Neutral Citation Number: [2019] EWHC 981 (Admin)

Case No: CO/4230/2018

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/04/2019

Before :

MR JUSTICE MARTIN SPENCER

- -

Between :

Mr Mark Lorrell	**Appellant**
- and -	
Solicitors Regulation Authority	**Respondent**

- -
- -

Mr Richard O'Sullivan (direct access counsel) for the **Appellant**
Mr David Collins (instructed by **Capsticks Solicitors LLP**) for the **Respondent**

Hearing dates: 4th April 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE MARTIN SPENCER

Mr Justice Martin Spencer:

Introduction

1. The Appellant, Mark Lorrell, appeals against the Order of the Solicitors Disciplinary Tribunal ("SDT") dated 5 July 2018 whereby it ordered that he be struck off and pay costs of £35,700. There are five grounds of appeal: grounds 1 and 2 relate to sanction and grounds 3, 4 and 5 relate to the findings of misconduct. The time for appeal expired on 3 October 2018 but the application to appeal was not made until 24 October 2018, some 21 days out of time. There is accordingly an application for an extension of time.

The background facts

2. The Appellant, who was called to the Bar in November 1999, was admitted to the Roll of Solicitors on 1 August 2003 and in due course practised as managing partner of the firm Lorrells LLP from premises at 25 Ely Place, London EC1. That firm was eventually wound-up by way of a creditors' voluntary liquidation on 9 September 2015. For the purposes of this judgment, where I refer to the Appellant, that is also to be taken as a reference to the firm.

3. In August 2011 the Appellant was instructed by a Ms Amanda Clutterbuck in relation to proposed litigation arising from property dealings in London. The proposed defendants were a Ms Sara Al-Amoudi and Mr Elliott Nichol (deceased). On 5 August 2011 the Appellant sent to Ms Clutterbuck a "client care letter" which set out the scope of the instructions as follows:

> "You have instructed me to firstly review your claim and assume conduct of your claim against Miss Sara Al-Amoudi in place of your current solicitors, Jeffrey Green Russell, and to prepare and issue your claim against Mr Elliott Nichol's estate as well as investigate any claims that you may have against any other parties. If, after having considered your evidence, we offer to act for you under a CFA, the terms of which are attached hereto, and you do not instruct us and enter a CFA with us, then we are entitled to charge you for the work we have undertaken in assessing your claim at the hourly rate set out herein. We have also agreed to consider with a view to acting for you, any other claims that you may have against any other parties in respect of the losses you have suffered as a result of the defendant's and Mr Nichol's actions."

The letter also includes a section headed "Initial action" which states as follows:

> "In the first instance we will review the documents you have provided with a view to taking over conduct of your claim against Miss Al-Amoudi in the High Court and bringing your claim against Mr Nichol's estate as set out in the Letter of Claim dated 22 April 2011. To advise you and investigate the costs of an ATE policy and the possibility of a funder funding your claim."

Thus, as was submitted by Mr Collins for the Respondent and as I find, advice in relation to the funding of the litigation formed an express part of the Appellant's retainer. In any event, where a solicitor accepts instructions in relation to litigation, advice in relation to funding is an implied part of the retainer.

4. On 6 October 2011, Ms Clutterbuck entered into two Conditional Fee Agreements ("CFA") with the Appellant which, at paragraph 13.2, included the following clause:

> "Lorrell's responsibilities include always acting in the client's best interests, subject to Lorrell's overriding duty to the court, explaining to the client the risks and benefits of taking legal action, giving the client the best information possible about the likely costs of the claim and the different methods of funding those costs."

At paragraph 66.42 of its determination, the SDT found that the matter of funding was clearly integral with the Appellant's duty to Ms Clutterbuck and, again, on the basis of the CFA and the general duties of solicitors, I agree with this finding.

5. Over the next few months, it became necessary for Ms Clutterbuck to secure funding for the litigation and in May 2012 the Appellant introduced her to an existing client of his, Shoprite Limited, with a view to arranging funding. Following an initial meeting, Ms Clutterbuck agreed to take a loan from Shoprite Limited ("Shoprite") of £300,000 to be secured against shares that she owned in a Jersey registered company, Kiloran Properties Limited ("Kiloran"), which had a net value of approximately £1.3 million. There were two separate elements to the transaction: first the loan agreement between Shoprite Limited and Ms Clutterbuck; secondly the execution of the security by Kiloran Properties Limited. Both elements needed to be completed for the transaction to proceed.

6. The loan agreement is at pages 87-90 of the appeal bundle and records that Shoprite had agreed to lend Ms Clutterbuck the sum of £300,000 to be secured by a first priority security interest in her shares in Kiloran. In consideration of Shoprite agreeing to the immediate release of the loan, Ms Clutterbuck undertook on demand "To execute and to procure the execution by the nominees of the security interest agreement and to execute and to do and to procure the execution and doing by the nominees of all such deeds documents matters and things as Shoprite shall require in order to perfect its title to the shares in accordance with the terms of the security interest agreement." Clause 4 of the agreement contains certain acknowledgements and agreements by Ms Clutterbuck including the following:

> "4.2 That Shoprite may deduct from the loan its legal costs and an arrangement fee of £9,000 and that payment of the loan to Lorrells LLP to be applied by them in or towards satisfaction of costs owing by her to Lorrells shall be a good and sufficient discharge to Shoprite.
>
> 4.3 To the release and payment of the loan to Lorrells LLP and to the application of the balance of the loan in or towards satisfaction of costs owing by her to Lorrells LLP.

> 4.4 That Shoprite has retained Lorrells to advise it in respect of the loan and all aspects thereof (including but not limited to the drafting of the security interest agreement).
>
> 4.5 That Lorrells have informed Mrs Clutterbuck that they cannot accept instructions from her or offer her advice in respect of the loan or the drafting of the loan documents and that in these matters they are acting solely for and in the interests of Shoprite.
>
> 4.6 **That she has been advised by Lorrells, but has declined, to seek independent legal advice."** (emphasis added)

This agreement, and the clauses above, particularly clause 4.6, are at the heart of this case. Shoprite were, apparently, longstanding clients of the Appellant who did all their legal work for them. There is some dispute as to the date that the agreement was signed. On its face, it is dated 20 June 2012 and this is the date that the Appellant asserted that it was signed when he gave evidence to the SDT. Ms Clutterbuck suggested that it was signed on 22 or 23 July 2012. The SDT did not find it necessary to make a finding on this (which, as I explain in paragraph 41 below, was a serious omission from their determination) but it seems to me that the evidence was strongly in favour of the Appellant's case for two reasons. First, he was able to produce convincing evidence that he was abroad on holiday in Greece between 13 and 25 July 2012 (flight tickets, photographs on his mobile phone etc). Secondly, a letter written by Ms Clutterbuck to Kiloran on 20 July 2012 is more consistent with her having already signed the loan agreement than with the agreement remaining to be signed (see paragraph 7 below).

7. The letter from Ms Clutterbuck to Kiloran of 20 July 2012 is relevant in a number of respects. It reads as follows:

> "Following your email to me dated 16 July 2012, I'm becoming extremely concerned that, despite my requests, it has not been possible for you to arrange for the agreement ("the agreement") to be signed. While I'm sure that you are aware, the purpose of obtaining the funds pursuant to the agreement is so that I am able to pursue a number of claims against various parties and seek to recover substantial sums.
>
> It is essential that the agreement is signed and returned to my solicitors Lorrells LLP by Monday 23 July 2012 at 9am so that they are able to draw down on funds to instruct counsel on an urgent application listed for next Thursday 26 July 2012. Counsel requires substantial funds so that he can begin preparing for the hearing as a matter of urgency and attend the hearing itself to oppose the defendant's application.
>
> I understand that you are concerned:
>
> 1. To ensure that I, as beneficial owner of Kiloran Properties Limited ("Kiloran"), understand the full meaning, affect and ramifications of your entering into the agreement and that I have had the opportunity of seeking independent legal advice

> before instructing you to execute the same. I hereby give that confirmation and confirm in particular that I understand and accept that I/Kiloran risk losing the properties in whole or in part if I fail to repay the loan of £300,000 therein referred together with interest thereon of £75,000 within six months of the agreement being signed and the monies, currently held by Lorrells LLP, being released.
>
> 2. That there are insufficient funds held by you on behalf of Kiloran to enable you to seek legal advice on the full meaning, affect and ramifications of your entering into the agreement on my request and that you require me to provide you with a waiver and indemnify you in that connection. I therefore expressly acknowledge and accept that you have not obtained legal advice in connection with the agreement I require you to sign and furthermore I hereby accept, agree and undertake with you that in consideration of your entering into the agreement at my express request I (on behalf of myself and successors in title and assigns) will not hold … Kiloran Properties Limited or any of their directors or shareholders liable for (and that I will keep them fully and effectually indemnified against) any loss or damage incurred as a result of your entering into the agreement at my request and that I will not threaten or commence any proceedings or make any complaint to any regulatory body or otherwise based on your having entered into the agreement. This includes in particular the risk that I/Kiloran may lose the properties concerned in whole or in part in the circumstances described in 1. above."

It would appear that this letter was sent following a discussion between Ms Clutterbuck and a lawyer at Lorrells LLP, James Swead, reflected in an email sent by Mr Swead to Ms Clutterbuck on Sunday 22 July 2012 at 13:23 in which he refers to the discussion on Friday, and the need for the issue of funding to be resolved by the following morning because he, Mr Swead, was due to be in court from 9:30 and needed to be in funds to instruct counsel to commence preparing for the hearing/application later in the week. The fact that Ms Clutterbuck was dealing with Mr Swead also rather confirms that the Appellant was abroad at the time. Furthermore, it is inherently unlikely that Ms Clutterbuck would have been pressing Kiloran as hard as she was to execute the security agreement if she had not already herself signed the loan agreement. I expect that Ms Clutterbuck's recollection that the loan agreement was signed on 22 or 23 July was confusion on her part between the loan agreement and the security agreement.

8. In January 2013, advice was obtained from leading counsel to the effect that the prospects of success in Ms Clutterbuck's action against Miss Al-Amoudi were about 66% and that the value of the claim was in excess of £5 million. However, shortly thereafter, Ms Clutterbuck fell out with the Appellant because Shoprite had not been repaid the loan and proposed to foreclose on their security. In her statement to the SDT Ms Clutterbuck described being provided in February 2013 by Mr Swead with correspondence between Lorrells and Shoprite dealing with an application for an

extension of the loan for a fee of £9,000, with documents being prepared by Lorrells including notices on behalf of Shoprite, all this emphasising the conflict of interest which the Appellant had when representing both Shoprite and Ms Clutterbuck. In April 2013, Ms Clutterbuck terminated the Appellant's retainer and instructed new solicitors. In July 2013, Shoprite instructed Lorrells to commence proceedings for the recovery of the loan which involved realising the security and the sale of three properties owned by Kiloran. On 18 July 2013 a Claim form was issued in the Chancery Division of the High Court by Shoprite Limited against Ms Clutterbuck seeking an order that the defendant immediately execute the security interest agreement in view of the defendant's failure to repay the loan of £300,000.

9. The action between Ms Clutterbuck and Miss Al-Amoudi was heard by Mrs Justice Asplin (as she then was) starting on 3 July 2013 and lasted four weeks. Asplin J handed down judgment on 20 February 2014 and I think it is fair to say that this was disastrous for Ms Clutterbuck: her claim failed and, in respect of certain important aspects of her evidence she was disbelieved or her evidence was not accepted. For example, at paragraph 17 of the judgment, Asplin J recorded that Ms Clutterbuck had accepted in cross-examination that a statement that she had made in an e-mail of 10 May 2010 to Miss Al-Amoudi's litigation solicitor had been "completely untrue". At paragraph 22 Asplin J said:

> "… to the extent she had direct knowledge of the relevant events, Miss Clutterbuck's evidence was repetitious and guarded and she often failed to answer the questions put to her and I found that she too was an unsatisfactory witness. When evaluating her evidence I also take account of Miss Clutterbuck's false contention in relation to the fictitious court order and her conduct in relation to Miss Osborne and the planning application to which I have already referred."

There were further occasions when the learned Judge found herself unable to accept Ms Clutterbuck's evidence or explanations.

10. On 17 September 2015, Ms Clutterbuck wrote to the Solicitors Regulation Authority ("SRA") asking the SRA to investigate the Appellant and his firm. This complaint was principally in relation to sums of money which Ms Clutterbuck alleged had gone missing. The SRA commenced its investigation and this led to the disciplinary proceedings with which this appeal is concerned being brought before the SDT. However it is relevant to record that, in the meantime, further allegations in relation to matters post-dating the events concerning Ms Clutterbuck had been brought against the Appellant which led to separate disciplinary proceedings and a determination of the SDT in August 2016. The following allegations were found proved:

> "1.1 The respondent used, or permitted the use of, the client account of Lorrells LLP, solicitors, inappropriately by utilising it as a banking facility for a client contrary to Rule 14.5 of the SRA Accounts Rules 2011;
>
> 1.3 In acting in the manner alleged in allegation 1.1 above, the respondent failed to act with integrity and failed to behave in a way that maintains the trust the public placed in him and indeed

> provision of legal services contrary to Principles 2 and 6 of the [Solicitors Code of Conduct]."

The sanction imposed was that the Appellant was suspended from practice as a solicitor for a period of three months and ordered to pay costs fixed in the sum of £35,000.

The proceedings before the SDT

11. The allegations before the SDT which were found proved against the Appellant and with which this appeal is concerned were as follows:

> "1.1 In or after May 2012, accepted or caused the acceptance of, instructions to act for S Limited:
>
> 1.1.1 where such instructions were in conflict with the interests of client C for whom instructions had been accepted on a related matter or where there was a significant risk of such a conflict;
>
> 1.1.2 where said instructions gave rise to a conflict with the interests of the firm, or where there was a significant risk of such a conflict;
>
> and in doing so breached Principles 3, 4 and 5 of the SRA Principles 2011 and Outcomes 3.4 and 3.5 of the SRA Code of Conduct 2011.
>
> 1.1.5 By reason of the matters set out at 1.1 above did not act with integrity and so breached Principle 2 of the SRA Principles 2011. Failure to act with integrity is not an essential ingredient to allegation 1.1 above and it is open to the tribunal to find the allegation proved with or without a finding of failure to act with integrity."

The SDT heard evidence from Ms Clutterbuck and also from the Appellant, who represented himself in the proceedings. The hearing started on 2 June 2018 and finished on 5 June 2018.

12. The heart of the SDT's determination is to be found at paragraph 66.42 which reads:

> "It was not disputed that in May 2012 Miss C was a client of the firm in respect of various pieces of litigation or that the firm drafted the loan agreement for S Limited. The Tribunal found that the terms of the loan agreement at clause 4.4 were quite clear. The firm was retained to advise S Limited 'in respect of the loan and all aspects thereof'. … The CFA at 13.2 stated the firm's responsibilities included always acting in the client's best interests and: 'giving the client the best information possible about the likely costs of the claim and the different methods of funding those costs.'"
>
> The client care letter stated under the heading "Initial action":

"To advise you and investigate the costs of an ATE policy and the possibility of a funder funding your claim."

The loan agreement stated at paragraphs 4.5 and 4.6:

> "That [the firm] have informed [C] that they cannot accept instructions from her or offer her advice in respect of the loan or the drafting of the loan documents and that in these matters they are acting solely for and in the interests of [S Limited].
>
> That she had been advised by [the firm], but has declined, to seek independent legal advice."

The Respondent maintained that he did not act for Miss C in respect of the loan but that at the same time in his statement he said:

> "I was very cautious as I was not acting for Miss C but I remember reading through it … she read the agreement in my presence. I do not believe she had seen it before … in any event she read it through with me and she understood exactly what it meant."

Also in oral evidence the respondent confirmed that they had read through the loan agreement together. This action was an example of the extent to which the firm was involved in the funding issues. Miss C had some recollection of them reading it but was unclear about the date. The respondent in evidence accepted that finding funding for the case fell within his retainer. The Tribunal also noted for example the e-mail from JS of the firm to Miss C of Friday 20 July 2012 where JS said:

> "I have been trying to sort out the issue of funding for the best part of today to no avail"

That e-mail also set out the funding options; get K Limited to sign the necessary documentation over the weekend so the S Limited loan could be drawn down or otherwise provided £18,000 to the firm in the same timeframe. This was also consistent with the efforts that the respondent made later to get the loan extended. He was deeply involved in it. The Tribunal found that he could not cherry pick among his duties to the client and subdivide his duty to advise on funding litigation and to give her the best advice; the Tribunal found that the matter of funding was clearly integral to the respondent's duties to Miss C. The Tribunal considered that in the light of the other documentary evidence and the respondent's own evidence of how he had conducted the loan matter with Miss C going through it with her line by line before she signed it, clauses 4.4 and 4.6 in the loan agreement had not applied in practise. What the respondent and the firm did and the documentation were consistent with acting

> for Miss C in the round; on the litigation and the loan agreement, indeed the latter was part of the former.

At paragraph 66.44, the Tribunal stated that it was satisfied that C (Ms Clutterbuck) and S Limited (Shoprite) were both clients of the firm in respect of the loan/loan agreement and that there was a client conflict or significant risk of a conflict between them. That conflict lay in their differing interests. The SDT found that, in circumstances where the loan was intended to be short-term only and to be repaid, this raised "the spectre of default" where the clients would be pitched against each other. This meant that the clients did not have a "substantially common interest" and in the absence thereof, the conditions to be satisfied in Outcome 3.6 did not apply. The SDT then made the following finding:

> "66.44 … there was no informed consent to act for both clients from Miss C or S Limited. There was no evidence that it was reasonable for the respondent to act and it could not be in both clients' best interests on the Tribunal's analysis. In the circumstances the respondent could not be satisfied that the benefits to the clients outweighed the risk. The Tribunal found proved on the evidence to the required standard that the respondent had in or after May 2012 accepted or caused to be accepted instructions to act for S Limited where those instructions were in conflict with the interests of client C as alleged in 1.1.1.
>
> 66.45 The Tribunal considered that the respondent had by his actions breached his obligation not to allow his independence to be compromised (Principle 3), to act in the best interests of each client (Principle 4), and to behave in a way that maintains the trust the public places in you and in the provision of legal services (Principle 6). He had also breached Outcome (3.5) and acted where there was a client conflict and the exceptions in Outcome (3.6) did not apply. The Tribunal found allegation 1.1.1 proved on the evidence to the required standard in respect of the respondent accepting instructions from S Limited on the loan."

However, the SDT did not find allegation 1.1.1 proved in relation to the acceptance by the firm and the Appellant of instructions to act for Shoprite in the enforcement proceedings.

13. So far as allegation 1.1.2 is concerned the SDT noted paragraph 4.2 of the loan agreement and said:

> "66.47 … This gave the respondent an interest in the loan by way of recovering fees already incurred. The litigation could not go on without the loan and so the firm had an interest in it going forward as well. The firm also earned a fee from S Limited for the agreement; the fact that on the respondent's evidence the firm's fee was £2,000 which the respondent deemed modest in the overall turnover of the firm at that time did not undermine

> his own client conflict. The respondent submitted that the client was sophisticated in litigation matters; this might affect the way in which the solicitor dealt with the client but it did not weaken the solicitor's duty to the client. The Tribunal found allegation 1.1.2 proved on the evidence to the required standard in respect of accepting instructions to act for S Limited in respect of the loan and that this constituted a breach of Principles 3, 4 and 6 and of Outcome (3.4), you do not act if there is an own interest's conflict or a significant risk of an own interest conflict. However, as with allegation 1.1.1, the Tribunal did not find this allegation proved in respect of acting for S Limited to enforce the loan."

14. Finally, the Tribunal turned to allegation 1.5 and the alleged failure to act with integrity. It referred to *SRA v Wingate and Evans* and in particular the reference to "subordinating the interests of the clients to the solicitors' own financial interests". The SDT found:

> "66.48 … The Tribunal considered that the respondent had behaved in a cavalier fashion in respect of the firm taking instructions from S Limited to act regarding its loan to Miss C. He had preferred the interests of client (S Limited) over another (Miss C). He did not advise her of the risks she was taking by the loan; she exposed herself to an interest rate of 56%. There was an alternative – to pay the firm to cover immediate needs only; £15,000 plus VAT by way of counsel's fees for an imminent hearing but no advice was given to Miss C about that. There was no evidence she was advised to seek independent advice and on the respondent's own evidence, she was not. The respondent merely relied on the clauses in the loan agreement that said that she had been so advised. JS's letter of the Friday preceding the imminent hearing presented just the two stark choices: take the loan or make a cash payment into the firm. The respondent sought out the loan arrangement and Miss C was encouraged to go into it. She alleges that she was bullied to do so; the Tribunal took no view about that but in any event the respondent allowed her to go ahead with the loan which benefitted the firm because it enabled the litigation to continue and was favourable to a long-standing client of the firm. The Tribunal considered that the respondent had failed to adhere to the ethical standards required of the solicitor's profession in behaving as he did regarding the loan. The Tribunal found allegation 1.5 proved to the required standard on the evidence and found that the respondent had failed to act with integrity in respect of allegation 1.1."

15. In relation to sanction, the SDT dutifully recorded at paragraph 71 of its determination the Appellant's submissions in relation to mitigation. He submitted that his actions had been taken after he had discussed the matter with another experienced lawyer, the benefit to the firm had been minimal (£2,000 for drafting the loan agreement) and in any event Miss C would have gone ahead with the loan and the firm would have received the fees had she received independent legal advice so this was not a case of a

deliberate decision to undertake misconduct in order to obtain a windfall for the firm. He submitted that he had made a judgement call which, on the findings of the Tribunal, had been wrong but it was not misconduct over a period of time and no vulnerable person had been involved there had been no attempt to conceal what had happened.

16. In its decision on sanction, the SDT found that, despite what the respondent had said in mitigation, "He had caused harm by his action; the client entered into a loan agreement with a punitive rate of interest without advice. She ended up in default." It found that the Appellant had displayed a cavalier attitude in relation to the effect on the client of his behaviour and this was an aggravating factor as was the fact that he had acted in this way over a period of time. It found that he ought reasonably to have known that he was in material breach of his obligations to protect the public and the reputation of the legal profession. It said:

> "The Tribunal did not consider that there were any relevant mitigating factors. The Tribunal considered that the respondent's actions had been a classic example of a solicitor departing from the complete integrity, probity and trustworthiness expected of a solicitor with the commensurate harm to the reputation of the profession and he had acted in this way on more than one occasion as the previous experience at the Tribunal showed."

The Tribunal was not impressed that, despite the Appellant's experience of appearing at the previous disciplinary tribunal hearing, he had not displayed

> "any insight into his misconduct at this hearing. His demeanour towards the Tribunal was as cavalier as that towards his client. He viewed the findings as a difference of opinion with the Tribunal preferring its judgement to his. It had been suggested for the applicant that the respondent was incompetent. The Tribunal disagreed; he was competent as a lawyer but disregarded the interests of his client as he saw fit."

17. Having found that the matter was too serious for no order or a reprimand or a fine the Tribunal stated as follows:

> "There was no indication that restrictions or a further suspension would prevent the respondent, who was currently practising as a barrister, from acting in the same way again if he decided to return to practise as a solicitor. Dealing with client or own client conflict was an important part of a solicitor's role and vital to protecting clients whether vulnerable or sophisticated; any client needed to be fully and properly advised on their options; this client had been operating under the pressure of costly and complex litigation with imminent deadlines. The Tribunal determined that for the protection of the public and the reputation of the profession the respondent must be struck off."

In addition, the Appellant was ordered to pay costs in the sum of £35,700.

Extension of Time

18. First, it is necessary for me to consider the need for the Appellant to be granted permission to proceed with this appeal out of time given that the Notice of Appeal was late. Without needing to go into the detail, and with due deference to the understandable submissions which Mr Collins was entitled to make on behalf of the Respondent, it is clear from the evidence that the serious illness of the Appellant's father intervened at a critical time so as to impede the Appellant's ability to deal with this appeal, such circumstances being very difficult when the Appellant had represented himself before the SDT. There is no suggestion of any prejudice to the Respondent from the fact that this Notice of Appeal was 21 days late and having considered carefully all the matters relied upon by Mr Collins in both his written and oral submissions I nevertheless take the view that, in the interests of justice, and given the seriousness of the consequences for this Appellant should he be refused an extension of time, it is appropriate for me to exercise my discretion in his favour.

19. In so deciding, I should mention that, had I considered for one moment that the approach of the Appellant to this appeal was in the same category as his approach to the original hearing before the SDT, I would not have countenanced his application for relief from sanction. I am referring to the fact that, with a hearing due to start on 12 December 2017, the Appellant had arranged to return from holiday on a flight which, when it was delayed (as is always a risk), meant that his appearance could not be before late afternoon on 12 December with the loss of one day. However, the evidence which the Appellant has adduced relating to the 21 day delay in filing his Notice of Appeal has compellingly convinced me that he had a genuine and justifiable reason for his failure to comply with the time limit and that in those circumstances I grant the necessary extension of time for the appeal to proceed.

Grounds of Appeal: Breach

20. There are five grounds of appeal: the first two relate to sanction, the other three relate to the findings of breach of the Solicitors Rules. The grounds of appeal relating to breach are as follows:

    i) Ground 3 – Irrationality: making contradictory findings regarding the information provided by the complainant

    ii) Ground 4 – Error of law in interpretation of the loan agreement

    iii) Ground 5 – Irrationality – ignoring evidence in writing that the complainant had been advised to take independent legal advice.

    <u>Ground 3</u>

21. In relation to the suggestion that the SDT had made contradictory findings, Mr O'Sullivan, for the Appellant, contrasted the findings in paragraph 66.42 and 66.48 of the SDT's determination. In the former, the SDT said, by reference to Mr Swead's e-mail of 20 July 2012, that two funding options had been set out: to get K Limited to sign the necessary documentation over the weekend so that the loan from S Limited could be drawn down; or otherwise provide £18,000 to the firm in the same timeframe. In the latter paragraph, the Tribunal said:

> "There was an alternative – to pay the firm to cover immediate needs only; £15,000 plus VAT by way of counsel's fees for an imminent hearing but no advice was given to Miss C about that."

Thus it is suggested that the SDT contradicted itself. However, in my judgment it is clear that, in paragraph 66.48, the SDT was referring not to the failure to give advice about the existence of the option of paying the £18,000 but the merits of that option as opposed to the alternative of drawing down the loan from Shoprite Limited. On that basis, there is no contradiction and, in my judgment, no merit in this argument whatsoever.

Ground 4

22. Next, Mr O'Sullivan submitted and argued that the SDT had erred in law in its interpretation of the loan agreement and that it had been no part of the Appellant's retainer to provide advice on litigation funding. It was submitted that there was no express retainer in respect of advice as to the risks associated with a loan or other agreement entered into in order to obtain funds for the litigation, nor should such a retainer be implied. It was submitted that Ms Clutterbuck was a sophisticated person well-versed in legal transactions, particularly those involving finance and property, having been engaged in the business of acquiring, refurbishing, letting, selling and financing the development of properties in the Knightsbridge, Belgravia, Chelsea and Westminster areas of London since 1985. She was used to dealing with complex legal matters of a high value nature. Mr O'Sullivan submitted that whilst the Appellant was acting for Ms Clutterbuck in the main action, he was not, on the face of the terms of the loan agreement, acting for her in respect of the loan and it was enough for the Appellant to advise her to take independent legal advice, which she declined to do and which was a matter for her choice. He pointed to Ms Clutterbuck's letter of 20 July to Kiloran as showing that she had the necessary knowledge of the risk she was entering into and, with such a client, it was sufficient for the Appellant to advise her to take legal advice. He submitted:

> "By telling the client that he was not acting for her he took the necessary step (in conjunction with advising her to seek independent legal advice) to divest himself of the retainer in relation to the loan agreement."

23. Mr O'Sullivan challenged the finding of the SDT that "there was no evidence she was advised to seek independent advice and on the respondent's own evidence, she was not": as recorded by the SDT, the Appellant had read through the agreement line by line and at no stage did Ms Clutterbuck suggest that she was unaware of the content of clause 4.6 of the loan agreement. He challenged the finding of the SDT that clauses 4.4 and 4.6 had not applied in practice and that both what was done and the documentation were consistent with the Appellant acting for Ms Clutterbuck in the round, both on the litigation and in relation to the loan agreement, the latter being part of the former.

24. For the Respondent, Mr Collins submitted that it was clear from the documentation and from the circumstances that advice on funding was part of the retainer. See paragraphs 3 and 4 above in this judgment. He supported the decision of the SDT that, in such circumstances, it is not possible for a solicitor to divest himself of his obligation to a client, and certainly not in favour of another client in order to support, inter alia, the

solicitor's own commercial interests. He submitted that the Appellant had a duty to advise Ms Clutterbuck on the risks she was taking on in respect of the loan agreement and the funding and that was not an obligation of which he could divest himself in the way that he purported to do.

Discussion on Ground 4

25. In my judgment the Tribunal was wholly entitled to come to the conclusion that it did and the Respondent is correct in its submissions. There is no doubt that the Appellant was in a position of conflict in representing both Ms Clutterbuck and Shoprite. With a short-term loan agreement and the "spectre of default" it was imperative that Ms Clutterbuck had independent legal advice. If the Appellant was to take the view that his interests lay in representing Shoprite rather than Ms Clutterbuck, for him to advise Ms Clutterbuck to obtain independent legal advice was, in my judgment, inadequate. He should not have proceeded with the execution of the loan agreement without insisting and ensuring - if necessary at his own expense - that Ms Clutterbuck had independent legal advice. In my judgment, in the circumstances of this case, it was a serious error on the part of the Appellant to choose to represent Shoprite Limited rather than Ms Clutterbuck in relation to this agreement; but even if that is not right, his duty to his client (Ms Clutterbuck) meant that it was insufficient simply to advise her to obtain independent legal advice. It is in the absence of such advice having been obtained and Ms Clutterbuck being independently represented in relation to the entering into of the loan agreement, that the Tribunal found that clauses 4.4 and 4.6 had not applied in practise. Those clauses indicate that the Appellant was aware of the conflict of interest that existed. However, his response was inadequate and the SDT was, in my judgment, entitled to make its findings in relation to allegations 1.1.1 and 1.1.2.

Ground 5

26. Mr O'Sullivan's final argument was that the SDT had made an irrational finding when it stated that "There was no evidence that the complainant was advised to seek independent advice" when it was plain from the clauses of the loan agreement which Ms Clutterbuck had signed which had been read through to her line by line that she had been advised to seek independent advice.

27. In the light of my findings above, it is unnecessary for me to decide this issue but, for the sake of completeness, I interpret the findings of the SDT to be that there was no separate advice by the Appellant to Ms Clutterbuck to seek legal advice independent of the terms of clause 4.6 of the loan agreement. Thus, what was required was not simply bare advice, conveyed through a written agreement, to seek independent legal advice but also an explanation as to <u>why</u> this was not merely desirable but necessary. In the absence of evidence that this had been clearly explained to Ms Clutterbuck by the Appellant before she came to sign the loan agreement, it was inadequate simply to insert such a clause into the agreement and obtain the client's consent and signature thereto.

Lack of Integrity

28. Finally, although no separate submissions have been made in relation to it, I consider the SDT's findings in relation to allegation 1.5 and that the Appellant failed to act with integrity. Again, for the reasons stated by the SDT, they were, in my judgment, entitled to make the findings that they did. Given the firm's own interests and the finding that

allegation 1.1.2 was proved, with the benefit to the Appellant in the loan funding being secured, there was a lack of integrity. As the Tribunal found, "It enabled the litigation to continue" as well as being favourable to a longstanding client of the firm, namely Shoprite. This was not merely the securing of the fee of £2,000 for the firm. The funding enabled Ms Clutterbuck to be properly represented by counsel at the forthcoming application in the litigation and thereby increased her chances of success in that litigation. Success in the litigation would represent a potentially large benefit to the firm and to the Appellant.

29. In the circumstances, in my judgment there is no merit in the appeal against the findings of the SDT in respect of breach.

Sanction

30. Before considering the submissions on sanction, it is appropriate to remind myself of the court's powers in relation to appeals of this nature, and the guidance from the Court of Appeal on the exercise of those powers. CPR 52 provides:

> "52.20
>
> (1) In relation to an appeal the Appeal Court has all the powers of the lower court.
>
> (2) The Appeal Court has power to –
>
> a. Affirm, set aside or vary any order or judgment made or given by the lower court;
>
> b. Refer any claim or issue for determination by the lower court;
>
> c. Order a new trial or hearing;
>
> …"

By CPR 52.21(3) an Appeal Court will allow an appeal where the decision of the lower court was "wrong".

31. In an appeal from a profession's regulatory or disciplinary tribunal, an Appeal Court has to decide how much deference it should accord to the decision of the tribunal members. In *Council for the Regulation of Healthcare Professionals v General Medical Council* [2005] 1 WLR 717, the Court of Appeal formulated the approach as follows, at paragraph 78:

> "Where all material evidence has been placed before the disciplinary tribunal and it has given due consideration to the relevant factors … the court should place weight on the expertise brought to bear in evaluating how best the needs of the public and the profession should be protected. Where, however, there has been a failure of process, or evidence is taken into account on appeal that was not placed before the disciplinary tribunal, the

> decision reached by the tribunal will inevitably need to be reassessed."

In *Newfield v Law Society* [2005] EWHC 765 (Admin), a case in which a solicitor unsuccessfully appealed to the Divisional Court against an order that he be struck off the roll, David Steel J stated:

> "In my judgment a professional disciplinary tribunal still remains the body best fitted to assess the seriousness of professional misconduct and an appellate court should be slow, save in a clear case, to interfere in the sentence of a relevant tribunal."

32. In *Law Society v Salisbury* [2009] 1 WLR 1286, Jackson LJ surveyed the authorities including *Bolton v Law Society* [1994] 1 WLR 512 where Sir Thomas Bingham MR had stated the guiding principles as follows:

> "It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness … 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. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the roll of solicitors. Only infrequently, particularly in recent years, has it been willing to order the restoration to the roll of a solicitor against whom serious dishonesty had been established even after a passage of years, and even where the solicitor had made every effort to re-establish himself and redeem his reputation. 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. A striking-off order will not necessarily follow in such a case but it may well. 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."

Jackson LJ, in *Salisbury's* case, concluded that the statements of principle set out by Sir Bingham MR in *Bolton v Law Society* remain good law subject to this qualification: in applying the *Bolton* principles the Solicitors Disciplinary Tribunal must also take

into account the rights of the solicitor under Articles 6 and 8 of the ECHR. Jackson LJ said:

> "It is now an overstatement to say that 'a very strong case' is required before the court will interfere with the sentence imposed by the [SDT]. The correct analysis is that the [SDT] comprises an expert and informed tribunal, which is particularly well placed in any case to assess what measures are required to deal with defaulting solicitors and to protect the public interest. Absent any error of law, the High Court must pay considerable respect to the sentencing decisions of the tribunal. Nevertheless if the High Court, despite paying such respect, is satisfied that the sentencing decision was clearly inappropriate, then the court will interfere. It should also be noted that an appeal from the [SDT] to the High Court normally proceeds by way of review: see CPR 52.11(1)."

33. In relation to lack of integrity, Mr O'Sullivan, for the Appellant, cites *Solicitors Regulation Authority v Wingate* [2018] EWCA Civ 366 where Jackson LJ, giving the judgment of the court, noted that integrity is a more nebulous concept than honesty and is less easy to define. He said:

> "100. 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.
>
> 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:
>
> … (iii) Subordinating the interests of the client to the solicitor's own financial interests …
>
> 102. Obviously, neither the 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."

Jackson LJ then referred to the Principles contained in the SRA's Code of Conduct. In relation to Principle 6, he said:

> "Principle 6 is directed to preserving the reputation of, and public confidence in, the legal profession."

The SDT's Guidance

34. Before considering the submissions in relation to sanction, it is also appropriate to consider the SDT's Guidance Note for Sanctions (5th edition, December 2016) which provides:

> "16. The tribunal will assess the seriousness of the misconduct in order to determine which sanction to impose. Seriousness is determined by a combination of factors, including:
>
> - The respondent's level of culpability for their misconduct.
> - The harm caused by the respondent's misconduct.
> - The existence of any aggravating factors.
> - The existence of any mitigating factors.
>
> **Culpability**
>
> 17. The level of culpability ('responsibility for fault or wrong') will be influenced by such factors as (but not limited to):
>
> - The respondent's motivation for the misconduct.
> - Whether the misconduct arose from actions that were planned or spontaneous.
> - The extent to which the respondent acted in breach of a position of trust.
> - The extent to which the respondent had direct control of or responsibility for the circumstances giving rise to the misconduct.
> - The respondent's level of experience.
> - The harm caused by the misconduct.
> - Whether the respondent deliberately misled the regulator.
>
> **Harm**
>
> 18. In determining the harm caused by the misconduct, the tribunal will assess:
>
> - The impact of the respondent's conduct upon those directly or indirectly affected by the misconduct, the

public, and the reputation of the legal profession. The greater the extent of the respondent's departure from the 'complete integrity, probity and trustworthiness' expected of a solicitor, the greater the harm to the legal profession's reputation.

- The extent of the harm that was intended or might reasonably have been foreseen to have been caused by the respondent's misconduct.

Aggravating features

19. Factors that aggravate the seriousness of the misconduct include (but are not limited to):

- Dishonesty where alleged and proved.
- Misconduct involving the commission of a criminal offence not limited to dishonesty.
- Misconduct which was deliberate and calculated or repeated.
- Misconduct continuing over a period of time.
- Taking advantage of a vulnerable person.
- Concealment of wrong doing.
- Misconduct where the respondent knew or ought reasonably to have known that the conduct complained of was in material breach of obligations to protect the public and the reputation of the legal profession.
- Previous disciplinary matters before the tribunal where allegations were found proved.
- The extent of the impact on those affected by the misconduct.

Mitigating factors

20. Factors that mitigate the seriousness of the misconduct itself include (but are not limited to):

- Misconduct resulting from deception or otherwise by a third party (including the client).
- The timing of and extent to which any loss arising from the misconduct is made good by the respondent.

- Whether the respondent voluntarily notified the regulator of the facts and circumstances giving rise to misconduct.

- Whether the misconduct was a single episode or one of very brief duration in a 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 co-operation with the investigating body.

Particular sanctions

21. Having determined the seriousness of the misconduct, the tribunal will assess whether to make an order and if so which sanction to impose. The tribunal, in making this assessment will start from the least serious option.

…

Suspension

35. 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 or a fine is a sufficient sanction or in all the circumstances appropriate.

- There is a need to protect both 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.

> 36. Suspension from the roll, and thereby from practise, reflects serious misconduct.
>
> 37. Suspension can be for a fixed term or for an indefinite period. A term of suspension can itself be temporarily suspended.
>
> …
>
> **Striking off the Roll**
>
> 44. Where the tribunal has determined that:
>
> - The seriousness of the misconduct that is at the highest level such that a lesser sanction is inappropriate, and
> - The protection of the public or the protection of the reputation of the legal profession requires it
>
> The tribunal will strike a solicitor's name off the roll.
>
> …
>
> **Absence of dishonesty**
>
> 48. Striking off can be appropriate in the absence of dishonesty where, amongst other things:
>
> - The seriousness of the misconduct is itself very high and
> - the departure by the respondent of the required standards of integrity, probity and trustworthiness is very serious."

35. In the light of the above, Mr O'Sullivan points out that what the SDT in this case conspicuously failed to find was that "The seriousness of the misconduct is at the highest level" (see paragraph 44 of the Guidance above). He submits that, in the absence of such a finding, it was not open to a reasonable and rational tribunal following its own guidance to strike the Appellant from the roll. He submitted that, in considering sanction, the SDT in this case applied the most draconian sanction available to it, reserved for the most serious misconduct, without first making the findings required to support such a sanction. Thus the tribunal failed to invite specific submissions on what sanction it should impose and failed properly to consider its powers short of strike off as it should have done.

36. Secondly, Mr O'Sullivan submitted that the SDT's reasoning in deciding to strike off the Appellant was perverse where it said that there was no indication that a further suspension would prevent the Appellant from acting in the same way again should he decide to return to practise as a solicitor. He pointed out that the Appellant had himself requested his removal from the Roll of solicitors, an indefinite period of suspension could have been imposed which would have required the Appellant to make an

application to lift it or a period of suspension could have been imposed that was itself suspended unless and until the Appellant returned to practise as a solicitor. Furthermore, given the terms of the finding of misconduct, namely that the Appellant had made judgment calls that the Tribunal considered he was unable to make, sanction and restriction including re-education could have been ordered. Mr O'Sullivan submits that the real reason why the SDT thought that no sanction short of striking off would be appropriate was because any lesser not have been sufficiently punitive. In that regard he submitted that the SDT had erred in fact and law by imposing a sanction for the purposes of preventing practise as a solicitor that had an entirely disproportionate effect and had led to an interim suspension of the Appellant's practising certificate as a barrister and a further disciplinary hearing.

37. For the Respondent, Mr Collins reminded me that the SDT is a specialist tribunal and he refuted any suggestion that the Appellant's conduct in the course of the hearing had clouded the Tribunal's judgment when it came to sanction. He submitted that the sanction decision had focused on the correct relevant issues including the Appellant's insight which was lacking as shown by the Appellant's reference to his view and the Tribunal's findings being no more than a difference of opinion with the Tribunal preferring its judgment to his.

38. Mr Collins set out the factors legitimately taken into account by the SDT in reaching the sanction that it did:

- The Appellant's motivation to keep a client who was good source of work at the expense of another;
- His cavalier approach in so doing;
- His overlooking of the basic standards of client care;
- The fact that the Appellant had direct control and responsibility for the matter;
- The finding that he had caused harm;
- The fact that he was an experienced solicitor;
- His lack of insight;
- The Tribunal's finding that there was no relevant mitigation;
- The finding that this was a classic example of lack of integrity, was not a borderline case but one at the upper end of the scale;
- The previous finding of lack of integrity;
- The Appellant's lack of appropriate reflection on what amounts to lack of integrity, despite the findings of the previous tribunal;
- The fact that dealing with conflicts of interest is an integral part of a solicitor's role.

39. Mr Collins therefore submitted that the decision to strike off was not one that was plainly wrong and I would need so to find before I could reasonably interfere. He also reminded me that an important aspect is the reputation of the profession and the extent to which that would be damaged by a failure to strike off the role a solicitor who had acted with the degree of lack of integrity shown by this Appellant.

Discussion on Sanction

40. In my judgment, there are aspects to the decision of the SDT on sanction which indicate a lack of clarity of thought on their part in relation to this particular Appellant. Firstly, I am puzzled by the reference in the SDT's reasons to the fact that, in spite of what the Appellant had said in mitigation, he had "caused harm by his action; the client entered into a loan agreement with a punitive rate of interest without advice. She ended up in default." The implication of this is that the SDT thought that, with appropriate advice, Ms Clutterbuck would not have taken the course that she did and entered upon the loan agreement with its rate of interest. However, there was no clear finding to that effect and, in my judgment, such a finding would have been surprising. It is in this context that the letter sent by Ms Clutterbuck to Kiloran on 20 July 2012 assumes significance. What appears abundantly clear from that letter is that Ms Clutterbuck was fully aware of the risks she was running in entering into this transaction: despite her appreciation of those risks she was cajoling Kiloran to complete the security agreement. She recognised that she was at risk of losing the properties which formed the security if she failed to repay the loan and she recognised her obligations which she was taking on. She willingly took on the obligation of indemnifying Kiloran and its directors in terms which indicated that she fully understood the implications of the indemnity and her relationship with the various parties. Racking my brains, I am unable to think of anything which a solicitor, independently instructed to advise Ms Clutterbuck, could have said to her which, through this letter, she has indicated she did not already know. It is particularly in relation to this aspect that Ms Clutterbuck's sophistication, experience and knowledge comes into play and I can see no basis upon which the SDT could have found that, by failing to ensure that Ms Clutterbuck had independent legal advice, the Appellant had caused harm.

41. Furthermore, although the Tribunal purported to find that the timing of the loan agreement was immaterial, it seems to me that the terms of their findings implied an assumption on their part that it was on or about 23 July 2012: hence, the reference to the alternative course of paying the immediate sum required of £15,000 plus Vat by way of counsel's fees "for an imminent hearing" but with no advice being given to Ms Clutterbuck about that. This is, of course, incorrect if the agreement was made on 20 June 2012 as at that stage there was no imminent hearing and no stark choice between entering into the loan agreement and providing £18,000. In my judgment, if the SDT was to make its findings on that basis, it needed to consider and articulate its reasons for finding that the loan agreement was made on or about 23 July 2012. However, for the reasons stated in paragraphs 6 and 7 above, it appears to me that the evidence was almost overwhelming that the agreement was entered into on 20 June 2012 as asserted by the Appellant and that, far from the Appellant putting pressure on Ms Clutterbuck to complete the agreement on or about 23 July 2012, it was Ms Clutterbuck who was putting pressure on Kiloran to complete the security agreement. The alternative of paying £18,000 was put to Ms Clutterbuck by Mr Swead on 20 July 2012 when the security agreement had not been completed by Kiloran and therefore the loan sums

could not be released but it seems clear from Ms Clutterbuck's letter to Kiloran that she was intent upon completing the loan agreement which included, for it to take effect, the security agreement. It therefore seems to me that the SDT have made a judgment about the seriousness of the Appellant's misconduct upon a wrong or false basis and that more than justifies interference with, and re-consideration of, the sanction. If the SDT were to assess the Appellant's conduct by reference to a finding as to the date that the loan agreement was entered into, it needed to make such a finding specifically, and justify that finding by reference to the evidence.

42. From the Guidance document, it is clear that suspension from the roll reflects serious misconduct including the need to protect the public and the reputation of the legal profession from future harm from the practitioner by removing their ability to practise. Lack of integrity is not in the same category as lack of dishonesty and does not lead inexorably to the solicitor being struck of the roll. As the guidance makes clear, striking off may still be appropriate in the absence of dishonesty where the seriousness of the misconduct is itself very high and the departure by the solicitor from the required standards of integrity, probity and trustworthiness is very serious. As Mr O'Sullivan submitted, the seriousness of the misconduct needs to be at the highest level for the Tribunal to conclude that the lesser sanction of suspension, as opposed to striking-off, is inappropriate or inadequate.

43. Despite the matters submitted by Mr Collins, I cannot see that the lack of integrity and probity here was even arguably at the highest level such as to justify striking the Appellant off the roll. The Appellant took the view that, with a client of the calibre of Ms Clutterbuck, it would be sufficient for her to be advised to seek independent legal advice and that if she declined to do so, this would not be because of any lack of understanding on her part of the risks involved. The clause of the loan agreement that she had been advised, but had declined, to obtain independent legal advice was read out to her without demur on her part. From reading all the various letters and statements made by Ms Clutterbuck, there is no doubt in my mind that, had she had any misgivings about entering into this loan agreement without obtaining such advice, she would have demurred and would have raised objection. If, as appears to me, the loan agreement was entered into in June 2012, she had plenty of time and opportunity to do so and the fact that she did not do so further strengthens the point. Thus, between 20 June 2018 and 22 July 2018, although she had signed the loan agreement, she could have taken legal advice or reconsidered the matter and it would not have been too late because the security agreement had not yet been completed and the loan agreement could not take effect without it being completed.

44. In the circumstances, in my judgment no reasonable tribunal could have concluded, upon a proper consideration of the facts in this case and the circumstances that existed in June/July 2012, that this Appellant's conduct was at the high end of lack of integrity such as to mean that striking off the roll was necessary. The Appellant had not had an opportunity to learn from the previous finding of the SDT because the events in question predated that Tribunal's decision. Furthermore, it seems to me unfair that the SDT visited upon this Appellant his robust defence of his actions in relation to Ms Clutterbuck as showing lack of remorse or insight despite the findings of the previous tribunal. Of course, were the Appellant to return to practise as a solicitor and were he to engage in such conduct again, the situation would be very different and it is difficult to imagine that any sanction short of striking off the roll would then be appropriate.

45. In the circumstances, I allow the appeal against sanction, and I impose in place of the striking-off a period of suspension from practise for a period of two years: this period is intended to take into account the fact that the SDT struck off the Appellant on 5 July 2018 at the conclusion of the hearing and so he has already been in a position equivalent to suspension for a period of 10 months. The Order for costs made by the SDT shall remain.