Neutral Citation Number: [2022] EWHC 124 (Admin)

Case No: CO/1078/2021

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

IN RE THE SOLICITORS ACT, 1974
IN RE AN APPEAL FROM THE SOLICITORS DISCIPLINARY TRIBUNAL

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 January 2022

Before :

MRS JUSTICE COCKERILL

- -

Between :

TONY NORMAN GUISE	**Claimant**
- and -	
SOLICITORS REGULATION AUTHORITY	**Defendant**

- -
- -

Mr Guise appeared in person and was not represented
Mr Benjamin Tankel (instructed by **Capsticks Solicitors LLP**) for the **Defendant**

Hearing date: 12 January 2022

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii and The National Archives. The date and time for hand-down is deemed to be Friday 21 January 2022 at 10:30am.

Cockerill J:

1. This is an appeal pursuant to s.49(1) of the Solicitors Act 1974, against the decision of the Solicitors' Disciplinary Tribunal in a prosecution referred by the Solicitors Regulation Authority ("SRA") dated 25 January 2021 (handed down 26 February 2021) ("the Judgment").

2. It is brought by Mr Tony Guise ("Mr Guise"). Mr Guise was admitted to the Roll of Solicitors in 1986. Prior to the events which gave rise to the Judgment he was an experienced commercial litigation solicitor of high repute.

3. By that Judgment, made following a six day remote hearing which lasted between 18 and 25 January 2021 and at which considerable factual evidence was called, the SRA ordered that Mr Guise be struck off the Roll of Solicitors and that he do pay the costs of and incidental to the enquiry in the sum of £55,824.81.

4. This Judgment reflected the decisions made against Mr Guise in respect of two allegations:

> "1.1 Between or around 23 July 2014 and 14 August 2015, he made one or more unauthorised transfers of monies from CLAN Commercial Services Limited ("CCS") as set out in Schedule 1. He thereby breached all or any of Principles 2 and 6 of the SRA Principles 2011.
>
> 1.2 Between or around 13 November 2014 and 5 August 2015, he made one or more unauthorised transfers of monies from the client account of Guise Solicitors Ltd ("the Firm"), as set out in Schedule 2. He thereby breached all or any of 20.1 of the SRA Accounts Rules 2011, and Principles 2, 4, 6 and 10 of the SRA Principles."

5. In addition, Allegations 1.1 and 1.2 were advanced on the basis that Mr Guise's conduct was dishonest. Dishonesty was alleged as an aggravating feature of Mr Guise's misconduct. The SDT found it to be established beyond reasonable doubt. (The relevant standard of proof in relation to solicitors' disciplinary proceedings at the time was the criminal standard of proof).

6. This appeal is confined to an appeal against the decisions on liability. Mr Guise sensibly accepted that if those findings held, the sanction could not be challenged.

7. The essential grounds of appeal are lengthy and detailed. They were supported by a very detailed skeleton argument. The Grounds and arguments contain a considerable degree of overlap. Both were to some extent streamlined in oral argument. In summary, it was Mr Guise's case that:

   i) the Tribunal materially erred in law in relation to both allegations in neglecting to consider *Gestmin SGPS S.A. v Credit Suisse (UK) Limited & Anor* [2013] EWHC 3560 (Comm);

ii) In relation to Allegation 1.1 the Tribunal materially erred in law in failing to conclude that CLAN was a shadow director of CCS and in failing to give reasons for this rejection;

iii) In relation to Allegation 1.1 the Tribunal erred in making critical judgments of fact which had no basis in the evidence, and/or demonstrably misunderstanding relevant evidence and/or a demonstrable failure to consider relevant evidence in relation to:

a) The 2014 Transactions;

b) The honesty of Mr MB and Ms S Dunn;

c) The Promise;

d) The Shadow Director issue;

e) The Ownership of the funds;

f) Removal from the Bank Mandate

g) Use of Money

h) Misstatement of pleaded case;

iv) In relation to Allegation 1.2 the Tribunal erred in making critical judgments of fact which had no basis in the evidence, and/or demonstrably misunderstanding relevant evidence and/or a demonstrable failure to consider relevant evidence in relation to:

a) The relevance of the decision of the Adjudication Panel;

b) Misunderstanding of the value of the material transfers

c) Dealings with RC

d) The Nine emails;

e) Client A needed his funds to buy a house.

The Legal backdrop to the appeal

The test on appeal

8. Although the legal principles applicable to this appeal were not in issue as such, there was certainly a difference in apparent understanding of them.

9. Mr Guise referred me to *SRA v Good* [2019] EWHC 817 (Admin) at [29] and the citation there of the judgment of Lord Reed in *Henderson v Foxworth Investments Ltd* [2014] UKSC 41; [2014] 1 WLR 2600 as to the correct approach, at [62] and [67] of his judgment:

> "The adverb "plainly" [qualifying "wrong"] does not refer to the degree of confidence felt by the appellate court that it would not have reached the same conclusion as the trial judge. 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."

10. Mr Guise used this judgment as the basis for a distinction between appeals where one of these types of identifiable errors could be demonstrated (in which case he submitted there was no scope for excuse or contextualisation by the respondent) and appeals which go to the weighing or evaluation of the evidence by a judge where the question of reasonable explanation or justification can come into play.

11. I do not consider that this characterisation of the law would make any difference in this case, but for clarity I should explain that this is not a correct distinction. This passage deals with the different kinds of appeal. In all appeals on the facts the hurdle faced on appeal is that the appellant must show that the decision is one that no reasonable judge could have reached.

12. However that conclusion can be reached by a number of routes – it may be that the wrong facts are considered because the legal test is misunderstood, there may be a critical rogue finding of fact for which there is no evidence or which is directly contrary to the clear evidence base, and so forth. All of these will require the appellate court to consider the overarching question of whether the decision is one which no reasonable judge could have reached against the relevant background.

13. The SRA referred me to the recent summary of the law by Morris J in *Ali v SRA* [2021] EWHC 2709 at [94] emphasising the restraint which is appropriate in cases of this kind:

> "(1) A decision is wrong where there is an error of law, error of fact or an error in the exercise of discretion;
>
> (2) The Court should exercise particular caution and restraint before interfering with either the findings of fact or evaluative judgment of a first instance and specialist tribunal, such as the Tribunal, particularly where the findings have been reached after seeing and evaluating witnesses;

> (3) It does not matter, with whatever degree of certainty, that the appellate court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge would have reached. That is a high threshold. That means it must either be possible to identify a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence. If there is no such identifiable error and the question is one of judgment about the weight to be given to the relevant evidence, the Court must be satisfied that the judge's conclusion cannot reasonably be explained or justified;
>
> (4) Therefore the Court will only interfere with the findings of fact and a finding of dishonesty if it is satisfied that that the Tribunal committed an error of principle or its evaluation was wrong in the sense of falling outside the bounds of what the Tribunal could properly and reasonably decide;
>
> (5) The Tribunal is a specialist tribunal particularly equipped to appraise what is required of a solicitor in terms of professional judgment, and an appellate court will be cautious in interfering with such an appraisal.
>
> Finally, as regards reasons, decisions of specialist tribunals are not expected to be the product of elaborate legal drafting. Their judgments should be read as a whole; and in assessing the reasons given, unless there is a compelling reason to the contrary, it is appropriate to take it that the Tribunal has fully taken into account all the evidence and submissions."

14. Mr Guise did not take issue with this as being an accurate statement of the law.

Article 6

15. Article 6 provides:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

16. Mr Guise relied on the statements of The European Court of Human Rights which has held that judgments must provide a specific and express reply on all questions that are decisive of the question in this matter. In particular he pointed to *Ruiz Torja v Spain* Case 39/1993/434/513 in the European Court of Human Rights at paragraphs 29 and 30:

> "29. The Court reiterates that Article 6 para. 1 (art. 6-1) obliges the courts to give reasons for their judgments, but cannot be understood as requiring a detailed answer to every argument

> (see the *Van de Hurk v. the Netherlands* judgment of 19 April 1994, Series A no. 288, p. 20, para. 61). The extent to which this duty to give reasons applies may vary according to the nature of the decision. It is moreover necessary to take into account, inter alia, the diversity of the submissions that a litigant may bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments. That is why the question whether a court has failed to fulfil the obligation to state reasons, deriving from Article 6 (art. 6) of the Convention, can only be determined in the light of the circumstances of the case.
>
> 30. In the present case Mr Ruiz Torija pleaded, *inter alia*, that the action brought by the lessor for his eviction was time-barred. This submission was made in writing before the first-instance court and was formulated in a sufficiently clear and precise manner. Furthermore evidence was adduced to support it. The *Audiencia Provincial*, which quashed the first-instance decision and gave a fresh ruling on the merits, was bound, under the applicable procedural law, to review all the submissions made at first instance (see paragraph 17 above), at least in so far as they had been "*the subject of argument*" and regardless of whether they had been expressly repeated in the appeal."

17. This case makes clear that full reasons are not required for every aspect of a decision. That conclusion is reflected in the English jurisprudence, for example in the leading case of *South Bucks District Council v Porter (No 2)* [2004] UKHL 33 [2004] 1 WLR 1953 at [36]:

> "The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. …. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

Allegation 1.1: CLAN

The facts

18. In addition to his work as a solicitor, Mr Guise was:

    i) The sole director of two companies which were involved in developing cloud platforms for the conduct of civil litigation and arbitration: iCourt Ltd and eARB Ltd.

    ii) Sole director, founder member, and member of the executive committee of a legal networking organisation known as the Commercial Litigation Association ("CLAN"). CLAN was a company limited by guarantee and registered in England. CLAN was designed to facilitate professional networking amongst those interested in dispute resolution and organised events for the legal profession.

    iii) Co-director (with a Ms S Dunn) of a company known as CLAN Commercial Services ("CCS"). By an agreement dated 2014 CCS arranged events on behalf of CLAN, and CLAN was its only customer. A Mr MB was also involved in the running of CCS and Ms S Dunn was a director of CCS. Both Ms S Dunn and Mr MB held the banking mandate for CCS.

19. Any profits generated by CCS were to be distributed between Annecto Legal Limited (90%) and CLAN (10%).

20. The meetings to determine the activities and direction of CCS took place at the same time and during the meetings of the body that controlled CLAN, its Executive.

21. CLAN's Executive (including the SRA's witness, MB, another administrator) agreed to develop Cloud based platforms for the management of civil litigation and alternative dispute resolution. CLAN was allotted 5% shareholdings in each of eArb and iCourt. Payments were made over a number of years to iCourt for the purpose of funding the development of the Cloud based platforms.

22. To provide oversight for these arrangements a Finance Committee was established by CLAN comprising the Treasurer and the SRA witness MB. The proceedings of the Finance Committee led to the preparation of Annual Accounts by CLAN which were approved by the Executive (including the witness MB). Once approved those annual accounts were filed at Companies House.

23. The proceedings of the Finance Committee and of the Executive were documented by minutes, emails, draft accounts and other documentary evidence created contemporaneously. This material was before the Tribunal and the subject of cross-examination.

24. This allegation concerned 5 bank transfers from the bank account of CCS to CLAN. Three transfers (£8,400) took place in 2014 (the 2014 Transfers). Two further transfers took place in 2015 together amounting to £16,000 (the 2015 Transfers). The fact that Mr Guise made these transfers was agreed. Complaints were made as

regards both sets of transfers. The Tribunal found that a dishonesty allegation in regard to the 2014 Transfers was not proven.

25. The only issue before the Tribunal was the question of authorisation to deal with the funds in a bank account. In essence there were issues as to whether:

    i) CLAN was a "shadow director" of CCS and made all the decisions in relation to that entity;

    ii) Further or alternatively, the funds in CCS' account belonged to CLAN;

    iii) CLAN's Articles of Association authorised Mr Guise to unilaterally make withdrawals of up to £10,000;

    iv) Developing legal technology such as iCourt and eARB was one of the objects of CLAN;

    v) The funds were spent for purposes related to iCourt and eARB;

    vi) Therefore the withdrawals were authorised.

26. There was also an issue as to whether Mr Guise admitted to Ms S Dunn and Mr MB that the 2014 Transfers were a "mistake", whether Ms S Dunn and Mr MB, on 20 November 2014, told Mr Guise during a meeting at a Café Paul in London that he should not make further unauthorised transfers, and Mr Guise promised that he would not do so (the "Promise").

27. The relevant timeline (and subsidiary issues) in relation to the later transfers runs as follows:

28. At the end of August 2015, Ms S Dunn queried the 2015 transfers. The Appellant said that all of the funds would be returned. The funds had still not been received by 6 October 2015. Ms S Dunn raised the issue at the monthly CLAN teleconference, which was minuted. Mr Guise was present on the call and said that the funds had been moved to iCourt for the purposes of "development work", and that they would be returned to CLAN the following day.

29. By 13 October the sums had still not been repaid. The Appellant was chased and he said "*I should have effected the transfer and will do so*". On 4 November 2015 a letter of claim was made by CCS to CLAN. That said:

> "We refer to our meeting yesterday and the discussions regarding the unauthorised transfer of £16,000 from the CLAN Commercial Services Limited bank account to the CLAN Commercial Litigation Association bank account, by Tony Guise in two separate transfers of £8,000 each on 12 August 2015 and 14 August 2015.
>
> Despite repeated reassurances that these funds would be returned, as at today's date, this has not happened.

> We hereby give notice therefore that unless funds are returned in full within the next 14 days we will have no alternative but to refer this matter to the Police and to the Solicitors Regulatory Authority.
>
> As advised, these funds were set aside to meet CLAN Commercial Services Limited statutory payments, which we have been unable to pay. We therefore hold CLAN Commercial Litigation Association responsible for the late payment fees and any interest that is incurred."

30. On 10 November 2015, Mr Guise met with two members of CLAN's executive committee and told them that he would return the funds that week.

31. On 13 November Ms S Dunn and MB had a call with the other members of the executive updating them on the situation. The note prepared by DH said that

> "MB indicated that [Ms S Dunn] was reviewing whether she had to report the whole of the executive committee for misconduct".

32. On 16 November 2015, Mr Guise said by text that he would repay the funds.

33. On 17 November 2015 a Letter of Complaint was sent by the six solicitor members of the Executive to the SRA. On 18 November a letter of Claim was sent by CCS to Mr Guise.

34. By email dated 1 December 2015 to Ms S Dunn, Mr Guise said that the monies had been applied for the purposes for which CLAN and CCS were founded, but that "*I have agreed to inject £16,000 in [CCS] and I expect to have done that by the end of this month*".

35. On 14 December 2015, Mr MB and Ms S Dunn confronted Mr Guise at his office. Mr Guise reiterated that he had invested the money but that he would return it. He says that he was falsely imprisoned by them. In a letter sent shortly after he described the position thus:

> "[MB] locked the only door from my office into the lobby and he barred that door by standing steadfastly between the door and I. Despite request by me he refused to move and refused to unlock the door.
>
> I was astonished by this conduct. I was taken aback and asked whether it was their intention to shoot me as I had no idea what was going to come next. I have never been imprisoned in my office, or anywhere else, in my life. They said they did not intend to shoot me but they would not release me. I explained that their conduct amounted to the tort of false imprisonment. I further explained that their conduct was unwise to say the least; I am an Officer of the Senor Courts of England and Wales, a solicitor and at that time going about ray lawful business of

> acting for my firm's clients and that their conduct was an outrage. Nevertheless they continued to hold me against my will."

36. On 16 December 2015 MB was appointed as CLAN's Director. On 4 January 2016 he reported the matter to Action Fraud. On 5 January 2016 the CLAN Executive threatened to serve Mr Guise with a statutory demand.

37. On 2 February 2016 Mr Guise sent a letter which said the following:

> "I have previously written in detail to Samara explaining the background to the payments made and reminding her that those payments were made as a practice expressly authorised by the Executive Committee of the Commercial Litigation Association Limited (CLAN). The allotments of shares for which those payments were made have been made in favour of CLAN (as you know) and there is absolutely no question of any fraud or other irregular payment arising. The authorisation for, the purpose of and the making of the payments in question were discussed in Executive Committee and were regularly minuted.
>
> At every … meeting of the Executive I reported on the progress of both iCourt Limited and eARB Limited. The Executive agreed the platforms should be created and that CLAN should have a shareholding in return for an investment arising from the Kinds generated by CLAN. If your letter in fact amounts to a request for the return of that Investment then please confirm and I will arrange for the transfer of the Association's shares to me.
>
> In these circumstances the proposed service of a statutory demand is wholly inappropriate…."

38. Before the Tribunal there was evidence from a forensic investigator that:

    i) A significant amount of these funds ended up in an account in the name of Mr Guise;

    ii) Mr Guise spent at least some of the funds in question on apparently personal items such as Netflix, garden centres and the National Trust.

39. It was also the evidence of Ms S Dunn and not contradicted by Mr Guise that to Mr Guise's knowledge, these were funds had been set aside to meet CCS's tax liabilities; although Mr Guise pointed out that the account had not been specifically designated for this purpose.

Preliminary points

40. There are a number of preliminary points on the facts which it is sensible to clear out of the way before dealing with the main grounds of appeal.

2014 Payments

41. The first concerns the 2014 payments. Mr Guise appeared, at least on paper, to be considerably confused as to what the Tribunal held as regards the 2014 payments.

42. Mr Guise complains that the Tribunal got (deliberately) wrong the following passage of the Judgment: "*With regards to Allegation 1.1, Ms S Dunn and Mr MB removed Mr Guise from the banking mandate after the unauthorised 2014 transactions in an attempt to prevent recurrence.*" That is said to be a mistake because it is said that elsewhere the Tribunal found the 2014 transactions were authorised. This is a reference to paragraph 10.73 of the Judgment which says:

> "Whilst the Tribunal was not sure that the disputed transactions of 2014 were not a mistake, the 2015 transactions were deliberate and made by the Respondent when he knew he did not have authority to make them. The Respondent's actions in making the 2015 transactions plainly lacked integrity as Mr Guise was well aware that he was not entitled to undertake the same."

43. However it is wrong to say that the Tribunal found that the 2014 Transactions were authorised. At paragraph 10.72 the Tribunal found the factual matrix of the CLAN allegation proved beyond reasonable doubt. That covers both sets of transfers. At paragraphs 10.73-10.74 the Tribunal found that the 2014 transactions may have been a mistake, but that Mr Guise lacked integrity in respect of the 2015 transactions because Mr Guise "*was well aware that he was not entitled to undertake the same*".

44. Further a breach of Principle 6 was apparently found as regards all 6 of the transactions (paragraphs 10.75-10.76). This would make no sense if the 2014 Transactions had been authorised.

45. I conclude that the Tribunal decided that both sets of payments were unauthorised; the distinction was whether Mr Guise may in 2014 have erroneously supposed himself to be authorised to make the payments.

Mr MB and Ms S Dunn: credibility issues

46. The second preliminary issue concerns Ms S Dunn and Mr MB against whom very serious allegations are made. These allegations form part of the reason for Mr Guise's submission that his case should have been preferred, despite the fact that he did not himself give evidence.

47. The first aspect of this is supposed lies by Mr MB and Ms S Dunn to the police. The background to this is as follows. Ms S Dunn and Mr MB confronted the Appellant at his office on 14 December 2015, to demand repayment of the funds.

48. On 27 January 2016, Mr MB made a witness statement in connection with a police investigation into the transfers. He said: "*I recorded part of the conversation between Tony, [Ms S Dunn] and I on my mobile phone I was holding the phone in my hand towards him so it was blindly [sic] obvious what I was doing.*"

49. On 1 February 2016, Ms S Dunn made a witness statement in connection with the same investigation, in which she said: "*MB took out his phone and made it clear he was recording the conversation.*"

50. On 17 May 2016, the FIO met with Mr MB. The FIO report records that Mr MB told her that "*MB also recorded the conversation which then followed in his mobile phone. The officer was informed that the Mr Guise [sic] was not made aware at the time that he was being recorded.*"

51. On the basis of this latter statement Mr Guise submits that Mr MB and Ms S Dunn had lied to the police. He put these alleged inconsistencies to Mr MB and Ms S Dunn at the hearing. Ms S Dunn said that "*as far as she could remember that is what MB did*" [i.e. take his phone out of his pocket]. Mr MB said "*it was 'blindingly obvious', in that he held his mobile telephone in front of him, despite the fact that he did not state out loud that he was recording the conversation*". The apparent discrepancy appears to arise from the fact that Mr MB held his telephone out in front of him, but did not expressly say that he was recording the conversation.

52. As to this, Mr Guise says:

    i) When cross-examined the witness MB was unable to provide a satisfactory, clearly articulated explanation which should have led the Tribunal to only one conclusion: the witnesses had lied to the Police and therefore had the proclivity to do so again, thus their evidence attracted no credibility.

    ii) The evidence of Mr MB as to his lie to the Police (and corroboration by Ms S Dunn) is not referenced by the Tribunal when considering the honesty of Mr MB and Ms S Dunn. The Tribunal's choice to make no reference to these witnesses putting their heads together to lie to the Police is a biased selection to avoid the evidence of the witnesses Mr MB and Ms S Dunn becoming discredited.

    iii) At the very least their evidence should have been treated with great caution save where it is corroborated.

53. There is a short answer to this, which is that it assumes a lie which does not exist and in the assertion that it could lead only to one conclusion, performs an entirely unjustified leap. In essence the point hinges on whether the account that holding out of the phone happened and carried with it an obvious correlation that a recording was being made, was accepted. There is no necessary conclusion of lying at all. The Tribunal, which heard the evidence, did accept that account. It obviously gave careful thought to what are in my own assessment no more than possible slight inconsistencies.

54. It said this:

> "The Tribunal noted that there were some discrepancies between the police statements and the statements provided to the Applicant as well as between the witnesses. However, those inconsistencies were not material to the allegations...All of the inconsistencies were put to Ms S Dunn and Mr MB under cross

> examination. The Tribunal as a finder of fact was able to evaluate their responses."

55. There is therefore no lie to affect the credibility of the witnesses. Further this particular allegation as to the Tribunal's approach is plainly ill-founded.

56. The blackmail allegation arises thus. The six other executive members of CLAN were all solicitors and therefore regulated professionals. When Ms S Dunn discovered that Mr Guise had made the withdrawals of £16,000, she notified the other solicitors of this and suggested that they report the apparent theft to their regulator. They did not immediately do so. Ms S Dunn considered whether she would also have to report them to the SRA, and Mr MB told them so.

57. That is said by Mr Guise to be blackmail. I have no hesitation in saying that there is no proper basis for an allegation of blackmail. Ms S Dunn had an entirely proper basis for doing this considering the professional ramifications: amongst other things, Outcome 10.4 of the Solicitors Code of Conduct 2011 required solicitors "*to report to the SRA promptly, serious misconduct any person or firm authorised by the SRA*". A similar obligation is repeated as Rule 7.7 of the SRA's current Code of Conduct 2019.

58. Mr Guise prays in aid an "admission" by Mr MB as to blackmail. That is not a fair reflection of the evidence. Mr MB said that he could not recall blackmailing the solicitors; the Tribunal referenced this evidence. Mr Guise pointed to another portion of the transcript and said that the omission by the Tribunal of this "admission" was a *"selection made by the Tribunal to avoid the evidence of the witness MB becoming discredited"*.

59. However this is another example of a massive and unjustified leap being taken. What is said in this passage is not an admission of blackmail, it is Mr MB agreeing that he told the solicitors that if they did not make a complaint they would be reported. There was no making of an unwarranted demand with menaces (cf Theft Act 1968). What there was, was an entirely proper reminder of professional duties.

60. It follows that the suggestion that this gave grounds for disbelieving the witnesses is unjustified. So too is the serious suggestion that the Tribunal selectively recorded evidence to bolster the credibility of the witnesses.

"*Material error of law"*

61. Mr Guise characterises his two main points as being material errors of law. His first point goes to the issue of the "Promise". It was submitted that the significance of the decision in *Gestmin SGPS S.A. v Credit Suisse (UK) Limited & Anor* [2013] EWHC 3560 (Comm) was not considered by the Tribunal despite extensive reference by him in closing submissions, in particular in relation to the admitted divergence from her usual practice by Ms S Dunn, in that the meeting was not minuted though it was an important meeting. Reference was also made to the acceptance by Ms S Dunn and Mr MB that their memories were not in a state of perfect freshness.

62. Mr Guise points to *Gestmin* and particularly the passage at [22] which says:

> "… the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts."

63. He submitted that this binds the Tribunal and is of central importance given the Tribunal decided this allegation on the basis of the Promise; the only evidence for which was the unreliable memory of two witnesses about an event that took place 6-7 years before and which evidence is not accepted by Mr Guise. Further, he contended that the evidence of the two witnesses is contrary to all the documentary evidence which was before the Tribunal and to the subsequent conduct of Mr MB and Ms S Dunn.

64. While Mr Guise submitted that this was a point of central importance on this allegation, I am not persuaded that this is correct. The critical issue was that of authorisation, which is a separate point. The Promise essentially goes to the question of dishonesty, marking the borderline between the time in 2014 when Mr Guise may have thought that such use of funds was authorised, and the 2015 period when he did not. It is not a constituent part of the authority argument.

65. However to the extent that the point was one of significance I was not persuaded by this submission. *Gestmin* did not bind the Tribunal to any particular course. The relevant passage in *Gestmin* is not binding. *Gestmin* simply sets out factors which will enter into the mind of a Tribunal. There is no need for it to be cited; particularly in a case which is not the sort of commercial case where there is a significant volume of documents which can offer a cross check, or alternative route to an answer. This was a case where there was no paper trail contemporaneously which would permit of a *Gestmin* type approach in practice.

66. There was therefore no error of law and this challenge amounts to a challenge to the Tribunal's approach to the evidence; and as such it faces a high hurdle. The authorities are replete with *dicta* which say that it will be rare that an appellate court will diverge from a finding of fact on witness evidence by the trial judge who had the opportunity to hear and assess that evidence.

67. This is not such a case. In this case both Mr MB and Ms S Dunn, gave evidence on oath. The Tribunal had the opportunity to assess that evidence, which was that Mr Guise had made the Promise. Mr Guise cross-examined them extensively on this issue but the SDT found that they came up to proof. Their conclusion was that the evidence was clear and credible. Their evidence was consistent with one another's.

68. Against this Mr Guise elected not to give evidence. There was thus no countervailing evidence from him that he had not made the Promise, nor could his pleaded case in this regard be tested. Further, the SDT was entitled to, and did, draw significant adverse inferences from the fact that Mr Guise declined to give evidence. It is not in issue that the Tribunal was entitled to draw that adverse inference.

69. Mr Guise relied on the continuation of the mandate, but that was not an unequivocal point and could provide little counterweight to the evidence in favour of the arguments advanced against him. Further it is not correct to say that all the documents

suggested he was right. Indeed, on the contrary, there were a number of documents a year later where Ms Dunn alluded to the Promise, in correspondence which crossed the line with Mr Guise and which allusions do not seem to have been protested by Mr Guise at the time.

70. I conclude without hesitation that the appeal on the facts in relation to this point must fail.

CLAN was a shadow director of CCS and therefore authorised the payments

71. The second supposed error of law relates to the shadow director argument which forms one part of Mr Guise's argument as to authority.

72. The essence of Mr Guise's case was and is that there was nothing wrong with the payments. His case is that CLAN's Articles of Association authorised him to make transactions of up to £10,000; that the established system for doing so was that he would make such disbursements and then account for them annually in arrears; that CLAN and/or each member of its Executive was a "shadow director" of CCS; that this shadow directorship meant that the same authority and system existed in relation to withdrawals of CCS funds; and/or that CCS' money belonged to CLAN and CLAN (through Mr Guise) was therefore free to use it as it saw fit.

73. Mr Guise's case is that the Tribunal wrongly rejected the evidence and submissions relating to the role of CLAN as a shadow director of CCS and breached his Article 6 rights by not giving reasons for the decision.

74. As to the first part of this, while this point is put as an error of law, Mr Guise does not explain how it is said that legally the wrong approach is evident.

75. In reality (again) this is an appeal on fact – whether on the facts the Tribunal was wrong to say that CLAN was not a shadow director.

76. The argument is that the conclusion on the facts that CLAN was not a shadow director is not one which was open to the Tribunal. Mr Guise says that the Tribunal erred in rejecting the contemporaneous evidence from minutes of meetings, emails recording decisions authorising transfers to Mr Guise, annual accounts and book-keeping records. He says such evidence is material to establishing that CLAN was a shadow director and shows the necessary degree of control required to establish a shadow directorship under section 251 of the Companies Act, 2006.

77. To assess Mr Guise's argument one must look at the criteria for establishing whether someone is a shadow director. A "shadow director" is a person in accordance with whose directions or instructions the directors of a company are accustomed to act in relation to the company: section251(1), Companies Act 2006. In Re *Hydrodam (Corby) Ltd* [1994] 2 BCLC 180 Millett J said:

> "To establish that a defendant is a shadow director of a company it is necessary to allege and prove: (1) who are the directors of the company, whether de facto or de jure; (2) that the defendant directed those directors how to act in relation to the company or that he was one of the persons who did so; (3)

> that those directors acted in accordance with such directions; and (4) that they were accustomed so to act. What is needed is, first, a board of directors claiming and purporting to act as such; and, secondly, a pattern of behaviour in which the board did not exercise any discretion or judgment of its own, but acted in accordance with the directions of others."

78. It is apparent from this that Mr Guise's argument effectively addresses the wrong target. Mr Guise sees matters in terms of generalities, as if a generalised association between the companies or a co-operative or reactive relationship was enough. Both below and now he has not really grappled with what these documents show in terms of these criteria.

79. This reflects his own mis-summary of the law. Mr Guise repeatedly says that he is right because *"CLAN was a person in accordance with whose directions or instructions the directors of the company are accustomed to act"*. This is to neglect a significant part of the statutory formula:

> "In the Companies Acts "shadow director", **in relation to a company**, means a person in accordance with whose directions or instructions the directors of the company are accustomed to act."

80. That is reflected in the second part of Millett J's formulation above *"that the defendant directed those directors how to act **in relation to the company**".*

81. Mr Guise asserts that "*The documentary evidence in the Bundle and live evidence establishes that CLAN was a shadow director of CCS because…*":

    i) CLAN instructed the Directors of CCS (the witness SD and Mr Guise) how to act in relation to CCS;

    ii) The CCS Directors acted in accordance with such directions;

    iii) They were accustomed so to act; and,

    iv) All of the major decisions taken by CCS were decided by CLAN.

82. But this is mere assertion. It is unsupported by bundle references. In reality the evidence upon which he relies does not begin to meet the hurdle.

83. In particular (again) Mr Guise himself did not give evidence. He also neglected to call any of the other members of the Executive Committee or directors. Thus he did nothing to discharge the burden of proof upon him. Allusion was made before me to minutes and to other documents which were said to support the case. But I was not taken to any such documents; and it would appear that a similar course was taken before the Tribunal. This cannot be adequate, particularly where there is a need not just to demonstrate co-operation, but direction in relation to matters concerning CCS.

84. The single piece of evidence upon which most stress was put was a telephone attendance note made by one of the SRA's representatives ("JZM" of Capsticks Solicitors) recording a telephone interview with Ms S Dunn dated 11 April 2018. The

note records that there was "*no direct formal legal/financial relationship between...CCS and CLAN*", although CLAN owned 10% of the shares in CCS.

85. Mr Guise nevertheless focuses upon the following entry:

> "Request any minutes of CCS AGMs/EGMs & resolutions
>
> Not think there were any – very informal setup
>
> What relevance/bearing did the decisions made at CLAN executive meetings/CLAN minutes have on CCS, if any?
>
> CLAN executive meetings identified what training was going to be undertaken – CLAN would decide when the annual conference would take place and who the keynote speaker would be, CCS would then go off and organise the event. CCS's role was reactive."

86. This is however a leap too far. The fact that CCS took instructions from CLAN as to the organisation of events is not the same thing as CLAN controlling CCS or its directors – in particular in relation to CCS as a company, which is what the Act requires. There is, as Mr Tankel pointed out, no sign of CLAN directing the employment of anyone by CCS, or the adoption of any particular course of action by the company qua company. What can be seen is simply evidence of a key client retaining CCS's services and CCS responding. There is nothing in that which goes beyond what might be expected from the contractual relationship.

87. It is plain that the Tribunal carefully considered this point on the evidence, and concluded that the case on shadow directorship was not made out on that evidence. I am not persuaded that they were even arguably wrong to do so; still less does this argument come close to the hurdle for overturning a finding of fact reached by the trial panel. It was open to the Tribunal to conclude that CLAN was not a shadow director of CCS.

88. Ultimately this ground of appeal is merely a disagreement with the merits of the SDT's findings in that regard. It discloses no error of law. Nor, in the circumstances, is it a decision no reasonable Tribunal could reach or any demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence.

89. As for the Article 6 argument, this does not assist Mr Guise. Article 6 does not require full reasons on every point. There was no issue as to the law. The Tribunal was required to decide whether the (agreed) criteria for being a shadow director were met. There was no key disagreement of fact. It was a question of weighing the evidence. A simple answer such as that given by the Tribunal was perfectly adequate.

90. I should add that on appeal the SRA have argued that the ground of appeal is misconceived in law and that the "*Appellant has never explained how, as a matter of law, even if there were a shadow directorship, it would have entitled him to use CCS' funds in the way that he did. The Appellant's contention that there was a 'shadow directorship' does not therefore assist his case*".

91. This effectively joins issue with Mr Guise's point that once he wins on shadow director, he is home and dry on authorisation because:

> "CLAN as a shadow director of CCS determines the issue whether the Appellant was authorised to make the 2015 transfers because CLAN implemented a process whereby the Appellant disbursed funds and accounted for such disbursement on an annual basis. That process applied in equal measure to CCS by virtue of CLAN's shadow directorship of CCS".

92. However this point of law does not appear to have been decided by the Tribunal (essentially because the shadow director argument logically preceded it on the basis that the shadow director route offers Mr Guise merely a step along a route for saying that CLAN was entitled to spend up to £10,000 of CCS money) and there is no Respondent's Notice. I therefore conclude that it is not open to the SRA to pursue this point.

93. Had the point been live it seems that there is force in the argument that it is hard to see how a shadow director of CCS was able to authorise payments of up to £10,000 when (i) CCS's Articles did not say this (ii) CLAN's own Articles appear not to have offered an unconditional ability to spend up to £10,000 without approval (iii) the conditions in CLAN's (apparent) Articles would appear to have precluded transactions not at arm's length.

The effect of the annual accounts for CLAN for 2015

94. It was alleged that Mr Guise had no authority to transfer money which was not in CLAN's own bank account. The issue therefore arose whether the money in CCS's bank account (which came entirely from its contracts with CLAN) was treated as belonging to CLAN and capable of being transferred by Mr Guise on behalf of CLAN.

95. Mr Guise complains that in the Judgment the Tribunal make no reference to the evidence and submissions relating to the treatment of the funds transferred in 2015 within the annual accounts for CLAN of 2015 (the 2015 Accounts) and that the effect of those Accounts is to effectively certify that the funds were actually CLAN's funds anyway.

96. The 2015 Accounts were approved by the Executive Committee of CLAN and the witness Mr MB was authorised by the Executive Committee of CLAN to sign them. This was done on 27 January 2016. These accounts included as CLAN's funds (without qualification) the sum of £16,000 transferred in 2015.

97. It is fair to say that this argument is not separately dealt with by the Tribunal. However this is a yes/no point and it is clear that the decision was not in Mr Guise's favour. Indeed the basis for the argument advanced by Mr Guise does not begin to address the point of ownership. The argument is in my judgment a thoroughly disingenuous one.

98. In essence Mr Guise says that because (i) accounts had to be prepared at the time after he had transferred the money to his own uses (and complaint had been made about it),

(ii) the funds had to be described in some way in the accounts, (iii) those preparing the accounts decided that the best way of doing that was to describe the funds as CLAN's, and (iv) under s. 393 Companies Act the directors have to be satisfied that the accounts give a true and fair view of the company and its assets and liabilities - that proves the funds really were CLAN's. The proposition only has to be stated to be rejected.

99. There is, on Mr Guise's case, no explanation given of how or why the funds were CLAN's in the first place; there cannot be because they were not. At best, as Mr Tankel pointed out, CLAN was entitled to a share of CCS's profits after tax. These funds were not that.

100. The point, if it was a point, is essentially an estoppel argument – that CCS would be estopped from denying CLAN's ownership. That argument was never run. It seems to me that if it had been run it would fail: both on the question of representation/consensus and on inequitability.

101. Mr Guise also relied on what he said was evidence confirming that the witnesses considered the money to be CLAN's. Again Mr Guise appeared to have mis-summarised the evidence given, which amounted to no more than confirmation of what payment had been made, and evidence that since the money had gone into a CLAN account CCS regarded CLAN as a natural entity against whom to claim repayment of the money.

102. A similar point relates to the argument derived from the fact that the relevant individuals controlling CCS regarded CLAN as the party liable to repay the funds transferred in 2015 when they wrote (not to Mr Guise) but to CLAN demanding the return of the CCS money.

103. Again therefore I dismiss unhesitatingly the argument that the Tribunal erred in relation to this point.

The Bank Mandate point

104. Mr Guise seeks to argue essentially that the Judgment is unsafe because the Tribunal at one point wrongly stated that he was removed from the Bank mandate of CCS: "*Ms S Dunn and Mr MB removed Mr Guise from the banking mandate after the unauthorised 2014 transactions in an attempt to prevent recurrence. Mr Guise found a way around this by transferring CCS funds to CLAN, who remained on the mandate, then from CLAN to various other accounts held by him*".

105. In fact Mr Guise remained on the mandate. This fact is noted by the Tribunal itself at paragraph 10.6 of the Judgment where the Tribunal records the SRA's submission that Mr Guise remained on the mandate.

106. Mr Guise submits that this is a critical point principally because his continued authority to deal with the Bank account via the Bank mandate is consistent with there being no Promise.

107. I do not accept that it is a critical point. It is a point which does feed into the Promise argument; but it does not affect the conclusion that the Tribunal's decision on that

cannot be impeached. It has no other relevance, and therefore cannot assist Mr Guise as an appeal point.

108. To the extent that it has some peripheral relevance, this appears to be a point where the Tribunal has oversimplified. The SRA says that it was a part of the SRA's case that the reason Mr Guise transferred funds from CCS to CLAN, and from CLAN to other accounts controlled by him, was that the online banking system would seek Ms S Dunn's authorisation for payments to any other payee, and that Mr Guise was deliberately seeking to avoid having to seek Ms S Dunn's authorisation. The reference to "mandate" therefore appears to be an error – the point was not about who was authorised to make transfers, but about which payees could receive transfers without further authorisation.

109. Whether this is right or not, there is nothing in this error which assists Mr Guise. It is a slip. The SDT was aware of the correct position regarding who was authorised to make transfers: as already noted at paragraph 10, it recorded that "*Mr Guise was permitted to remain on the bank mandate...*" It is not arguable that it would have affected the conclusion as regards whether the Promise was made when on the one side there was clear evidence from two witnesses and on the other Mr Guise was not prepared to give evidence.

The use of the money

110. Mr Guise also took issue with the fact that Tribunal find that Allegation 1.1 is about dishonest use of the money. His case is that the SDT incorrectly treated Allegation 1.1 as being about the dishonest use of money, rather than about unauthorised transfers. He also says that they wrongly found that the SRA's counsel stated that Mr Guise did not dispute the use of the money in his Answer to the Rule 12 Statement, the witness statements or skeleton argument filed at the Tribunal.

111. Dealing with this second point first, it is fair to say that the Tribunal has again slightly oversimplified the position. Mr Collins for the SRA may not have said this. And while Mr Guise may not have taken formal issue with the flow of funds evidence in his Answer to the Rule 12 Statement, the witness statements or skeleton argument filed at the Tribunal he did during the course of the hearing demonstrate some business use. Mr Guise took the witness to the documentary evidence in the bundle of legal expenses being billed and paid for drawing up commercial agreements, registering Intellectual Property rights and other business expenses being incurred. This related to some of the funds in question, but not, as Mr Guise conceded, all.

112. So far as concerns the apparently personal items Mr Guise tested those in cross-examination, as he was entitled to do. But the Tribunal was right in essence – Mr Guise did not advance a positive case against these matters. He could not do so because he neither gave evidence himself nor called evidence to support his own case.

113. As to the gravamen of the complaint the distinction between the Tribunal's finding and the fuller explanation of the position is not material, let alone critical to the decision-making exercise. None of this went to the key point: authorisation. It can afford no basis for an appeal.

114. As to the relevance of the point, Mr Guise says that he invited the SDT to put out of its mind the facts relating to destination and use. He says that SDT was wrong not to do so when the allegations were not about use and when (i) he had access to other accounts that were in funds; and (ii) the SRA could not exclude the possibility that the apparently personal items of expenditure were in fact business expenses.

115. However, this point again goes nowhere. It was at best a minor point. But further the Tribunal correctly considered this point and effectively had to do so for two reasons. One related to dishonesty, which was in issue. But the other was Mr Guise's own case. Mr Guise contended as part of his authorisation case that the funds were used for the development of legal technology on behalf of iCourt and eARB. This use – and the use of other funds for things which on their face cannot sensibly have been to develop iCourt and eArb - was plainly relevant to contradict this case. In relation to both of these points the aspect of the case which Mr Guise complains was neglected (limited business use demonstrated in relation to some funds) could not affect the conclusion. Hence the omission was not material.

Allegation 1.2

The facts

116. On 4 November 2014, Client A received a remittance of approximately £601,043.99 following a divorce and the sale of a property. The proceeds of sale were paid into Mr Guise's Firm's client account.

117. Client A was a ship inspector. He had been involved in a long running and highly contentious set of financial settlement proceedings attendant on the divorce. In that time he had started a new family. He had also been involved in a failed hotel business.

118. In or around Autumn 2014 Mr Guise was seeking financial support for the further development of the Cloud based platform for the management of civil litigation, iCourt Limited (iCourt).

119. Mr Guise's case is that Client A said that he was interested, took independent legal advice and decided to proceed. Mr Guise contended that this led to an agreement with Client A that the latter would invest in and/or make loans to iCourt and eARB and, in accordance with Client A's instructions, some of his money was used in the way proposed by Mr Guise. All the withdrawals were authorised as having been pursuant to that agreement.

120. Other sums from his divorce settlement were used, on his instruction, to settle debts that he had incurred in the UK and in India. They were also used, on his instruction, to settle the properly incurred legal fees of Mr Guise's law firm in connection with several other matters in which Client A continued to instruct Mr Guise's law firm.

121. That was not Client A's account of events. Client A admitted that he was approached by Mr Guise about iCourt but said he told Mr Guise he did not wish to become involved and that he wanted all of his money paid to him so that he could buy a house for himself and his new family. Client A's evidence was that he never entered into any such agreement with Mr Guise. The existence or otherwise of the agreement was the key issue in relation to Allegation 1.2.

122. On 11 November 2014 there was an email apparently from Client A instructing him to "*transfer all of my funds*". This was the first of 9 emails which Mr Guise asserted were falsified documents produced by Client A to bolster his case.

123. On 13 November 2014, Mr Guise wrote to Client A:

> "When we met last week I raised the possibility of you making a loan to me for £50,000 from the settlement monies to assist in developing a business called iCourt Limited...An investment could be made at, e.g. £75,000 but with potentially a much higher return...
>
> If you prefer the loan option then my professional rules require me to inform you that you must obtain independent legal advice prior to the loan being entered into...
>
> Pending confirmation of how you would prefer this sum treated I have taken £40,000 on account today and will agree the basis of the payment with you when we meet next week".

124. On 17 December 2014 there was an alleged reply to email of 13 November 2014 sent by Client A entitled iCourt and saying "*please not to take any money from client account*".

125. Between 13 November 2014 and 5 August 2015, Mr Guise made 22 withdrawals from client account, totalling £353,500, which he contended were authorised pursuant to the alleged November 2014 agreement.

126. Mr Guise relied as evidence for the existence of the agreement upon:

i) The email dated 13 November 2014 referred to above, inviting Client A to make loan or to invest. Mr Guise did not adduce any response to this email.

ii) Four attendance notes of meetings, usually taking place in restaurants and bars, between Mr Guise and Client A.

iii) The fact that Client A instructed Mr Guise to make some payments from the funds held on client account, which Mr Guise says was inconsistent with Client A wanting the whole of the funds to be released immediately to him and was thus consistent with the existence of an agreement.

127. Client A gave evidence and was cross examined. Mr Guise put this case to him. He also accused him of fabricating the emails asking for his funds to be released to him. The SDT found Client A to be a credible witness. Mr Guise did not give evidence - even after a submission of no case to answer was rejected. He adduced no expert evidence as to the supposed lack of authenticity of the emails. The SRA placed considerable reliance on both these factors: Client A's evidence and Mr Guise's failure to give evidence:

i) The SDT found Client A to have been a *"clear, consistent and credible witness"*. The SDT considered the main planks of Mr Guise's attacks on Client A's credibility and dismissed each of them in turn.

ii) The SDT drew the inference from Mr Guise's refusal to give evidence that *"he had no innocent explanation"* for the allegations and it considered Mr Guise's submissions *"in that context"*.

128. The SRA also relied upon the evidence of the FIO that the funds were traceable to Mr Guise's current account. One example contained within the FIO's analysis showed £15,000 being transferred on 4 July 2015 from client account to iCourt, which held only £1,500 prior to the transfer. £5,000 was then transferred on 7 July 2015; £3,000 on 9 July 2015; and £2,000 on 13 July 2015, to merchants such as Amazon, the Globe, and the Dirty Martini cocktail bar.

129. The SDT found the facts of Allegation 1.2 proved, that Mr Guise had breached all of the rules and principles upon which the SRA had relied, and that he had been dishonest.

Material error of law

130. Mr Guise reprises his *Gestmin* argument in this context also. The argument is of course somewhat stronger here, in that Client A had an interest in the findings which Ms Dunn and Mr MB lacked, and in that there was some documentary evidence against which to test the evidence.

131. However that is exactly what the Tribunal did. It cannot be said that they failed to consider the evidence and consider the arguments. It is not right that they erred in law because they did not cite *Gestmin*. Nor does *Gestmin* say that no witness's evidence is to be accepted in relation to events some years before.

132. Ultimately Mr Guise's argument is (again) an appeal against the Tribunal's determination on the credibility of a witness. That is not a question of law. It is exactly the kind of issue of fact in which an appeal court will be extremely cautious about interfering.

The essence of the case

133. I shall deal below with the other individual points on which Mr Guise rested. However my conclusion is that these are essentially peripheral matters which have no real impact on the SDT's Judgment. While I entirely understand Mr Guise's focus on matters such as the nine emails, the truth or falsity of those documents are essentially a side show to the only issue that matters: was there an agreement between Mr Guise and Client A?

134. On this the Tribunal had to weigh the live evidence of Client A, who tendered himself for cross examination and whose evidence was thoroughly tested by Mr Guise, against the absence of any evidence from Mr Guise. What is more, into the side of the equation which favoured Client A's account fell also the adverse inference against Mr Guise produced by his failure to give evidence.

135. On that basis, even without looking at the factual matrix, it was effectively inevitable that the Tribunal would find for Client A. That fact was clearly signalled to Mr Guise by the ruling on the half time submission. In ruling that there was material on the basis of which the Tribunal could find that he had breached the relevant Principles,

the Tribunal conveyed that even before he failed to give evidence the evidence against him was prevailing.

136. However the inevitability of this conclusion was only bolstered by the surrounding facts including the absence of any presentational materials, written agreement or detailed discussion and the unlikelihood of Client A wishing to invest essentially all his assets when he had a young family to provide for and was living in somewhat straitened circumstances.

137. I conclude, again without hesitation that this is not a case where it can be said that the conclusion on this point was one which no reasonable Tribunal could reach. It was not affected by a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence.

138. It follows that the appeal on Allegation 1.2 must also fail. However for completeness I consider the other peripheral and related issues raised by Mr Guise.

The Adjudication Panel

139. Mr Guise submits that the Tribunal erred in that it failed to attach weight to the decision of the Adjudication Panel of the SRA's Compensation Scheme which decided that: *"an in depth analysis of the available evidence is inconclusive in respect of Tony Guise's knowledge or belief of the facts"* regarding the existence or otherwise of an agreement. He points out that the Adjudication Panel:

    i) Did not find, on a balance of probabilities, that Client A had suffered loss in consequence of the dishonesty of Mr Guise.

    ii) Found on a balance of probabilities that there was an agreement to invest;

    iii) Found that Client A was aware that Mr Guise had taken £40,000 to invest.

140. Mr Guise says that the Adjudication Panel addressed the same facts, documentary evidence and issues as were engaged by Allegation 1.2. This led to the same question of whether there was an agreement and whether Mr Guise was honest or not. He contended that the Adjudication Panel found Mr Guise was honest, that there was an agreement and that the Tribunal was wrong to exclude this decision which would have shown that their decision on this point was wrong.

141. However there is no basis for saying that this was a material error on the part of the Tribunal. It was a matter for the Tribunal to decide what if any weight it would give to the Adjudication Panel's decision. There was no error of law in concluding that it was not relevant. There is no basis for saying that this was material evidence which was ignored. This is in particular the case because the Adjudication Panel was in effect doing a different job. It was not considering the same question. Further and more significantly its decision was made on the documents without the benefit of oral evidence which was tested in the Tribunal hearing.

142. In the light of this the Tribunal's decision at 11.66, to attach no weight to the decision of the Adjudication Panel, is unimpeachable and this ground of appeal discloses no error of law of law or fact.

Mis-understanding of the value of the material transfers

143. Mr Guise highlights the following errors in the Tribunal's judgment:

i) In four places, the SDT referred to the sum of the disputed transfers being £441,500 made up of 23 disputed transfers when in fact it was £353,500 made up of 22 disputed transfers.

ii) The SDT referred to Client A first requesting repayment of a £93,000 sum in January 2015, when in fact he first requested it in March 2016 and it was repaid in April 2016.

144. Mr Guise contends that these alleged errors mean the SDT failed accurately to carry out its fact-finding and is indicative of a generally careless approach to the evidence.

145. It is however instructive to see the way this is put by Mr Guise. He says this:

> "These mis-statements together with the Tribunal's other misunderstandings set out above convey the unmistakeable impression of a Tribunal that failed to carry out its fact finding accurately and in haste."

146. The point then goes nowhere. This is correct. The mistakes are regrettable but there is no error of law. Nor is there any impact on the core of the case – that Mr Guise made a number of unauthorised withdrawals – amounting in total to £100,000s – from a client's money in the client account. All of the errors he highlights are also readily explicable. There is no basis for saying that they cast doubt on the main findings.

Issues regarding the instruction of RC

147. Client A instructed a solicitor, RC, in connection with the matter of his funds. Client A's evidence, which the Tribunal accepted, was that the instruction related to the return of his funds. Mr Guise nevertheless contends that the instruction must have been about the alleged agreement, which in turn is evidence that such an agreement existed.

148. He relies upon two pieces of evidence which he says that the Tribunal failed to properly consider. The first relates to the outcome of that advice. This is the aspect upon which Mr Guise concentrated orally. The second concerns the subject lines in an email.

149. The first point is that on 17 November 2015 Client A arranged to meet with a solicitor, RC. Client A's written evidence about this meeting, which he adopted before the SDT, was that his solicitor advised him at that meeting to await payment and leave matters until after the Christmas period. Mr Guise alleges that, if the payments were unauthorised, then it is implausible that his solicitor would have advised Client A to await payment rather than acting immediately. He says that the only rational conclusion to draw from these facts was that Client A was fully aware of the agreement with iCourt and that this is a demonstrable failure to consider relevant evidence by the Tribunal. He also says that the choice to omit all reference to Client

A's retainer with RC is a biased selection intended to avoid addressing evidence that weakens the credibility of Client A's evidence – effectively a reprise of the point made under Allegation 1 about the evidence on "blackmail".

150. But I do not accept that there is anything here which can support an appeal. Advice to seek return of the payment at all, whether before or after Christmas, is inconsistent with the existence of an agreement pursuant to which funds had been properly withdrawn. The slight oddity of waiting is contextualised by the fact that Client A was a ship's engineer, away for weeks at a time with limited email and telephone access. Finally, Mr Guise did not cross-examine Client A on this specific point. The Tribunal cannot be faulted for failing to address an issue that Mr Guise did not put to Client A at the hearing, the more so where there were many live points.

151. There is then the question of subject rows in emails. On 9 May 2016 Client A sought to instruct RC again but on that occasion RC declined to accept Client A's instructions. The 2016 emails in question each had the subject "iCourt" in the subject row and these emails were put to Client A in evidence.

152. The significance of the debate about the subject row is that Mr Guise submits that if Client A populated the subject row with the word "iCourt", it is likely that the agreement with iCourt was the subject of his meeting with the solicitor RC. If Client A was simply forwarding an email from Mr Guise with "iCourt" as its subject row the same conclusion could not be drawn.

153. I accept the submission of the SRA that this argument is very considerably overstretched and can have no material bearing on the overall outcome of the appeal. The point was peripheral at the hearing: Mr Guise did not cross-examine Client A about it, and it is not mentioned further in the SDT's judgment.

154. The argument is that if Client A wrote "iCourt" in the subject line of an email in May 2016, then it can be inferred that there was an agreement in November 2014 pursuant to which Mr Guise was entitled to withdraw £353,000 from Client A's client account for investment in his own companies. This is certainly an argument which can be run. But it is very tenuous stuff. iCourt could be used out of laziness because it had been used previously. It was used in previous emails rejecting requests for money. And against it stacks up (i) the absence of any written agreement itself, (ii) Client A's oral evidence to the contrary which the Tribunal found to be credible (iii) the absence of oral evidence from Mr Guise about the existence of an agreement, and (iv) the suspicious flows of money following the withdrawals.

155. A further point of detail raised by Mr Guise, going to the accuracy of the Judgment, is that in May 2016 Client A contacted RC in an email the subject line of which was "iCourt". In the part of the judgment summarising Client A's evidence, the SDT recorded Client A's evidence as being:

> "When he received notification from Mr Guise that the Firm was going to close on 31 May 2016 he was 'absolutely shocked and concerned. [He] called Mr Guise but there was no reply' and he wasn't aware of what was going on. The subject matter of that email, populated by Mr Guise, was 'iCourt'".

156. Mr Guise contends that that is a demonstrable misunderstanding of relevant evidence and that it was not Client A's evidence that Mr Guise populated the subject matter of that email with "iCourt". The SRA accepted that Client A's evidence was only that he did not type iCourt or anything else in the subject line. However this is a minor error and cannot provide any fuel for an appeal.

The 9 emails

157. These were the subject of extensive cross-examination and submissions before the Tribunal. Mr Guise maintains that the emails were falsified by Client A.

158. The story goes thus. Client A made a complaint to the Firm, which was rejected. He also made an application to the Compensation Fund which was rejected on 21 August 2018.

159. Client A renewed his application to the Compensation Fund and in doing so he was asked by a Claims Investigator for the Compensation Fund for any documentary evidence demonstrating he had sought return of the funds. At that stage, Client A submitted nine emails that he had not previously supplied.

160. Mr Guise contended that:

i) The emails were only produced in response to a request from the Compensation Fund solicitor for evidence that Client A asked Mr Guise to return the funds;

ii) The emails are self-serving with its content strongly supplying gaps identified in August and September 2017 in Client A's case by the solicitor instructed by the SRA to manage Client A's application to the SRA Compensation Fund;

iii) The existence of the emails is inconsistent with representations by Client A's solicitor that all requests for return of funds had been made orally. He contends that the solicitor would not make such a statement save on the instructions of Client A. The same conclusion was drawn by the Adjudication Panel, a fact which the Tribunal neither acknowledged nor considered;

iv) The emails asking for return of all funds were inconsistent with other emails in which Client A instructed Mr Guise to make various payments from the funds held in client account;

v) The emails are inconsistent with the fact that Client A sought advice from solicitor RC on the subject of "iCourt".

vi) There was no evidence of Client A objecting to the £40,000 transfer in November 2014.

161. The Appellant set out a table of alleged inconsistencies in the emails, at paragraph 8.3(l) of his skeleton argument on the appeal. A similar table was before the Tribunal. In essence, these inconsistencies are that despite the emails purporting to ask for the transfer of "all" my funds, Client A continued to instruct Mr Guise, authorised him to make some payments from client account for various purposes (e.g. paying debts and

settling litigation), sometimes asked for smaller sums of e.g. £80,000, and sometimes showed he was willing to wait for his money.

162. Mr Guise complains that the Tribunal failed to deal with these issues and use them to assess Client A's credibility.

163. In relation to this issue, while I entirely understand why Mr Guise would consider these points to offer him powerful support, the question is whether the Tribunal erred in rejecting this case (which was made before them).

164. The first point is that it is not correct to say that the Tribunal did not consider the arguments. The decision is fairly brief, but it deals with the essential points. At the end of the day the evidence was there and was tested. Mr Guise cross-examined Client A on this issue. Again, this was essentially an issue of Client A's credibility, which the Tribunal was best placed to make. There is no manifest error based on the documents. It cannot be said on the basis of the material before me that the Tribunal erred or that the conclusion was one which no reasonable Tribunal could have reached.

165. Again and by contrast, Mr Guise chose not to give evidence that he had not received these emails. Nor did he adduce any positive evidence about their alleged inauthenticity, for example from an IT specialist or other expert – something it would have been perfectly possible for him to do.

166. This point provides no error of fact or law in support of Mr Guise's case.

Client A needed his funds to buy a house

167. Mr Guise also submitted that from the outset there has been a contradiction between Client A's stated position and his conduct and that this was nowhere examined by the Tribunal, leading them into further error in failing to judge the credibility of his live evidence against the documentary evidence as they are required to do by *Gestmin*.

168. Mr Guise's point is that Client A's position was that he wished to have all of his money to buy a house. Had he actually wanted to buy another property he should, and could, have instructed Mr Guise to send his funds to him on their receipt by the Firm. Following receipt by him in early November 2014 Client A could have bought his house. On a true construction of Client A's evidence all that he did with his money was to repay his debts, pay Mr Guise's Firm's legal fees to defend civil litigation claims brought against him and settle judgments arising from his Hotel business and other liabilities, all of those activities taking place continuously between November 2014 and May 2016.

169. This is however simply another facet of the question of credibility. This point was plainly made before the Tribunal and was part of the evidence on the basis of which they reached their views as to credibility. It does not go directly to the central question of whether there was an agreement. It is not a discrete material point such that the Tribunal needed to deal with it separately. There is no relevant error of fact or law.

Conclusion

170. For the reasons given, the appeal is dismissed.