the Respondent's property, where there was still equity. The Tribunal saw no basis to

reduce the costs on the grounds of means and therefore ordered that the Respondent pay the Applicant's costs as claimed.

Statement of Full Order

58. The Tribunal Ordered that the Respondent, NAIM IBRAR LONE, solicitor, do pay a fine of £8,000.00, 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 £29,359.05.

Dated this 15th day of January 2021
On behalf of the Tribunal

P Jones
Chair