Neutral Citation Number: [2024] EWHC 3248 (Admin)

Case No: AC-2024-LON-001418

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 December 2024

Before :

MRS JUSTICE LANG DBE

- -

Between :

ZAHEER AHMAD	**Appellant**
- and -	
BAR STANDARDS BOARD	**Respondent**

- -
- -

The Appellant appeared in person
Nicholas Bard (instructed by the **Bar Standards Board**) for the **Respondent**

Hearing date: 5 December 2024

- -

Approved Judgment

This judgment was handed down remotely at 4 pm on 20 December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

....

MRS JUSTICE LANG DBE

Mrs Justice Lang :

1. The Appellant, who is a barrister, appeals against the sanction of 6 months suspension imposed by a Disciplinary Tribunal ("the Tribunal") on each of two charges of misconduct (to run concurrently), on 4 April 2024.

2. The Tribunal found the following charges of misconduct proved:

> "**Charge 1**
>
> **Statement of Offence**
>
> Professional misconduct, contrary to paragraph Core Duty 5 of the Conduct Rules (Part 2 of the Bar Standards Board's Handbook – Version 2.1).
>
> **Particulars of Offence**
>
> Zaheer Ahmad, a barrister and BSB regulated individual, behaved in a way which is likely to diminish the trust and confidence which the public places in him or in the profession in that, he has failed to comply with a court order, made by District Judge Swan at Wandsworth County Court on 22 October 2015 which ordered that he pay the sum of £54,595.39 plus £9,416.50 in costs to the Claimant, Mr H, by 5 November 2015.
>
> **Charge 2**
>
> **Statement of Offence**
>
> Professional misconduct, contrary to paragraph rC8 of the Conduct Rules (Part 2 of the Bar Standards Board's Handbook – Version 2.1).
>
> **Particulars of Offence**
>
> Zaheer Ahmad, a barrister and BSB regulated individual, behaved in a way which could reasonably be seen by the public to undermine his integrity in that, he has failed to comply with a court order, made by District Judge Swan at Wandsworth County Court on 22 October 2015 which ordered that he pay the sum of £54,595.39 plus £9,416.50 in costs to the Claimant, Mr H, by 5 November 2015."

3. Core Duty 5 of the BSB Handbook states:

> "You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or your profession."

4. Conduct Rule rC8 states:

> "You must not do anything which could reasonably be seen by the public to undermine your honesty, integrity (CD3) and independence (CD4)."

5. The Appellant only appeals against the sanctions imposed, not the findings of misconduct.

History

6. The Appellant, who is aged 50, was called to the Bar (Lincoln's Inn) on 13 October 2011. He was unregistered until November 2019. He then became a self-employed practising barrister until March 2020. He was unregistered again from April 2020 to February 2022, while working in Pakistan, and following his return he has held a practising certificate. He is regulated by the Bar Standards Board ("BSB").

7. Between 2007 and October 2019 the Appellant owned and ran a solicitors practice known as Regents & Co Solicitors (Solicitor-Advocate) Ltd ("Regents"). From the beginning of June 2011 to the end of May 2013, Mr H, a solicitor, began to work at that firm as a salaried partner.

8. In 2014 Mr H began proceedings in the Wandsworth County Court against the Appellant and Regents claiming that he had not been paid sums owing to him under a partnership agreement. Liability and quantum were in issue.

9. The Appellant and Regents failed to comply in time with a direction for the service of witness statements. It appears that 22 October 2015 had been set as the first day of a multi-track trial.

10. The case came before DJ Swan who refused the application for relief from sanctions for the late filing of evidence, refused the application by the Appellant and Regents to adjourn the trial, struck out the defence, and entered judgment in favour of Mr H. The Appellant has always maintained that the judgment was unfair and unjust because neither he nor Regents were allowed to present their defence. On 22 October 2015, the Appellant and Regents were ordered to pay the sum of £54,595.39, together with £9,416.50 on account of costs, by 5 November 2015. The order further provided that costs be subject to a detailed assessment on the indemnity basis, if not agreed.

11. DJ Swan refused permission to appeal on the basis that there was no real prospect of success. The written reasons for refusal include the following observation: "gross breach of court order (again)".

12. The Appellant stated that he filed a notice of appeal shortly after the hearing on 22 October 2015, but this document was never found on the Court files. It seems that it may have been sent to the Court of Appeal in error.

13. On 16 January 2018 there was a hearing before HHJ Gerald. Mr H was represented by Counsel, but the Appellant and Regents did not attend. The Appellant has always maintained that he had no notice of that hearing. After the recital: "Upon there being no extant notice for Appeal on the Court file and no other matter challenging the order of DJ Swan", HHJ Gerald ordered that the order of 22 October 2015 should stand and

that, if the Appellant and Regents wished to apply to set aside the order, they must do so by 9 February 2018, failing which they would be debarred from so doing. They were ordered to pay the costs within 14 days.

14. No application to set aside was made within the specified time. On 16 August 2019 a hearing took place before HHJ Lethem. The Appellant and Regents were represented. HHJ Lethem did not accept their assertion that they had not had notice of the hearing before HHJ Gerald on 16 January 2018. The recital records that the application to set aside which ought to have been made by 9 February 2018 was not in fact made until 12 December 2018. The application to set aside was dismissed with costs payable within 14 days.

15. There followed an application to the High Court for permission to appeal. On 21 January 2020 the application was considered by Johnson J. on the basis of the papers and was refused. The Appellant and Regents were given 7 days from the date of receipt of the order to renew their application for permission to appeal at an oral hearing.

16. The date on which the Appellant and Regents received the order of 21 January 2020 is not clear. However, exactly 14 months later, on 21 March 2022, they wrote seeking to renew the application to set aside and asking for a "suspension" (pending the oral hearing) of the two orders of the Circuit Judges (although not that of DJ Swan). The Appellant's statement in support explained that he had been out of the country, sitting as a Judge in Pakistan, between 5 December 2019 and 15 March 2022. There is no document showing the outcome of the request made on 21 March 2022, but the Appellant says that the "last decision", which was the dismissal of the application for permission to appeal, on the grounds that it was time barred, was made in June 2022. The Appellant accepts that he never obtained a stay of enforcement or execution of the judgment.

17. The Appellant was out of the country at various times between 2015 and 2022. He sat in a judicial capacity in Pakistan between around April 2020 and March 2022.

18. Meanwhile, in December 2020 Mr H reported the Appellant to the BSB for failure to comply with the court order. The Appellant informed the BSB that he was still seeking to overturn the judgment. In August 2022 the solicitors for Mr H threatened bankruptcy proceedings.

19. Neither the Appellant nor Regents made any payments at all towards the judgment, until the Appellant started doing so in May 2023.

20. By the date of the Tribunal hearing on 4 April 2024, the Appellant had paid Mr H around £42,500. The principal sum was £54,595.39, together with £9,416.50 on account of costs. Interest at the judgment rate (which is 8%) was payable for 6 years on both the principal sum and the order for costs.

21. At the date of the appeal hearing in this Court, the Appellant's evidence was that he had now paid Mr H £57,500, and so only interest and costs were outstanding. Interest was due on the principal sum, at the judgment rate of 8%, for 6 years, totalling £26,205. Costs had been assessed at £18,833 (including the sum of £9,516.50 which was ordered to be paid on account but had not yet been paid). Interest was due on the unpaid costs,

at the judgment rate of 8%, totalling £9,039. Therefore, at the date of the appeal hearing, the approximate amount which the Appellant still owed Mr H was £51,000.

22. There was a dispute between the parties as to whether the applicable interest rate was 8% or 6%. I am satisfied that the judgment rate is 8%, but as the Appellant has a letter from Mr H's solicitors stating that they are claiming 6%, it is possible that he will only have to pay interest at the lower rate of 6%, in which case the interest figures set out above would be reduced.

23. The Tribunal ordered the Appellant to pay costs of £2,496; that order was suspended pending the outcome of this appeal.

24. In his submissions to this Court, the Appellant explained that he has considerable financial responsibilities and outgoings for his family (his wife and 4 children), as he explained to the Tribunal.

25. Now, his two older children are away at University, and he has to contribute to the costs of maintenance and accommodation. In respect of one of them, there is a dispute as to whether she meets the rule requiring 3 years residence in the UK prior to the degree commencing, in order to be eligible for a student loan for tuition fees. If she is not eligible, the Appellant will have to pay her tuition fees.

26. The Child Trust Funds set up for his two older children have now matured, in the sums of £11,000 and £9,000.

27. The Appellant's car was recently stolen/written off and he received £12,000 from his insurance policy.

28. After the Tribunal's decision, in August 2024, the Appellant bought a house because his rented accommodation was unsuitable for the family. The house cost £510,000 and he has taken out a mortgage of £440,000. He borrowed the deposit of £70,000.

29. Since the order for his suspension has become known, some clients have decided not to instruct him, because of the risk that his appeal against suspension will not succeed and he will no longer be able to represent them. This has reduced his income.

The Tribunal's decision

30. The Tribunal's conclusions on the two charges were as follows:

> "35. Throughout the entire period, the Respondent's stance has been that of an aggrieved judgment debtor. He feels that the order should never have been made against him, that he did not have a fair hearing, and that all of his appeals were dismissed without fair and proper consideration. Again, that is not something that concerns us.
>
> 36. The question for us is whether, as contended by the BSB the failure to comply with the court order going back well over seven years amounts to a breach of the professional code of conduct.

> 37. As to Charge 1, we are unanimous in our conclusion that the charge is made out to the civil standard of proof. We are satisfied that any member of the public would inevitably lose trust and confidence in a barrister who failed to comply with an order of the court. The Order was for a significant sum of money. The debt arose as a consequence of failure to pay an employee. The failure to pay continued over several years. We are satisfied that these factors would undermine public trust and confidence in the legal profession.
>
> 38. In relation to Charge 2, as a barrister, the Respondent was expected to behave in a way consistent with the ethical standards of his profession. Although the failure to comply with the court order did not arise out of the Respondent's professional duty as a barrister, it nevertheless arose in a professional capacity in that he was the employer of the claimant. We have considered whether the Respondent might simply have been obstinate and might have just hoped that the case would go away, but we are satisfied on the balance of probabilities that the Respondent deliberately prolonged the court proceedings in the hope that the claim might ultimately be unenforceable. It is clear from his letter of 5.12.2022 to the BSB that he was of the opinion that once the judgment was more than six years old it could not be enforced. We are unanimous in our conclusion that the Respondent's prolonged failure to comply with the order amounted to behaviour falling below the ethical standards of the Bar. We are satisfied that Charge 2 is made out."

31. The Appellant did not attend the hearing on 31 January 2024. At that hearing, the Tribunal concluded that suspension was a possible sanction and therefore adjourned the hearing to 4 April 2024 so that they could obtain more information about the Appellant's financial circumstances and his proposals for paying off the outstanding debt, and to give him the opportunity to address the Tribunal.

32. At the hearing on 4 April 2024, the Tribunal reached the following conclusions:

> "80. Taking all of the factors into account, we are unanimously of the view that the breaches are so serious that only a period of suspension is justified.
>
> 81. The indicative sanction for middle range is a high level fine to a 12 month suspension or less.
>
> 82. We judge that the appropriate, just and proportionate sanction to recognise the seriousness of the breaches is a suspension of six months concurrent on each of the charges.
>
> …..
>
> Costs

> 84. We order that Mr Ahmad pays £2,496 to the BSB within 28 days of the decision."

Legal framework

33. The Courts and Legal Services Act 1990 designated the Bar Council as the authorised body for the profession. The BSB was set up under the Legal Services Act 2007 to act as the specialist regulator of barristers in England and Wales. Its regulatory objectives derive from the Legal Services Act 2007, section (1). The BSB publishes the Bar Standards Handbook ("the Handbook") which contains *inter alia* the Code of Conduct, comprising the Core Duties and rules which supplement the Core Duties. "Outcomes" and "Guidance" on the Code of Conduct are also published.

34. As to rights of appeal, section 24 of the Crime and Courts Act 2013 abolished the jurisdiction of the Visitors of the Inns of Court, and made provision in subsection (2) for the General Council of the Bar and the Inns of Court to confer a right of appeal to the High Court in respect of, *inter alia*, a matter relating to regulation of barristers. Subsection (6) provides that the High Court may make such order as it thinks fit on an appeal. Rights of appeal are conferred by the Disciplinary Tribunal Regulations 2017, and under rE236, the Appellant has a right of appeal against findings and/or sanction.

35. CPR 52.20 confers power on the appeal court to affirm, set aside or vary the orders of the Tribunal. It has the same powers as the Tribunal.

36. CPR 52.21 provides, so far as is material:

> "**Hearing of appeals**
>
> 52.11
>
> (1) Every appeal will be limited to a review of the decision of the lower court unless –
>
> (a) a practice direction makes different provision for a particular category of appeal; or
>
> (b) the court considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing.
>
> ....
>
> (3) The appeal court will allow an appeal where the decision of the lower court was –
>
> (a) wrong; or
>
> (b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court.
>
> (4) The appeal court may draw any inference of fact which it considers justified on the evidence.

…..”

37. An appeal against the decision of a Disciplinary Tribunal is by way of review, not re-hearing. However, the nature of an appeal by way of review under rule 52.11 is flexible and differs according to the nature of the body which is appealed against, and the grounds upon which the appeal is brought. In *E I Dupont de Nemours & Co v S T Dupont* [2003] EWCA Civ 1368, [2006] 1 WLR 2793, Aldous L.J said, at [92] - [94]:

> “92. CPR Pt 52 draws together a very wide range of possible appeals. It applies, not only to the Civil Division of the Court of Appeal, but also to appeals to the High Court and county courts….it applies to a wide variety of statutory appeals where the nature of the decision appealed against and the procedure by which it is reached may differ substantially.... .
>
> 93. It is accordingly evident that rule 52.11 requires, and in my view contains, a degree of flexibility necessary to enable the court to achieve the overriding objective of dealing with individual cases justly. But as Mance LJ said on a related subject in *Todd v Adams and Chope (trading as Trelawney Fishing Co)* [2002] 2 All ER (Comm) 97, it cannot be a matter of simple discretion how an appellate court approaches the matter.
>
> 94. As the terms of rule 52.11(1) make clear, subject to exceptions, every appeal is limited to a review of the decision of the lower court. A review here is not to be equated with judicial review. It is closely akin to, although not conceptually identical with, the scope of an appeal to the Court of Appeal under the former RSC. The review will engage the merits of the appeal. It will accord appropriate respect to the decision of the lower court. Appropriate respect will be tempered by the nature of the lower court and its decision making process. There will also be a spectrum of appropriate respect depending on the nature of the decision of the lower court which is challenged. At one end of the spectrum will be decisions of primary fact reached after an evaluation of oral evidence where credibility is in issue and purely discretionary decisions. Further along the spectrum will be multi-factorial decisions often dependent on inferences and an analysis of documentary material. Rule 52.11(4) expressly empowers the court to draw inferences.....”

38. The justification for orders of suspension and striking off the roll was explained by Sir Thomas Bingham MR in *Bolton v Law Society* [1994] 1 WLR 512, at 518-519.

39. In *Law Society v Salsbury* [2008] EWCA Civ 1285, the Court of Appeal upheld a decision of the Solicitors Disciplinary Tribunal striking a solicitor off the roll. Jackson LJ reviewed the authorities and stated:

> “30. From this review of authority I conclude that the statements of principle set out by the Master of the Rolls in Bolton 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 Convention. 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 Solicitors Disciplinary Tribunal. The correct analysis is that the Solicitors Disciplinary Tribunal 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 Solicitors Disciplinary Tribunal to the High Court normally proceeds by way of review; see CPR rule 52.11(1).
>
> ……
>
> 38. In my view the Solicitors Disciplinary Tribunal's decision was correct, both in law and on the facts. However, even if the case were regarded as being on the borderline, the Divisional Court was not entitled to interfere with the sentence imposed. The Court ought to have paid proper respect to the decision of the Tribunal, which was an expert and informed body, particularly well-placed to assess what measures were required to deal with Mr Salsbury and to protect the public interest. The Divisional Court could not be satisfied that the sentencing decision reached by the Tribunal was clearly inappropriate."

40. Applying *Salsbury*, the BSB submitted that the test to be applied in an appeal was whether, despite paying respect to the sentencing decision of the Tribunal, the Court is satisfied that the sentencing decision was "clearly inappropriate".

41. In *Hewson v BSB* [2021] EWHC 28 (Admin), Pepperall J. held, on an appeal against a suspension:

> "30. Appeal courts should not lightly interfere with decisions of specialist disciplinary tribunals as to the appropriate sanction for professional misconduct. First, the appeal is by way of review and not re-hearing. The discretion as to sanction is therefore reposed in the tribunal and not the court. Secondly, the court should accord deference to the evaluative decision of the specialist tribunal.
>
> 31. In the exceptional case of *Bawa-Garba v. The General Medical Council* [2018] EWCA Civ 1879, Dr Bawa-Garba had been convicted of gross negligence manslaughter following her failure to diagnose and treat septic shock secondary to pneumonia. The Medical Practitioners Tribunal found that her fitness to practise was impaired and suspended her from practice

> for 12 months. Allowing the GMC's appeal, the Divisional Court quashed the suspension and directed that Dr Bawa-Garba's name should be erased from the medical register. The Court of Appeal (Lord Burnett CJ, Sir Terence Etherton MR and Rafferty LJ) allowed Dr Bawa-Garba's further appeal holding that the Divisional Court had been wrong to interfere with the sanction imposed by the specialist tribunal. In a joint judgment, the appeal court described, at [61], the tribunal's decision on sanction as "an evaluative decision based on many factors." There was, the court observed, "limited scope" for an appellate court to overturn such decisions. They added, at [67]:
>
> > "That general caution applies with particular force in the case of a specialist adjudicative body, such as the Tribunal in the present case, which (depending on the matter in issue) usually has greater experience in the field in which it operates than the courts … An appeal court should only interfere with such an evaluative decision if (1) there was an error of principle in carrying out the evaluation, or (2) for any other reason, the evaluation was wrong, that is to say it was an evaluative decision which fell outside the bounds of what the adjudicative body could properly and reasonably decide."
>
> 32. While a decision of a disciplinary tribunal of the Council of the Inns of Court is somewhat closer to home for a judge than one of the Medical Practitioners Tribunal, it remains true to observe that the tribunal is a specialist adjudicative body that has greater experience in the field of regulating the Bar than the courts. Its decision on sanction is an evaluative decision that should be accorded respect and the court should only interfere with its decision in the circumstances identified by the Court of Appeal in Bawa-Garba."

Grounds of appeal

42. In his appeal against the suspension orders, the Appellant relied upon the following grounds of appeal:

    i) The decision was harsh and the Tribunal failed to give due consideration to the Appellant's full circumstances.

    ii) The decision was against the public interest.

    iii) The decision would have a grave financial impact on the repayments to Mr H as well as the Appellant's family.

    iv) The Tribunal drew the wrong inferences on the Appellant's payment of wages to his wife and capital payments for the firm.

v) The Tribunal did not draw the appropriate inferences on the Appellant's remorse.

vi) The Tribunal did not properly take into account the payments made by the Appellant. The range of seriousness should have been at the lowest level and the sanction imposed should have been a fine.

Conclusions

43. As the grounds overlap, it is convenient to consider them together, and in a different order.

44. The Tribunal's full written judgment is contained in its 'Report of Finding and Sanction' ("the Report"). The Tribunal considered and applied the BSB's 'Sanctions Guidance version 6' ("SG"). The 'Purpose and Principles of Sanctions' are set out in section 2:

> "**Purpose of sanctions**
>
> 2.2 The purposes of applying sanctions for professional misconduct are to:
>
> i. Protect the public and consumers of legal services.
>
> ii. Maintain public confidence and trust in the profession and the enforcement system.
>
> iii. Maintain and promote high standards of behaviour and performance at the Bar, and
>
> iv. Act as a deterrent to the individual barrister or regulated entity, as well as the wider profession, from engaging in the misconduct subject to sanction.
>
> 2.3 The purposes above are non-hierarchical and any or all may apply in a particular case. Sanctions under a regulatory enforcement regime should not be imposed to punish. It may be that the impact of a sanction will have a punitive effect, but panels must ensure that any sanctions are only imposed to meet the purposes listed above.
>
> **Principles of sanctioning**
>
> 2.4 The fundamental principle of sanctioning is that any sanctions imposed should be proportionate, weighing the interests of the public with those of the practitioner or BSB authorised body. The sanctions imposed should be no more than is necessary to achieve the purposes set out above at paragraph 2.2.
>
> ……"

45. The Tribunal applied the six step methodology in section 3:

> "3.3 The six steps are:
>
> i. Determine the appropriate applicable Misconduct Group for the proved misconduct as set out in Part 2.
>
> ii. Determine the seriousness of the misconduct by reference to culpability and harm factors.
>
> iii. Determine the indicative sanction level for the proved misconduct.
>
> iv. Apply aggravating and mitigating factors.
>
> v. Consider the totality principle and determine the final sanction(s); and
>
> vi. Provide written reasons for the sanctioning decision."

46. The Tribunal correctly identified 'H: Failure to comply with formal orders' as the appropriate misconduct group. The Tribunal then applied the criteria set out under H at SG/55-56, and the general factors relevant to culpability and harm and the aggravating factors set out at Annex 2, SG/74 – 76.

47. The Tribunal reached the following conclusions in the Report:

> "43. In relation to seriousness, our conclusions are that each of the charges falls between the upper and middle range of seriousness. Firstly looking at culpability under seriousness, page 55, we identify that the following factors are relevant. The non-compliance continued from the autumn of 2015 to date. Although the Respondent started to make payments in May 2023, and although he has paid around £42,500, a substantial amount remains unpaid.
>
> 44. We find that there were limited attempts to comply with the order. They began in correspondence in 2022, but did not materialise in terms of any payments until May 2023. It is questionable what it was that ultimately triggered the attempts to pay. We are satisfied that there was no good reason why the Respondent failed to comply with the order.
>
> 45. In terms [of the] aggravating features relevant to culpability as set out in the annex, the following factors apply. The misconduct was intentional, and it was sustained over a number of years. The Respondent had sole responsibility for the circumstances giving rise to the misconduct. Although the Respondent has admitted the fact of non-compliance with the court order, he has not admitted and still does not admit that it amounts to professional misconduct. There is also a lack of insight. We are satisfied that the Respondent's behaviour over

many years including his inability or reluctance to engage in a timely way with the litigation demonstrates a lack of insight into the impact on the judgment creditor of his failure to comply.

46. As to mitigating features, it has been suggested that recently the Respondent has demonstrated genuine remorse. We have scrutinised the Respondent's written submissions and can find nowhere any expression of remorse, genuine or otherwise. Far from it. The Respondent still maintains that the successful claimant is disreputable and ultimately dishonest. That has not affected our judgment. It merely deals with the suggestion that the Respondent has expressed remorse.

47. We have taken into account that the Respondent has co-operated with the investigation by the BSB, but to that we add the following caveat. He has not been entirely open. In his written submissions, the Respondent has attempted to give the impression that he has never transgressed in terms of professional conduct, whether as a solicitor or a barrister. In fact, that is not correct. There is the previous disciplinary finding against him in 2014 for which he was sanctioned by way of a reprimand. Although that earlier finding does not amount to an aggravating factor, we do take it into account when considering the weight that might otherwise be given in mitigation to the fact that he has co-operated with the inquiry.

48. We have considered whether the Respondent took voluntary steps to remedy or rectify the breaches. Well yes, he took some steps, but very late in the day. It is questionable whether those steps were prompted by the threat of bankruptcy proceedings. However, we do take into account in the Respondent's favour that he paid £42,500 towards the debt.

49. We have looked at the Respondent's personal circumstances. In his very detailed written submissions, he has spoken about a period when his business as a solicitor ran into some difficulty because he was unable to work, having undergone surgery to donate a kidney to his mother. It seems that was in around 2018. We have been told that he travelled to Japan in 2023 to sort out some family matters following the death of his brother-in-law. Neither of these factors, in our judgment, amount to mitigation in terms of the non-compliance with the judgment.

……

51. The view of the Panel is divided on whether this amounted to significant culpability or moderate culpability. The majority view is that this amounts to significant culpability. The minority view is this amounts to moderate culpability.

52. Turning then to harm and pages 55 and 56 of the Guidance. The following factors are relevant. The non-compliance impacted on only one individual as far as we know and we cannot speculate on the impact on perhaps family members of Mr H. As to the cost and inconvenience caused to Mr H of attempting to enforce compliance, there is no victim personal statement from Mr H which might deal with those points. However, we do take note of the fact that any individual involved in litigation is bound to be subject to some stress and in this case the litigation and non-compliance continued for several years. We find it is more likely than not that Mr H would have been subjected to significant stress and some inconvenience in pursuing his entitlement to the judgment debt. We are also of the view that financial loss was an important feature given that Mr H was employed at very modest rate initially of £800 a month plus disputed referral fees. There is also, of course, the fact that he has been kept out of his money and costs for a number of years.

53. Turning to the annex and the aggravating and mitigating factors relevant to harm, we take into account the impact on the public confidence in the legal profession. It was submitted on behalf of the BSB that since it is unlikely that this particular case attracted any attention, the impact on public confidence is unlikely to be significant. We do not accept that submission. The fact that this might be known only to Mr H and possibly to close family and associates does not detract from its importance. What impresses us is the fact that public confidence in the legal profession would be undermined as a consequence of a member of the legal profession being able to spin out proceedings over a number of years to the detriment of a judgment creditor. We also take into account that the harm continued over many years.

54. In terms of mitigation, there is the fact that the Respondent has paid some money towards the debt and that he appears to be continuing to make attempts to pay.

55. So, our overall conclusion was by a majority that this amounted to moderate harm and by a minority that this amounted to significant harm. It is for those reasons that our conclusion is that the professional misconduct straddles the upper and middle ranges of seriousness.

56. The indicative sanctions for upper range seriousness is suspension of over twelve months, and for middle range seriousness a high level fine to suspension of twelve months or less. Given that there is no consensus or even a minority view that overall the misconduct comes within the upper range, the misconduct must be considered to be within the middle range of seriousness for which the indicative sanction is high level fine to suspension of twelve months or less."

48. In my judgment, the Tribunal's application of the SG in the passages quoted above does not disclose any errors and cannot be characterised as "wrong" or clearly inappropriate. The conclusions reached were well within the reasonable range of evaluative judgments open to a specialist Tribunal. Therefore I do not accept the Appellant's submission under Ground (vi) that the Tribunal ought to have assessed seriousness at the lowest level and imposed a fine.

49. Under Ground (vi), the Appellant also submitted that the Tribunal did not take into account the payments he made to discharge the debt. In my view, this submission is clearly incorrect. The Tribunal expressly stated at paragraph 48 of the Report "we do take into account in the Respondent's favour that he paid £42,500 towards the debt".

50. The Tribunal considered the history of the litigation in painstaking detail. It found that no payments were made towards discharging the judgment until May 2023, despite the fact that the order was made on 22 October 2015, and by June 2022 the Appellant had exhausted all avenues of appeal. It was entitled to conclude that, although the Appellant took voluntary steps to remedy the breach, they were very late in the day and possibly prompted by the threat of bankruptcy proceedings.

51. Under Ground (v), the Appellant submitted that the Tribunal did not draw the appropriate inference on the issue of remorse. He said he had shown remorse by stating that he felt ashamed that he had not made payments sooner, due to his constrained financial circumstances. In the oral ruling on sanction (page 19 of the transcript of 4 April 2024), the Chairman said:

> "We were also concerned today by a demonstrable lack of insight and lack of remorse. Mr Ahmad stressed in his written submissions for today that he is ashamed and remorseful. When asked to explain why he felt that way, he said in terms that he was professionally embarrassed that he should have been able to settle the case, to arrive at a negotiated settlement, but that he was prevented from doing so by what he perceived to be, and still perceives to be, the unreasonable stance of the Claimant. At no stage did Mr Ahmad acknowledge responsibility for the breach of the professional Code of Conduct. The thrust of his written and oral submissions was that it was the fault of the dishonest Claimant."

52. In my judgment, the Tribunal was entitled to conclude from the Appellant's written and oral evidence that he had not expressed genuine remorse for his conduct because he did not accept he was at fault or liable to pay the judgment sum. Instead, he persisted in claiming Mr H was disreputable and dishonest (see paragraphs 45, 46 and 74 of the Report).

53. Under Ground (iv), the Appellant submitted that the Tribunal drew the wrong inference from the payment of his wife's wages.

54. The Appellant, in his 'Written submission' for the hearing on 31 January 2024, stated at paragraph 66 "[m]y wife assists me in my practice and she has no other income". In his 'Further information' for the hearing on 4 April 2024, he stated "[m]y wife works

part time to help me in my practice but her main role is to look after children. So there is no earning." At the hearing on 4 April 2024, the Claimant said:

> "….my wife helps me. She doesn't have any source of income but she only helps me part-time when needed. Mainly she looks after the children because they're at school."

55. On examining the Claimant's tax return for 2022/23, the Tribunal asked him about the business expense he was claiming in the sum of £20,243 for "Wages, salaries and other staff costs". The Appellant explained that this sum represented a salary which he paid to his wife for her assistance with his work. It was deducted as a business expense from his gross income to reduce his tax liability. The Tribunal queried this with him, on the basis that he had earlier stated that his wife had no income and that he was the sole earner. The Appellant said that was a mistake.

56. In my view, this was one of several instances where the Appellant's evidence was inconsistent and unclear. The Tribunal was entitled to be concerned about the reliability of the Appellant's evidence about his income and outgoings. Other examples were the Appellant's claim in his tax return for relief on the basis that he was in receipt of a blind person's allowance and that he was repaying a student loan. When questioned by the Tribunal he accepted that these claims were inaccurate.

57. Under Ground (iv), the Appellant submitted that the Tribunal drew the wrong inference about the entry on his tax return in which he claimed for an "Annual investment allowance" in the sum of £10,345. The Appellant initially told the Tribunal that it was his personal income tax allowance. He then corrected himself and stated that it related to the £6,000 deposit he paid for the lease of a car, and items of office furniture, and a fridge, microwave and a photocopier. In the oral ruling on sanction, the Tribunal Chairman said:

> "If those figures are correct, and if it is correct that it is possible to include as a capital allowance a deposit on a leased car, it would seem that Mr Ahmed chose to prioritise the expenditure on these items over the payment of the debt. In other words, there was £10,345 available to him in the last tax year which might have been used towards the satisfaction of the judgment debt."

The same point was made at paragraphs 71 and 72 of the Report.

58. In my judgment, the Tribunal was justified, on the evidence, in finding that the Appellant was prioritising other expenditure over the payment of the judgment debt.

59. Under Ground (iii), the Appellant submitted that the suspension order would have a grave impact on his family and Mr H. The Tribunal received evidence about the impact of suspension on the Appellant's family, in particular his wife and 4 children, two of whom needed financial support to attend university. The transcript shows that the Appellant addressed the Tribunal on this matter. The Tribunal then referenced this expressly at paragraphs 77 and 79 of the Report. The Appellant also addressed the Tribunal on his ability to meet the payments to Mr H, indicating that he would be unable to make his planned payments by instalments if he was suspended from work. The Tribunal considered the detriment to Mr H of non-payment at paragraph 52 of the

Report. I find it impossible to infer that the Tribunal did not have proper regard to such obvious points.

60. Under Ground (ii), the Appellant submitted that the suspension order was against the public interest because it would deprive members of the public from the Appellant's legal services. He also repeated his submission about the impact on his family and Mr H. Under Ground (i), the Appellant submitted that the suspension was harsh and that the Tribunal failed to consider his circumstances fully.

61. In my view, the Tribunal must have been well aware that the suspension would be likely to operate harshly as it would deprive the Appellant of his livelihood and his income for 6 months. Clearly this would have an adverse effect on his family and he would not be able to continue representing clients during that period. However, the Tribunal was entitled to take the view that suspension was required to maintain public confidence and trust in the profession, and to maintain high standards in the profession.

62. The justification for such orders, despite their harsh impacts, was explained by Sir Thomas Bingham MR in *Bolton v Law Society* [1994] 1 WLR 512, at 518-519:

> "It is important that there should be full understanding of the reasons why the tribunal makes orders which might otherwise seem harsh….. In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards….The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. ….Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires.
>
> Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. ….On applying for restoration after striking off, all these points may be made, and the former solicitor may be also be able to point to real efforts made to re-establish himself and redeem his reputation. All these

> matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears likely, to be so the consequence for the individual and his family may be deeply unfortunate and unintended. But it does not make suspension the wrong order if it is otherwise right. The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is part of the price."

63. In this case, the Tribunal concluded in the Report:

> "80. Taking all of the factors into account, we are unanimously of the view that the breaches are so serious that only a period of suspension is justified.
>
> …
>
> 82. We judge that the appropriate, just and proportionate sanction to recognise the seriousness of the breaches is a suspension of 6 months concurrent on each of the charges."

64. I am satisfied that the Tribunal had well in mind the purpose and principles of sanctions, as set out in the SG at 2.2 – 2.4, including the principle of proportionality. As Sir Thomas Bingham MR held, the adverse consequences of a suspension did not make a suspension order wrong, if it was otherwise right. In my judgment, the sanction imposed was neither wrong nor clearly inappropriate.

65. For these reasons, the appeal is dismissed.

66. The Respondent's application for an award of costs in the sum of £1,200 is reasonable and proportionate.