



Neutral Citation Number: [2019] EWHC 2831 (Admin)

Case No CO/1578/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/10/19

Before :

LORD JUSTICE HICKINBOTTOM
and
MRS JUSTICE MAY DBE

Between :

SOLICITORS REGULATION AUTHORITY

Appellant

- and -

MOHAMMED ZAHID DAR

Respondent

Edward Levey (instructed by Solicitors Regulation Authority) for the Appellant
Richard Coleman QC (instructed by Dar & Co Solicitors) for the Respondent

Hearing date: 3 October 2019

Approved Judgment

Lord Justice Hickinbottom and Mrs Justice May:

Introduction

1. In these proceedings the Solicitors Regulation Authority (“the SRA”) appeals, and the Respondent (“Mr Dar”) cross-appeals, against the order of a Solicitors Disciplinary Tribunal (“the Tribunal”) made on 27 February 2019 and their reasons given in a judgment dated 26 March 2019 (“the Decision”). Both appeals are brought as of right under section 49(2) of the Solicitors Act 1974.
2. Mr Dar challenges the Tribunal’s findings of lack of integrity and recklessness made against him. The SRA challenges the sanction imposed by the Tribunal of a fine and restrictions on practice together with a suspended period of suspension, on the basis that the Tribunal’s approach was wrong in law and the sanction imposed was excessively lenient and clearly inappropriate.

The Factual Background

3. The background facts, set out in the Decision, are not in dispute.
4. Mr Dar was admitted to the Roll in March 1990 and practised at the material time at a firm of which he was the sole director, Dar & Co Solicitors Limited, in Manchester. He was also the Compliance Officer for Legal Practice, Compliance Officer for Finance and Administration and the Money Laundering Reporting Officer for the firm.
5. On 1 February 2017, Mr Dar received an email from a Mohammed Ali Bahar Aleloom instructing him to act on behalf of three persons – Seyed Ebrahim Khalil Tabatabai, Mahdi Muhsin Mahdi and Mr Aleloom himself – in relation to the sale of a property in Clapham, London (“the Property”). The email informed Mr Dar that their personal assistant would be representing them and that a Memorandum of Sale would follow. Messrs Tabatabai, Mahdi and Aleloom were not existing clients, and were unknown to Mr Dar.
6. The Property was an Islamic community centre registered at HM Land Registry with Messrs Tabatabai, Mahdi and Aleloom as the registered proprietors. Mr Dar understood that they held the Property on a charitable trust. The registered address for each of them was a residential address in Paddington. Entries on the Land Register for the Property revealed a restriction against the registration of dispositions by a sole proprietor not being a trust corporation.
7. A Memorandum of Sale was forwarded to Mr Dar on 2 February 2017, naming the buyer as Axmo Limited (“Axmo”), the buyers’ solicitors as Bude Nathan Iwanier Solicitors (“BNI”) and the sale price as £1,500,000.
8. By email the same day, Mr Dar asked Mr Aleloom for certified copy identification and proof of residence for all three registered proprietors/trustees. The following day, Messrs Tabatabai, Mahdi and Aleloom each provided Mr Dar with proof of identity in the form of a copy passport purportedly certified by “Joanne Shortlands” of Oliver Fisher Solicitors. Oliver Fisher was a genuine firm of solicitors; and, having conducted a search with the Law Society for the firm and the named solicitor, Mr Dar

accepted these at the time as genuine certification. However, at the Tribunal hearing there was uncontested evidence in the form of a witness statement from Joanne Shortland (without an “s”) of Oliver Fisher that neither she nor anyone else at the firm had certified the documents. By way of proof of residence, Mr Tabatabai and Mr Mahdi also sent Mr Dar a joint bank statement having a shared address in Worsley, Manchester – about ten miles from Mr Dar’s office – and Mr Aleloom sent a water bill.

9. Mr Dar corresponded with BNI concerning the sale of the Property to Axmo. Axmo initially insisted upon completion being conditional upon the approval of planning permission; but BNI later confirmed that Axmo was willing to exchange unconditionally, with the three-month period for completion to which the trustees, through Mr Dar, had earlier agreed.
10. On 4 February 2017, Mr Dar emailed Mr Tabatabai informing him that it would be preferable for the vendors to attend the office to sign the transfer, alternatively for it to be signed in the presence of an independent witness. He sent a client care letter to Mr Aleloom in respect of the sale on 6 February 2017.
11. At 12.12hrs on 20 February 2017, Mr Dar received an email from Mr Aleloom in the following terms (as written):

“We the sellers have read your mails and threads pertaining to the intended sale and I can only conclude that in view of the circumstances herein whereas the buyer and associated parties have unfounded discrepancies and unorthodox methods of transacting including a direct breach, that we no longer wish to proceed with the bird view homes or subsidiaries or associated parties including solicitors etc.

We now wish to transfer our title to a community member namely Mohammed Shafiq of Shields and Co ltd, Lenton Road Manchester...”

12. That was followed at 13.04hrs by an email from Mr Mahdi, as follows:

“Further to an email from my partner [Mr Aleloom], I hereby cease and desist from any further dealings with previous buyers AXMO ltd and Birdview homes ltd henceforth.

Also I am instructing your firm to initiate the transfer of titles to SHIELDS & CO LTD...”

13. Then, at 13.17hrs, Mr Dar received this email from Mr Tabatabai:

“Just a quick note to inform you of our joint decision to refrain from further dealings with the aforementioned buyers bird view homes or AXMO ltd as they have breached contracts on several grounds.

Please transfer titles as advised by my co-owners, to SHIELDS & CO Ltd.”

14. Mr Dar accepted in his evidence before the Tribunal that, whatever views his clients seemed to take in these emails, Axmo had not in fact breached any contract. He also accepted that, despite the reference by Mr Aleloom in his email to “unfounded discrepancies and unorthodox methods” on the part of Axmo and other (unspecified) “associated parties”, Mr Aleloom did not explain what he meant, nor had Mr Dar asked him to. In his evidence, Mr Dar said that he understood the reference to “unfounded discrepancies” to be a reference to the fact that the trustees had lost interest in the sale. He did not know what Mr Aleloom had meant by his reference to “unorthodox methods”.
15. In any event, the emails indicated that, instead of selling the Property for £1.5m, the trustees now wished to transfer the Property without any consideration to Mr Shafiq, who they said was another community member and who was the owner and director of an estate agency, Shields & Co Limited (“Shields & Co”), said to be based in Manchester. In fact, as the documents which Mr Dar himself obtained from Companies House showed, Shields & Co was located in Nottingham, not Manchester. Mr Dar told the Tribunal that he had not noted that discrepancy at the time.
16. On 28 February 2017, Mohammed Shafiq attended Mr Dar’s office and produced identification. He confirmed to Mr Dar that the Property was to be transferred to Shields & Co. Mr Dar prepared and witnessed Mr Shafiq’s signature on a Transfer document transferring the Property to the estate agency. Mr Dar did not himself seek to obtain the signatures of the trustees; instead, he permitted Mr Shafiq to take the document away with him for the trustees to sign and return. Mr Dar confirmed his instructions and what he had done in an email to Mr Aleloom dated 7 March as follows:

“I write to confirm my new instructions from you that you and the co sellers now wish to transfer the property to one of your community members Mohammed Shafiq’s company Shields & Co Ltd for a none [sic] monetary value.

I have drafted the transfer and obtained Mr Shafiq’s signature. He has taken the original transfer document to bring to you and the other co-sellers for you to check and have signed and witnessed and returned to me...”
17. The transfer document was signed and returned to Mr Dar dated 9 March 2017, together with a copy of purported minutes of a meeting of the trustees. The minutes recorded that, because of their age and health, the trustees had decided that Mr Shafiq would be appointed as the sole trustee of the charity instead of them and that the Property would be transferred to his estate agency, which would sell the Property. The minutes further recorded that, once the Property had been sold, Mr Shafiq would use the sale proceeds to further their Islamic mission. However, during the course of the Tribunal hearing, Mr Dar was unable to explain why, to further these charitable ends, title to the Property needed to be transferred to Mr Shafiq, still less why it needed to be transferred to his estate agency, Shields & Co.

18. On 13 March 2017, Mr Dar submitted the signed transfer document to the Land Registry. Mr Shafiq attended at Mr Dar's firm again on 21 March 2017 to sign an application to remove the restriction on the Property which Mr Dar then also submitted. The Property was thereafter registered to Shields & Co with effect from 21 March 2017.
19. Mr Dar was not involved in the appointment of Mr Shafiq as a trustee of the charity: his evidence was that he did not know who was responsible for dealing with that aspect of the transaction. He did not ask to see any evidence that Mr Shafiq had been so appointed as the trustees had apparently agreed. In arranging the transfer of the Property, Mr Dar acted for both the transferors (Messrs Tabatabai, Mahdi and Aleloom) and the transferee (Shields & Co). Despite the apparent conflict of interest, Mr Dar did not raise the issue with the parties, let alone seek their consent to his so acting. He told the Tribunal that he was not aware that he needed to do so.
20. On 22 March 2017, another firm of solicitors, Rahman & Co, were instructed by Mr Tabatabai on behalf of the charity which had owned the Property. It emerged that Mr Tabatabai had not known about or authorised the transfer of the Property, still less signed any transfer document. Mr Mahdi and Mr Aleloom had each died some years before. The purported trustees of the Property during the proposed sale and subsequent transfer to Shields & Co had been imposters and the transfer was a fraud.
21. Rahman & Co notified Mr Dar of the fraud on 23 March 2017. Mr Dar immediately withdrew the application to remove the restriction; and the Land Registry entry was subsequently rectified, removing Shields & Co as registered proprietor.

The Disciplinary Proceedings

22. On 24 March 2017, Rahman & Co made a report to the SRA concerning the conduct of Mr Dar. Following exchanges of correspondence with Mr Dar, on 23 July 2018 the SRA filed a statement under rule 5 of the Solicitors (Disciplinary Proceedings) Rules 2007 ("the Rule 5 Statement"), which made the following allegations against Mr Dar:

"1.1 Between 1 February 2017 and 21 March 2017 [Mr Dar] facilitated a dubious transaction concerning [the Property]. He thereby breached any or all of:

Principle 2 of the SRA Principles 2011;

Principle 6 of the SRA Principles 2011; and

Principle 8 of the SRA Principles 2011

...

1.2 Between those same dates, he failed to adhere to the Anti-money laundering policy of Dar & Co Solicitors Limited, when undertaking the transfer of [the Property]. He thereby breached and/or failed to achieve any or all of:

1.2.1 Principle 6 of the SRA Principles 2011;

1.2.2 Principle 7 of the SRA Principles 2011;

1.2.3 Principle 8 of the SRA Principles 2011; and

1.2.4 Outcome O(7.5) of SRA Code of Conduct 2011.

...

2. Recklessness is alleged with respect to the allegation set out at paragraph 1.1...”.

23. The Rule 5 Statement gave details of the allegations including, at paragraph 15, the “unusual elements” of the transaction concerning the property which, it was said, meant that Mr Dar should have satisfied himself by investigation that he could properly act – in other words, that rendered the transaction “dubious” – as follows:

“15.1 Property One had an open market value of at least £1,500,000, this being the price recorded in the Memorandum of Sale in relation to the abortive sale to [AXMO]. Mr Dar must have seen that document by 28 February 2017, when he was instructed to transfer [the Property] to Mr [Shafiq] because there was a copy on his file and this must have been given to him before 20 February 2017 (when the sale to AXMO aborted).

15.2 Mr [Mahdi] and Mr [Aleloom] were therefore transferring an asset of considerable value to Shields & Co for no consideration. Up until 13 March 2017, when he first had sight of the Minute of the Meeting purportedly held on 20 February 2107, Mr Dar was provided with no explanation as to why this was being done.

15.3 The sale of [the Property] to AXMO had been aborted in circumstances which were unclear: the precise nature of the “...unfounded discrepancies [sic] and unorthodox methods of transacting including direct breach...” referred to in the email from Mr [Mahdi] timed at 12.12 on 20 February 2017 were never explained to Mr Dar.

15.4 The transaction related to a Community Centre. It was therefore reasonable to expect that all the purported parties lived in the same general area each other and the property concerned. However, this was not the case. The identity documents provided by Mr [Tabatabai] and Mr [Aleloom] related to an address in Worsley, Manchester, Mr [Mahdi] lived in London W2 and Mr [Shafiq] lived in Nottingham. [The Property] was located in SW4. Furthermore, although the instruction of Dar & Co was convenient for Mr [Aleloom] (who did not attend its offices) it was not convenient for Mr [Shafiq] (who did).

15.5 The purported reason for the transfer of the registered title comprising [the Property] to Shields & Co was that its director, Mr [Shafiq] was a member of the congregation. However, this was unlikely to be the case given that [the Property] was situated in South-West London and Mr [Shafiq] lived in Nottingham.

15.6 There was a discrepancy between the address for Shields & Co provided by Mr Dar within the email timed at 12.12 on 20 February 2017 and the information which he obtained on-line when confirming the identity of that company eight days later, on 28 February 2017. The email stated that that company was based in Lenton Road, Manchester. The information subsequently obtained on-line showed that it was based in Lenton Boulevard, Nottingham.

24. The Statement went on to identify what the SRA said Mr Dar should have done (in [16]):

“In those circumstances, Mr Dar should not have continued to act in the matter following receipt of the email from Mr [Mahdi] on 20 February 2017 without making the following minimum additional enquiries:

16.1 He should have asked Mr [Aleloom], whom he knew lived at an address in the Greater Manchester area and who he could therefore reasonably expect to travel to the offices of Dar & Co, to meet with him in person to confirm the instructions which he had been given in the email of 20 February 2017;

16.2 He should have asked [Mr Tabatabai, Mr Mahdi and Mr Aleloom] why they had decided not to proceed with the sale to AXMO;

16.3 He should have asked [Mr Tabatabai, Mr Mahdi and Mr Aleloom] why they had decided to transfer [the Property] to Mr [Shafiq] for no consideration; and

16.4 He should have asked Mr [Shafiq] to provide confirmation of the office address of Shields & Co and explain why he attended a Community Centre in South West London when he lived in Nottingham.”

25. The SRA Principles 2011 to which reference was made in the Rule 5 Statement, provide:

“Principle 2: You must act with integrity.

Principle 6: You must behave in a way that maintains the trust the public places in you and in the provision of legal services.

Principle 7: You must comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner.

Principle 8: You must run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles.”

26. By section O(7.5) of the SRA Code of Conduct 2011, various outcomes that must be achieved, including compliance with anti-money laundering legislation.
27. Mr Dar’s answer to the allegations, dated 18 October 2018, accepted that, with the benefit of hindsight, there were features of the transaction which should have put him on alert. By the time of the hearing before the Tribunal in February 2019, he had formally admitted all the allegations in the Rule 5 Statement, except the charges of lack of integrity and recklessness at paragraphs 1.1.1 and 2 set out at paragraph 22 above. The only disputed issues at the hearing were accordingly whether Mr Dar had acted recklessly and with a lack of integrity in relation to the transfer of the Property.
28. The SRA’s case was that, given the number and character of unusual features concerning his instructions and the transaction, Mr Dar must have appreciated, and did in fact appreciate, that the transaction was “dubious” or “suspicious” – the terms were used synonymously – i.e. were such as to require him to make further investigations before acting or continuing to act. Further that, by proceeding with the transaction as he did, i.e. without making any proper enquiries to satisfy himself that the transaction was legitimate, Mr Dar acted recklessly and without integrity. It should be noted that although the Rule 5 Statement on its face distinguished between a lack of integrity and recklessness (in paragraph 2), the case before the Tribunal proceeded on the basis that the two matters were linked and that proof of recklessness was required for a finding of lack of integrity. It was never contended that Mr Dar had acted dishonestly.
29. At the Tribunal hearing, Mr Dar gave evidence and was cross-examined. He accepted the basic factual background. However, his position was that he did not at the time recognise the unusual features of the transaction, and did not therefore appreciate that it was dubious, suspicious or fraudulent (see the Decision at [35.6] and [35.8]: references in square brackets in this part of the judgment are to paragraphs of the Decision). Mr Dar accepted that, although his actions may have amounted to incompetence or negligence, he had not acted recklessly or with a lack of integrity (see [35.10]-[35.11]).
30. The Tribunal made findings against Mr Dar in accordance with the charges he had admitted, including, in line with his admission to paragraph 1.1 of the Rule 5 Statement, that he had facilitated a dubious transaction. Having recorded the parties’ common position that the resolution of the issue of lack of integrity/recklessness depended upon Mr Dar’s credibility (see [35.15]), the Tribunal proceed to examine his evidence in relation to the unusual features of the transaction relied on by the SRA, finding as follows (in bullet points at [35.15]):

- i) They did not accept that that the change in Mr Dar's instructions regarding the sale to Axmo for £1.5m to subsequent transfer for nil value was not unusual, or Mr Dar's evidence that he did not believe it to be unusual.
- ii) They rejected Mr Dar's evidence that he had not regarded the gratuitous transfer to an estate agency to be unusual, in circumstances in which the agency did not require ownership in order to sell the Property.
- iii) They found that the email from Mr Aleloom on 20 February 2017 was "peppered with inaccuracies which could not have escaped [Mr Dar]'s attention"; and rejected his evidence that he found nothing unusual in the content.
- iv) They rejected Mr Dar's evidence that he was unaware of the significance of the underlying charitable trust issues and that he considered resignation and appointment of trustees as "usual" in the context of this transaction.
- v) They found incredible his evidence relating to the peculiarities of the transfer to Shields & Co in order to sell the Property.

31. The Tribunal concluded as follows (at [35.16]):

"... [Mr Dar] had been aware at the material time of a number of unusual features of this dubious transaction yet facilitated the same in the absence of carrying out further or additional enquiries and that this amounted to a want of integrity. Applying the test set out in the judgment of Lord Bingham in R v G [[2003] UKHL 50; [2004] 1 AC 1034], and for the reasons set out in paragraph 43, the Tribunal were of the view that [Mr Dar] had been reckless – he had been aware of, and had deliberately closed his mind to, significant risks intrinsic to the transaction which it was clearly unreasonable to take in the circumstances known to him. The risks were obvious..."

32. At [43] the Tribunal considered the allegation of recklessness, recording Mr Dar's case as follows (at [43.4]):

"... [Mr Dar] refuted any suggestion that he was aware of any specific risk emanating from the 'unusual features' relied upon by the [SRA]. [He] averred that he did not act in disregard of an appreciated and acceptable [sic] risk that the transaction may have been fraudulent..."

33. The Tribunal rejected Mr Dar's "assertions that... he had no perception of either the general or the specific risks, by virtue of the 'unusual features', pertaining to his transaction" [43.6]. They concluded that he was aware of the specific risks (at [43.7]).

34. The Tribunal accordingly found the disputed allegations – that Mr Dar had acted with a lack of integrity in breach of Principle 2, and recklessly – proved to the relevant, criminal, standard (see [35.17] and [43.9]).

35. We deal with the Tribunal's analysis and conclusion with regard to sanction below (paragraphs 74-79). The Tribunal imposed a fine of £20,000 and 12 months' suspension from practice, itself suspended for a period of two years, together with restrictions on practice prohibiting Mr Dar indefinitely from accepting any conveyancing and/or trusts instructions (at [59]). Mr Dar was also ordered to pay the SRA's costs in the sum of £23,228 (at [60]).

The Grounds of Appeal

36. Although strictly a cross-appeal, Mr Dar's challenge to the findings of the Tribunal logically require to be considered first. Richard Coleman QC, who appeared for Mr Dar on this appeal (although not at the hearing before the Tribunal), advanced three grounds:
- i) Ground 1: The Tribunal failed to ask themselves the correct question, wrongly conflating Mr Dar's appreciation of the unusual features of the transaction with an appreciation of the risk of fraud.
 - ii) Ground 2: They failed to give adequate reasons for their decision that Mr Dar's actions were reckless and that his behaviour lacked integrity.
 - iii) Ground 3: They failed to take into account evidence of Mr Dar's positive good character (a) when considering whether he was likely to have acted recklessly in the manner complained of, and (b) in their assessment of his credibility.
37. Edward Levey of Counsel, for the SRA, challenged the Tribunal's decision on sanction, on two grounds:
- i) Ground 1: The Tribunal erred in its approach, by (a) taking into account irrelevant considerations by way of purported mitigation, and (b) by failing to follow its own Sentencing Guidelines by "upgrading" a fine to a suspended suspension.
 - ii) Ground 2: Even if there was no error in approach, the sanction imposed was clearly inappropriate given the seriousness of the lack of integrity and recklessness as found by the Tribunal.

The Legal Principles

38. The principles to be applied on an appeal against the decision of a specialist disciplinary tribunal such as the Tribunal, in relation to both a challenge to their findings and to the sanction imposed, are agreed between the parties and are uncontentious.
39. An appeal is by way of review, not a rehearing (CPR rule 52.21(1)); it follows that the court will only allow an appeal where the decision is shown to be "wrong" (CPR rule 52.21(3)(a)). This can encompass an error of law, an error of fact or an error in the exercise of discretion; but it is by now well-established that an appellate court must exercise particular caution and restraint in interfering with findings of fact, particularly where the court or tribunal has seen and evaluated the evidence of the

witnesses and/or where such findings have been made by a specialist tribunal (AH (Sudan) v Secretary of State for the Home Department [2007] UKHL 49; [2008] 1 AC 678 at [30] per Baroness Hale of Richmond). Specifically in the context of an appeal against a decision of the Solicitors Disciplinary Tribunal, in Solicitors Regulation Authority v Day [2018] EWHC 2726 (Admin) at [64]-[68], this court recently reviewed many of the relevant authorities, culminating in the citation of the following passages in Henderson v Foxworth Investments Limited [2014] UKSC 41; [2014] 1 WLR 2600 at [62] and [67] per Lord Reed in support of the proposition that the court will only interfere with a finding of fact where the court or tribunal below has gone “plainly wrong”:

“It does not matter, with whatever degree of certainty, that the appellate court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached....”

“It follows that, in the absence of some other identifiable error, such as (without attempting an exhaustive account) a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified.”

40. In the recent case of Bawa-Garba v General Medical Council [2018] EWCA Civ 1879 (“Bawa-Garba”), the Court of Appeal (at 67)) helpfully confirmed that:

“[The] general caution [with which an appellate court approaches an assessment of primary facts below] applies with particular force in the case of a specialist adjudicative body, such as the Tribunal in the present case, which (depending on the matter in issue) usually has greater experience in the field in which it operates than the courts.... An appeal court should only interfere with such an evaluative decision if (1) there was an error of principle in carrying out the evaluation, or (2) for any other reason, the evaluation was wrong, that is to say it was an evaluative decision which fell outside the bounds of what the adjudicative body could properly and reasonably decide.... As the authorities show, the addition of ‘plainly’ or ‘clearly’ to the word ‘wrong’ adds nothing in this context.”

41. An appellate court is required to exercise similar restraint before interfering with the sanction imposed by a specialist disciplinary tribunal for professional misconduct. Arriving at the appropriate sanction involves a multi-factorial exercise of discretion and evaluative judgment by the tribunal, which will typically be composed of, or at least include, members of the relevant profession. They are accordingly especially well-placed to evaluate the severity (or otherwise) of the misconduct in question, and to determine what sanction is required to protect the interest of the public and the reputation of the profession. It is well-established that the court will only interfere if

the sanction passed was “in error of law or clearly inappropriate” (see, e.g., Solicitors Regulation Authority v James [2018] EWHC 3058 (Admin); [2018] 4 WLR 163 at [53]-[55]).

42. On this appeal, therefore, we may only interfere with the decision of the Tribunal that Mr Dar was reckless and lacking in integrity, and as to the appropriate sanction, if we are satisfied that the Tribunal have made an error of principle (which would include an error of reasoning) or the decision falls outside the bounds of what could reasonably and properly be decided.

Mr Dar’s Appeal: Grounds 1 and 2

43. Grounds 1 and 2 of Mr Dar’s appeal can be taken together.
44. In addressing his first ground, Mr Coleman emphasised the distinction between a solicitor acting incompetently in breach of Principle 6 on the one hand, and acting without integrity in breach of Principle 2 on the other. He referred us to the observations of Rupert Jackson LJ in Solicitors Regulation Authority v Wingate [2018] EWCA Civ 366; [2018] 1 WLR 3969 at [105]:

“... It is possible to think of many forms of conduct which would undermine public confidence in the legal profession. Manifest incompetence is one example. A solicitor acting carelessly, but with integrity, will breach Principle 6 if his careless conduct goes beyond mere professional negligence and constitutes ‘manifest incompetence’”.

Mr Dar has always accepted that his conduct in connection with the transfer of the Property breached Principle 6, on the basis that he had not taken sufficient care; but he disputed the allegation that he had acted recklessly or without integrity.

45. Mr Coleman submitted that in considering recklessness the Tribunal should have focused on the question of whether Mr Dar was aware of the risk of fraud, i.e. as we understand his submission, the risk that the transaction might be a deliberate deception of at least some of those with an interest in the Property. He pointed out that the Rule 5 Statement had framed the charge of recklessness in a very particular way (at paragraph 29):

“Given Mr Dar’s state of knowledge of the transaction concerning [the Property] as set out in paragraphs 15, 17 and 18 of this statement, he was necessarily aware of the risk that that transaction might be fraudulent”.

46. Mr Coleman argued that, having pleaded knowledge of fraud against Mr Dar, the question which the Tribunal should have posed itself in addressing recklessness was whether, when he proceeded with the transfer of the Property, Mr Dar was aware of a risk of fraud in that sense. Instead, the focus in the reasoning was on “unusual features” of the transaction, and whether Mr Dar was aware of them. The conflation of unusual features with indicia of fraud meant that the Tribunal had not addressed the correct question concerning Mr Dar’s state of mind.

47. Mr Coleman’s second ground was, as he accepted in argument, the reverse side of the same coin: given the conflation between unusual features and appreciation of the risk of fraud, it was impossible to be sure that the Tribunal arrived at a secure conclusion on Mr Dar’s knowledge of risk of fraud. Mr Coleman submitted that, even if Mr Dar’s awareness of the unusual features of the transaction might have sufficed for a finding of recklessness (as he acknowledged, it might), the Tribunal’s reasoning did not make it clear how they had arrived at that conclusion. Mr Coleman submitted that, given the way the allegation of recklessness was framed at paragraph 29 of the Rule 5 Statement, the Tribunal was required to consider the ways in which the transaction might have been fraudulent, so as to tether the allegation that it was dubious or suspicious by defining those ways before proceeding to ask if Mr Dar had been aware of them. He said that it was for the Tribunal to explain how they got from a finding of appreciation of unusual features to a finding of an appreciation of the risk of fraud; and their conclusions at paragraph 35.16 or elsewhere in the Decision had not made this clear. They had not adequately explained what were the “significant risks intrinsic to the transaction” referred to at [35.15], or the “specific risks” and “risks” noted at [43.7] and [43.8].
48. Mr Coleman submitted that there was a further error in the Tribunal’s reasons owing to their failure to explain why they had rejected Mr Dar’s evidence. The conflation of issues referred to above meant that the Tribunal failed to consider the significance of Mr Dar’s knowledge of the unusual features against all the evidence pointing away from his having any awareness of fraud.
49. On behalf of the SRA, Mr Levey submitted that Mr Coleman had mis-characterised the SRA’s case against Mr Dar, putting it too narrowly. Mr Levey accepted that the SRA’s primary case was that Mr Dar ought reasonably to have been – and was in fact – aware of the risk of the transaction being a deliberate deception of those (or some of those) with an interest in the Property. However, the SRA had framed its allegations against Mr Dar in broader terms, and a finding of lack of integrity/recklessness did not require a finding that Mr Dar was aware of the risk of fraud in that narrow sense. Paragraph 1.1 of the Rule 5 Statement (quoted at paragraph 22 above) referred to facilitating “a dubious transaction” (not “a fraudulent transaction”); and paragraph 2 (quoted in the same paragraph) alleged recklessness in relation to that allegation. The SRA had put its case firmly on the basis that there was a series of obvious and highly unusual features of the transactions concerning the Property which signalled something potentially illegitimate and illegal, or “dubious”, about the transaction which required a solicitor acting with integrity to investigate further before proceeding. The illegitimacy was probably some form of fraudulent transfer to the disbenefit of at least some of those with an interest in the Property; but, alternatively or in addition, may have been (e.g.) undue influence on a trustee or money laundering. It was not necessary to show that Mr Dar foresaw the precise nature of the illegitimacy, only that he appreciated something was not right and there was a risk that the transaction involved some form of illegitimacy/illegality that required further investigation before Mr Dar proceeded.
50. We find Mr Levey’s submission on this point persuasive: we broadly agree with his analysis of the Tribunal’s task arising from the way the case had been put. The SRA’s case against Mr Dar was clearly set out in the Rule 5 Statement, in paragraph 1.1 and 2, and in particular in paragraph 14:

“A solicitor of integrity does not act in a transaction which bears the hallmarks of fraud, or which is dubious in nature, unless they have first made proper enquiries and satisfied themselves that it is a legitimate transaction in which they can properly act.”

51. The alleged unusual features said to indicate the risk that the transaction was fraudulent or otherwise illegitimate/illegal which required further investigation were particularised at paragraph 15 of the Rule 5 Statement (quoted above at paragraph 23).
52. It is true that the SRA’s primary case was that the unusual features of this case were such that the risk of fraud should have been apparent to any solicitor acting reasonably, and that Mr Dar was in fact aware of that risk; but, in our view, the SRA case was not restricted to a risk of fraud narrowly defined, as opposed to a risk of some other form of illegitimacy/illegality. The thrust of the recklessness alleged against Mr Dar was that he was put on notice of the risk of some form of illegitimacy/illegality such that he, appreciating that risk, was required to take some investigative steps before proceeding with it; but, rather than taking those steps, he closed his eyes to that risk, going ahead with the transaction regardless.
53. As is evident from the transcript of the hearing and from the Decision itself, Mr Dar’s case in answer to each of the unusual features relied upon by the SRA was two-fold, namely (i) that the features, taken individually or collectively, were not objectively unusual so as to require further investigation before proceeding, but (ii) if and insofar as they were, he had been unaware that they were unusual at the time. In relation to most, although not all, of the matters highlighted by the SRA as being of concern, the Tribunal disbelieved Mr Dar on both counts (see [35.15] of the Decision). In our view, on the evidence, they were clearly entitled to make those findings.
54. We consider the complaint that the Tribunal focused on the unusual features of the transaction has no force: the Tribunal had to deal with the issues before it, which included whether the features of the transaction relied upon by the tribunal were indeed objectively unusual as alleged by the SRA and denied by Mr Dar; and, if they were, whether Mr Dar appreciated they were unusual as alleged by the SRA and denied by him.
55. However, the Tribunal did not stop there. Having set out the correct test for “recklessness” as described in R v G at [31] of the Decision – as including an awareness by the individual himself of a risk – and Mr Dar’s contentions as to appreciation of risk at paragraph 43.4, the Tribunal applied the test and rejected Mr Dar’s assertion that he was unaware of the risk that the transaction was illegitimate/illegal and found that, aware of that risk, Mr Dar closed his eyes to it (see [43.6]-[43.8] of the Decision).
56. Therefore, we do not accept that the Tribunal in some way wrongly conflated the presence of unusual features with risk: having made findings in relation to the unusual features and Mr Dar’s appreciation of their unusual nature, the Tribunal then went on properly to consider whether he appreciated from those features that there was a risk that the transaction was fraudulent or otherwise illegitimate/illegal. We consider the Tribunal’s reasoning in this regard to have been clear; and they at least adequately explained why they rejected Mr Dar’s assertions that he did not appreciate that

features of the transaction were unusual or that there was a risk that the transaction was illegitimate/illegal. On the basis of all the evidence, they did not believe Mr Dar, making findings in relation to his credibility that were open to them to make and which were at least adequately explained in the decision.

57. For those reasons, we do not find either Ground 1 or 2 made good.

Mr Dar's Appeal: Ground 3

58. Turning to Mr Coleman's third ground of appeal, it was common ground that, in their Decision, the Tribunal did not specifically refer to evidence of Mr Dar's good character in the statement of David Berkeley QC, a Manchester barrister, who provided a letter as to Mr Dar's honesty and integrity and of the respect in which he was held by his local community.

59. Mr Coleman submitted that the good character evidence was relevant in two ways, namely (i) as evidence making it less likely that Mr Dar would have acted recklessly or without integrity and (ii) as supporting the credibility of his account. As to (ii), the Tribunal rightly recognised that their decision turned on Mr Dar's credibility (at [35.15]), yet had failed to take into account the positive character evidence bearing directly upon that issue.

60. However, we are unpersuaded by this submission. The character reference from Mr Berkeley was short, just one page. In it, Mr Berkeley explained that, although he did not socialise with Mr Dar, he regarded him as a friend; and, although he did not descend to examples, in his dealings with Mr Dar, Mr Dar had always demonstrated competence and integrity.

61. Whilst Mr Dar referred to the reference in his statement (at paragraph 45), he did not refer to it in his oral evidence; nor did his Counsel (not Mr Coleman, but an experienced Junior Counsel) refer to it in his submissions, oral or written.

62. Mr Levey submitted that, in those circumstances, it is unsurprising that the Tribunal did not refer to the reference in its Decision; and they certainly did not err in law in not doing so. We agree. The fact that the reference was not referred to at the hearing is in our view a reflection of the very limited possible weight that could attach to it in respect of the issues which the Tribunal had to decide, including Mr Dar's credibility. At paragraph 3 of the Decision, the Tribunal refer to the reference (an exhibit to Mr Dar's statement) as something which they had considered. Although not expressly referred to again in connection with (e.g.) the findings of credibility, there is nothing to suggest that the Tribunal did not take it into account in that regard and give it the weight, if any, they considered it was due. We consider that it is overwhelmingly likely that they did so. In any event, we are quite satisfied that, even if the Tribunal did not consider it in that specific regard, that error would have been immaterial to the conclusions that the tribunal reached.

63. Ground 3 therefore also fails.

Mr Dar's Appeal: Conclusion

64. For those reasons, we dismiss Mr Dar's appeal.

SRA's Appeal against Sanction: Introduction

65. Having found that Mr Dar had acted recklessly and with a lack of integrity, the Tribunal imposed the following sanction, namely (i) a fine of £20,000 at Level 4 (see paragraphs 73 and 78 below), (ii) a suspension from practice of one year suspended for a period of two years and (iii) indefinite restrictions on practice precluding him from undertaking any conveyancing or trust business. Mr Dar was also ordered to pay the SRA's costs in the sum of £23,228.
66. In its appeal, Mr Levey on behalf of the SRA submits that, in imposing that sanction, the Tribunal erred in two ways. First, it made two errors in its approach to sanction by (i) taking into account irrelevant considerations by way of purported mitigation, and (ii) by failing to follow its own Sanctions Guidance (see paragraph 67 and following below) by "upgrading" a fine to a suspended suspension. As a result of those errors, he submitted that we should quash the sanction, and consider the issue of sanction afresh ourselves. Second, and in any event, Mr Levey submits that the sanction imposed by the Tribunal was clearly inappropriate and, given the findings of serious misconduct, only striking off (or, alternatively, a period of immediate suspension) would be appropriate to reflect the seriousness of the misconduct and protect the profession. If we consider sanction afresh, that is the sanction which Mr Levey urged us to impose.

The Guidance on Sanctions

67. The Solicitors Disciplinary Tribunal publishes guidelines on sanctions, reviewed annually. The 6th Edition of the Guidance Note on Sanctions (December 2018) were the guidelines in force at the relevant time ("the Guidance").
68. The Introduction to the Guidance emphasises that the guidelines are not intended to be prescriptive:

"Every case is fact-specific, and this Guidance Note consists of guidelines only; it is not intended in any way to fetter the discretion of the Tribunal when deciding sanction.

...

Prescriptive, detailed guidelines for sanctions in individual cases are neither practicable nor appropriate. The Tribunal adopts broad guidance. Its focus is to establish the seriousness of the misconduct and, from that, to determine a fair and proportionate sanction.

Section A, paragraph 1, sets out the various types of sanction available; paragraph 2 notes that "[t]he Tribunal is not restricted as to the number of combination of sanctions which it may impose."

69. The Guidance goes on to deal with the purpose of sanctions at paragraph 7, quoting the following well-known extracts from the judgment of Sir Thomas Bingham MR in Bolton v The Law Society [1994] 1 WLR 512 ("Bolton") at page 518B-519A:

“Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal.

... a penalty may be visited on a solicitor... in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way...

... to be sure that the offender does not have the opportunity to repeat the offence; and...

... the most fundamental of all: to maintain the reputation of the solicitors’ profession as one in which every member, of whatever standing, may be trusted to the end of the earth... and a member of the public... is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession’s most valuable asset is its collective reputation and the confidence which that inspires.”

70. Paragraphs 8-10 emphasise the need to adopt a holistic approach to sanction, and to ensure that the interference with a solicitors’ right to practise inherent in any sanction is no more than necessary to achieve the purpose of imposing the sanction.
71. Section B covers the proper approach to the determination of sanction, the broad principles being summarised in the introductory passages, as follows:

“The starting point in determining sanction is to establish the seriousness of the allegation proved. The Tribunal will determine which of the sanction thresholds have been crossed, working from the lowest sanction upwards.

In determining seriousness, the Tribunal must consider the respondent’s culpability for their conduct and the harm caused or the harm that was intended or might reasonably be foreseen to have been caused by their actions.

When the Tribunal has identified the starting point it can add to or reduce this to reflect any aggravating or mitigating features which impact on the culpability of the respondent and harm caused to reach a provisional sanction.

On reaching a provisional sanction the Tribunal should take account of personal mitigation of the respondent before coming to a final conclusion....”

72. There follows, at paragraphs 17-21 of the Guidance, more detailed instructions as to matters to be taken into account in assessing seriousness, including identifying particular examples of aggravating and mitigating factors. Mitigating factors include:

“ ...

- the timing of and extent to which any loss arising from the misconduct is made good by the respondent [i.e. by the relevant solicitor]
- whether the conduct was either a single episode, or one of very brief duration in an otherwise previously unblemished career
- genuine insight, assessed by the Tribunal on the basis of facts found proved and the respondent’s evidence
- open and frank admissions at an early stage and/or degree of cooperation with the investigating body.”

73. Paragraphs 22-48 deal with details of each of the available orders, from the making of no order to the most severe sanction of striking off the Roll. Particular provisions relevant to this appeal are as follows:

“Fine

26. A Fine will be imposed where the Tribunal has determined that the seriousness of the misconduct is such that a Reprimand will not be a sufficient sanction, but neither the protection of the public nor the protection of the reputation of the legal profession justifies Suspension or Strike Off.

[A Table under paragraph 29 gives indicative fine bands from Levels 1-5, of which Level 4 is reserved for “Conduct assessed as very serious”].

...

Restriction Order

31. A Restriction Order may be combined with any other sanction made by the Tribunal.

32. The Tribunal, in exercising its wide power to ‘make such order as it may think fit’, may if it deems it necessary to protect the public, impose restrictions in the form of conditions upon the way in which a solicitor continues to practise...

33. Restricted practice will only be ordered if it is necessary to ensure the protection of the public and the reputation of the legal profession from future harm by the respondent.

34. A Restriction Order may be for either a finite or an indefinite period.

...

Suspension

38. Suspension from the Roll will be the appropriate penalty where the Tribunal has determined that:

- the seriousness of the misconduct is such that neither a Restriction Order, Reprimand nor a Fine is a sufficient sanction or in all the circumstances appropriate.
- there is a need to protect the public and the reputation of the legal profession from future harm from the respondent by removing their ability to practise, but
- neither the protection of the public nor the protection of the reputation of the legal profession justifies striking off the Roll.
- public confidence in the legal profession demands no lesser sanction.
- professional performance, including a lack of sufficient insight by the respondent (judged by the Tribunal on the basis of facts found proved and the respondent's evidence), is such as to call into question the continued ability to practise appropriately.

39. Suspension from the Roll, and thereby from practice, reflects serious misconduct.

40. Suspension can be for a fixed term or for an indefinite period. A term of suspension can itself be temporarily suspended.

Suspended Term of Suspension

41. Where the Tribunal concludes that the seriousness of the misconduct justifies suspension from the Roll, but it is satisfied that:

- by imposing a Restriction Order, the risk of harm to the public and the public's confidence in the reputation of the legal profession is proportionately constrained; and
- the combination of such an Order with a period of pending Suspension provides adequate protection and addresses the risk of harm to the public and the need to maintain the reputation of the profession

the Tribunal may suspend that period of suspension for so long as the Restriction Order remains in force.

...

44. If the period under restriction is successfully completed and the Restriction Order lifted, the pending suspension will cease to have effect.”

The Tribunal’s Determination on Sanction

74. The Tribunal’s approach to sanction appears at [48]-[59] of the Decision. At [48], they explicitly referred themselves to the Guidance and the need to adopt a staged approach. Having considered various relevant matters in [49], they concluded that Mr Dar was “highly culpable in respect of the matters found proved” (at [50]), but accepted that no harm had in fact been caused to the trustees by reason of Mr Dar having actively sought to remedy the position once the fraud had been drawn to his attention (see [51]). At [52], they concluded that:

“... [T]he lack of integrity and recklessness exhibited by [Mr Dar] throughout the transaction fell far short of the standard of conduct expected of a solicitor”.

75. The Tribunal then set out part of the judgment in Bolton emphasising the importance and value of the reputation of the profession referred to paragraph 69 above, before going on (at [52]):

“The failure to heed numerous ‘unusual features’ to the transaction, the failure to probe dubious circumstances pertaining to the same, the failure to adhere to his own policy and the failure to safeguard a community asset valued at £1,500,000 were gravely detrimental to the reputation of the legal profession.”

76. Aggravating factors were identified at [53] of the Decision, with mitigating factors listed as follows at [54]:

“The Tribunal considered all of the mitigating features advanced on behalf of [Mr Dar] and had regard to the following:

- [Mr Dar] was not the main instigator of the fraud and it appeared that those perpetrating the fraud were third parties...;
- admissions had been made prior to the Substantive Hearing, although not in relation to the allegation concerning lack of integrity;
- [Mr Dar] had taken steps to reverse the transfer once its fraudulent nature had been presented to him in no uncertain terms.”

77. The Tribunal concluded, at [55], that

“... [Mr Dar]’s culpability was high, as was the risk of harm to the reputation of the legal profession and the potential risk of harm to the public if [Mr Dar] was able to continue practice unrestricted.”

78. In addressing the appropriate sanction, the Tribunal ruled out making no order or reprimanding Mr Dar. It concluded (at paragraph 57) that a fine was appropriate, assessed at Level 4 given their view of Mr Dar’s conduct as “very serious”. They considered the sum of £20,000 to be “proportionate and appropriate”.

79. The Tribunal continued:

“58. The Tribunal determined that the seriousness of the conduct warranted further sanction in order to protect the public and the reputation of the profession. The Tribunal viewed the reckless manner in which [Mr Dar] had conducted himself during the transaction in conjunction with his failure to adhere to his own Anti-Money Laundering policy to be of serious concern. The Tribunal concluded that the risk posed by [Mr Dar] to the public and the profession could only be met by the imposition of a suspended suspension order aligned with restriction of practice to militate against recurrence of the risk.

59. The Tribunal therefore imposed a 12 month suspension of practice wholly suspended for 24 months effective immediately. The Tribunal further restricted [Mr Dar’s] practice by the imposition of conditions prohibiting him from accepting any conveyancing and/or trusts instructions.”

The SRA Grounds of Appeal

80. As we have indicated, as his first challenge, Mr Levey submitted that, in imposing the sanction that they did, the Tribunal erred by taking into account irrelevant matters as mitigation. At paragraph 76 above, we have set out the particular matters of mitigation identified and taken into account by the Tribunal. Mr Levey submitted that none of these bore relevantly upon the purposes of sanction identified in Bolton, which he summarised as (i) a punitive element (ii) a deterrent element (iii) preventing recurrence and (iv) protecting the reputation of the profession; and were all thus irrelevant considerations for sentencing purposes.

81. We do not agree that the Tribunal erred in this way. It is implicit in Mr Levey’s argument that a matter is relevant to sanction in terms of possible mitigation only if it can be directly linked to one or more of the purposes of sanction as outlined in Bolton. That is not the case. As the introduction to Section B of the Guidance (quoted at paragraph 71 above) makes clear, mitigation is anything “which impact[s] on the culpability of the respondent and the harm caused...”. In fact, the matters identified by the Tribunal at paragraph 54 of the Decision match three of the examples of mitigating factors set out at paragraph 21 of the Guidance. For the reasons which Mr Levey identified (e.g. Mr Dar’s admissions did not go to integrity/recklessness; and no steps were taken by Mr Dar to reverse the transfer until after the fraud had been pointed out to Mr Dar “in no uncertain terms”), the particular matters may not have

been so weighty here as they might have been in other cases; but in our view there was clearly no error of law in characterising them as mitigation. Weight was, of course, quintessentially a matter for the Tribunal.

82. The second limb of Mr Levey's first ground of appeal was that the Tribunal failed to follow its own Guidance in, as he put it, "upgrading a fine to a suspended suspension".
83. He submitted that the Tribunal must have reached the view that a suspension from practice was justified, since that is a necessary step in arriving at a suspended term of suspension (see paragraph 41 of the Guidance). The Guidance thereafter permits a "downgrade" of an immediate term to a suspended term, but it does not allow a Tribunal to use a suspended term as, in effect, a step up from a fine.
84. The Guidance does not have statutory force, but Mr Levey submitted that if a tribunal is not going to follow published guidelines on sanction then it ought at least to recognise that it is departing from them and explain why it has decided to do so. Here the Tribunal had done neither: there was no apparent recognition in the Decision that they were departing from the staged scheme of the Guidance, and no explanation of why they had decided to do so.
85. We accept that the Tribunal's analysis of how they arrived at the sanction ultimately imposed is not as clear as it might have been; but we consider that, when it is looked at as a whole, they did not err. Although paragraph 57 may be ambiguous when looked at alone – because it suggests that a fine of £20,000 in itself is the proportionate and appropriate sanction – when looked at in context, we consider that the Tribunal considered the sanction holistically, as the Guidelines require. The key, in our view, is in the last sentence of paragraph 58 of the Decision where, having referred to the fine and said that more was required to protect the public and the reputation of the profession, the Tribunal said:

"The Tribunal concluded that the risk posed by [Mr Dar] to the public and the profession could only be met *by the imposition of a suspended suspension order aligned with restriction of practice to militate against recurrence of the risk.*" (emphasis added).

86. The Tribunal thus concluded that the appropriate sanction was a combination of a fine, with a restriction order restricting Mr Dar's practice by prohibiting him from accepting any instructions in conveyancing and/or trust matters, that restriction being backed by an "aligned" suspended suspension order which could be activated if there were any breach. Paragraph 2 of the Guidance expressly contemplates any combination of orders; paragraph 31 expressly says that a restriction order "may be combined with any other sanction"; and paragraph 41 specifically contemplates a restriction order in combination with a suspended suspension order to back the restriction and to assist with enforcement. In all the circumstances, we have concluded that the Tribunal cannot be said to have erred in combining the sanctions as it did, and including as an element of the package a suspended suspension in support of the restriction order.

87. However, in our view, the Tribunal did err in one aspect of the order giving effect to their decision. As they explained in the final sentence of paragraph 58 of the Decision, the Tribunal intended to impose “a suspended suspension order aligned with restriction of practice”. Such an alignment is contemplated by the terms of paragraph 41 of the Guidance, from which it appears that a suspended term of suspension backing a restriction order is for obvious reasons intended to be cotemporaneous with a restriction order so as to provide an additional element of protection by ensuring compliance with the restrictions for as long as they are in place. However, here, although the restrictions on practice were imposed indefinitely (subject to Mr Dar being able to apply to have them discharged at some point in the future), the one-year suspension from practice was suspended for only two years. There was thus no temporal “alignment” between the restriction order and the suspended suspension order, as the Tribunal themselves appeared to intend. It was clearly the intention of the Tribunal to impose a restriction order unlimited in time (subject to an application to the tribunal to revoke it) which they considered necessary to protect the public and the profession, and to make an “aligned” suspended suspension order in support of that restriction order. In any event, such an order could only rationally be cotemporaneous with the restriction order it was intended to support. It was clearly the aggregate of the elements of the sanction that the Tribunal considered appropriate and proportionate. In our view, the Tribunal erred in not making the restriction order and suspended suspension order cotemporaneous.
88. We have considered whether this error is such as to enable us to set aside the entire sanction as Mr Levey has invited us to do if we concluded that the Tribunal had erred in imposing the sanction that they did. We do not consider that it is. This error as such was not one actively pursued by Mr Levey; and we consider that, by correcting it, we are doing no more than imposing the sanction which the Tribunal considered appropriate. However, in this respect, we have also had regard to Mr Levey’s final and overriding submission that, irrespective of any errors in their reasoning, the final sanction was “clearly inappropriate”. It is that to which we now turn.
89. Given the very serious nature of the findings made against Mr Dar by the Tribunal, Mr Levey contends that the sanction should have been considerably more severe. He referred us to the observations of the Master of the Rolls in Bolton, to which we have already referred (see paragraphs 69 and 75 above), and particularly the following (at 518B and D-E):

“Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees....

If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust.... The decision whether to strike off or to suspend will often involve a fine and difficult exercise of judgment, to be made by the tribunal as an informed

and expert body on all the facts of the case. Only in a very unusual and venial case of this kind would the tribunal be likely to regard as appropriate any order less severe than one of suspension.”

90. He also relied on these observations of Moses LJ in Solicitors Regulation Authority v Emeana [2013] EWHC 2130 (Admin) at [26]:

“The principle identified in Bolton means that in cases where there has been a lapse of standards of integrity, probity and trustworthiness a solicitor should expect to be struck off.... The very fact that an absence of integrity, probity or trustworthiness may well result in striking off, even though dishonesty is not proved, explains why the range of those who should be struck off will be wide. Their offences will vary in gravity. Striking off is the most serious sanction but it is not reserved for offences of dishonesty.”

91. In response, Mr Coleman submitted that the sanction which the Tribunal imposed in Mr Dar’s case was not “clearly inappropriate”: it did not fall outside the bounds of what the Tribunal could properly and reasonably decide (see Bawa-Garba at [67], quoted at paragraph 40 above). The SRA had never alleged dishonesty against Mr Dar. On the scale of seriousness applying to actions lacking integrity, the Tribunal had clearly taken the view that Mr Dar’s behaviour was at the less serious end, and that, as explained in their Decision, adequate protection for the public and the reputation of the profession could be achieved by a combination of sanctions including restrictions on practice reinforced by a suspended suspension.
92. With the alteration to the period of the suspension of the suspension order to which we have referred, we agree. In our view the combination of sanctions imposed by the Tribunal here, whilst perhaps unusual, was not wrong in the sense explained in Bawa-Garba. A finding of serious misconduct does not require striking off or an immediate suspension from practice, although no doubt that will be appropriate in most cases. The Tribunal had heard and seen Mr Dar give evidence, and were in the best position to assess the proper level of his culpability; and the appropriate and proportionate measures that would properly protect the public and the reputation of the profession.
93. We have concluded that the Tribunal did not err in their approach to – or conclusion in respect of – sanction, save as to the single error in failing to align the period of suspension with the period of restriction. We propose to correct that error by quashing the two year suspension and imposing instead an indefinite suspension of the suspension order. If Mr Dar breaches the terms of his restriction order (or otherwise is found to have committed further misconduct), then it is very likely if not certain that that suspension from practice will be activated. On the other hand, it is open to Mr Dar in the future to apply to have the restriction order lifted; and, if that application is successful, to have the aligned suspended suspension order also lifted.

The SRA Appeal against Sanction: Conclusion

94. For those reasons, although the SRA has succeeded in neither of the grounds of appeal against sanction as it especially pursued them, we formally allow the SRA

appeal. We vary the suspension order imposed by the Tribunal from a suspension from practice of one year suspended for two years, to a one of one year suspended indefinitely. The other orders so far as sanction is concerned will remain in place.