



Neutral Citation Number: [2019] EWHC 1950 (Admin)
On appeal from the decision of the Solicitors Disciplinary Tribunal
dated 31 January 2019

Case No: CO/689/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/07/2019

Before :

MR JUSTICE WALKER

Between :

Mr Alexander ZIVANCEVIC
- and -
SOLICITORS REGULATION AUTHORITY

Appellant

Respondent

Mr Maurice Rifat, instructed by Patron Law Ltd, for the appellant
Mr Rory Mulchrone, instructed by Capsticks Solicitors LLP, for the respondent

Hearing date: 19 June 2019

Approved JUDGMENT: Decision on the appeal

Mr Justice Walker:

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A. Introduction

A1 Introduction: general

1. This is an appeal by a solicitor, Mr Alexander Zivancevic, from a decision (“the decision”) made by the Solicitors Disciplinary Tribunal on 31 January 2019. The tribunal found Mr Zivancevic guilty of misconduct, and imposed a fine of £15,000 in addition to an order for costs.
2. The hearing before the tribunal took place on 11 December 2018. Mr Zivancevic was represented at that hearing by Mr Maurice Rifat, who now appears for him as counsel in support of the appeal. Mr Rory Mulchrone, who now appears as counsel for the Solicitors Regulation Authority (“SRA”), similarly represented the SRA as prosecutor at the hearing on 11 December 2018.

A2 Introduction: background

3. Until April 2017 Mr Zivancevic was engaged as a consultant by a firm of solicitors (“the firm”). In that capacity he acted for a client (“Mr T”) in relation to a housing matter. On 19 June 2017 Mr T asked the firm for a breakdown of monies paid by him. Once that breakdown was provided, Mr T on 13 July 2017 advised the firm that it failed to include a payment which he made in July 2013 in an amount of £900. The firm’s client ledger did not include any such payment, and the firm had no record of any invoice for that sum. Mr T then provided documentation showing that £900 had been transferred into Mr Zivancevic’s personal account on 1 July 2013. The firm’s managing partner reported the matter to the SRA in August 2017.

A3 Introduction: the principles and the charges

4. The SRA’s Code of Conduct sets out ten principles. Those material for present purposes are principles 2 and 6:

You must

...

2. act with integrity;

...

6. behave in a way that maintains the trust the public places in you and the provision of legal services;

....

5. The charges against Mr Zivancevic were set out in a statement under rule 5 of the Solicitors (Disciplinary Proceedings) Rules 2007:

The allegations against the respondent, Alexander Zivancevic, ... are as follows.

1. That by requesting [Mr T] to make a payment into his personal bank account and then failing to notify the firm of the payment and failing to transfer the payment to the firm he breached;

1.1 Principle 2 of the SRA Principles 2011;
and/or

1.2 Principle 6 of the SRA Principles 2011.

2. Dishonestly is alleged in relation to allegation 1. However, proof of dishonesty is not required for any of ... allegations [1.1 and 1.2].

A4 Introduction: common ground

6. For the purposes of this appeal there is no dispute as to the following primary facts:

- (1) Mr T instructed Mr Zivancevic at the firm in March 2013.
- (2) Mr T's dispute was against his landlord for failing to provide adequate hot-water.
- (3) A letter of claim was drafted by Mr Zivancevic in April 2013 and a payment of £200 plus VAT was requested through the firm, and Mr T settled the payment request.
- (4) Thereafter Mr Zivancevic engaged in substantial correspondence with the landlord's representative between April 2013 and 28 June 2013, in respect of which the work amounted to substantially more than £900, and the communications touched on more than simply the state of the premises in which Mr T lived but also matters involving his deposit.
- (5) On Friday 28 June 2013, after a significant amount of work had been done on his case, Mr T informed Mr Zivancevic that he wanted to settle with his landlord and move out of his property on Sunday 30 June 2013 in order to relocate to the USA. Mr T was a French national and Mr Zivancevic did not want him to move somewhere else, with no forwarding address being provided, without putting the firm in funds for the work done.

- (6) Under Mr Zivancevic's agreement with the firm, (a) his clients were at the end of each month to be sent bills for amounts payable to the firm, (b) upon a bill being paid by the client to the firm Mr Zivancevic would receive from the firm 50% of the relevant profit costs.
7. It is also common ground that Mr Zivancevic's request for payment of £900 was for a payment which would be either "client money" or "office money" within the meaning of the SRA Accounts Rules 2011, that under those rules the £900 was required to be paid into a "client account" or an "office account", and that Mr Zivancevic's personal account did not fall into either of these categories.

A5 Introduction: issues below and the tribunal's decision

8. The issues below can be summarised in this way:
1. Whether, by requesting a client of his firm to make a payment into his personal bank account, failing to notify the firm of the same, and failing to transfer the payment to the firm, Mr Zivancevic failed to act with integrity, in breach of Principle 2 of the SRA Principles 2011 (Allegation 1.1).
 2. Whether the same conduct constituted a failure by Mr Zivancevic to maintain the trust placed in him and the provision of legal services, in breach of Principle 6 of the SRA Principles 2011 (Allegation 1.2).
 3. Whether Mr Zivancevic's conduct in this regard was dishonest (Allegation 2).
9. On issues 1 and 2 the tribunal's decision was adverse to Mr Zivancevic. It was in these two respects – failure to act with integrity and failure to maintain the trust placed in him – that the tribunal found Mr Zivancevic guilty of misconduct. On the third issue, the tribunal found that the charge of dishonesty was not demonstrated to the requisite standard. Accordingly allegation 2, asserting dishonesty, was not proved.

A6 Introduction: the approach of the appeal court

10. Under CPR 52.21 the appeal normally proceeds by way of review rather than re-hearing. It is not suggested that anything other than the normal course should be followed in the present case. In those circumstances, the court will allow an appeal where the decision below was "wrong", or where it was "unjust" by reason of a "serious procedural or other irregularity". In the present case, Mr Zivancevic's appellant's notice said that the court should find that the decision was "wrong" in its findings on misconduct and on sanction and costs.

A7 Introduction: grounds of appeal

11. The grounds of appeal fall into two categories. What I shall call category A set out reasons for complaining about the tribunal's decision on misconduct. What I shall call category B concerned complaints about the level of the fine imposed on Mr Zivancevic and the order for costs that was made against him.
12. After adjusting to reflect these two categories, the grounds of appeal (which use the abbreviation "SDT" to refer to the tribunal) can be set out as follows:

[A]. ... in particular the SDT was wrong to find that [Mr Zivancevic] was in breach of principle 2 and principle 6 of the Solicitors' Principles 2011 in the SRA handbook for the following reasons;

[1]. The SDT was wrong to find that by receiving a small amount of client money into his own personal account and failing to account his firm, with whom he was a consultant, where the reasons for doing so by [Mr Zivancevic] had been accepted by the SDT, that he lacked integrity and/or behaved in a way that undermined public trust.

[2]. The SDT [was] wrong to find that the SRA had proved their case of lack of integrity and/or undermining public trust beyond a reasonable doubt in circumstances where the SDT had also found that [Mr Zivancevic] was not dishonest and that the SDT could [not] discount the reasonable possibility that the payment of £900 by the client was made into [Mr Zivancevic's] personal account in circumstances of honest expediency and was ... subsequently accounted for by honest forgetful oversight.

[3]. The SDT erred in failing to apply properly the principles in *Wingate & Evans v SRA* [2018] EWCA Civ 366 and erred in considering ... the actions of the respondent as being "on par" with the type of behaviour that should properly be considered as lacking in integrity or undermining public trust.

[4]. The SDT erred in failing to properly apply the burden of proof, namely 'beyond a reasonable doubt' in respect of the allegations of lack of integrity and/or undermining public trust, where the SDT had found on the very same facts that 'dishonesty' had not been proved to the requisite standard.

[5]. The SDT was wrong to decide that the very reasons that the respondent was found not guilty of dishonesty, namely that there was enough of a reasonable possibility that this was a one-off oversight caused by unavoidable and necessary expediency, could not avail him of a reasonable doubt in

respect of the allegations of lack of integrity and undermining public trust.

[6]. The SDT [was] wrong to find that in absolute terms under no circumstances should a solicitor make a request for a client to pay money into a personal account (see para. 8.24 of the judgment), when at the same time [it] found that the respondent could avail himself of necessary expediency on the facts of this case.

[B] Sentence

[7]. The SDT [was] wrong to fine [Mr Zivancevic] £15,000. This amount was too high and disproportionate with the severity of the offence and ignored or did not properly take into account the mitigating circumstances that were put forward on [Mr Zivancevic's] behalf at the hearing, namely that this was a case involving a very small amount in circumstances where the court had found an honest oversight; that this was a one-off incident; that [Mr Zivancevic] had no previous or subsequent disciplinary findings against him; that there was no complaint from the client; and that [Mr Zivancevic] had acknowledged and accepted the facts at an early stage when they were brought to his attention with no attempt on [Mr Zivancevic's] part to hide or conceal any behaviour or act.

[8]. The SDT [was] wrong to find this matter was so serious as to justify a fine [of] such severity.

[9]. The SDT [was] further wrong in failing to reduce properly or at all the costs liability of [Mr Zivancevic] to properly reflect that the [SRA's] case of 'Dishonesty' against [Mr Zivancevic] had been dismissed.

A8 Introduction: issues arising on the appeal

13. At my request the parties agreed issues arising on the appeal as follows:

1. Whether the tribunal was "wrong" to find that the Appellant's conduct lacked integrity, in breach of Principle 2 of the SRA Principles 2011 (CPR 52.23(1)).
2. Whether the tribunal was "wrong" to find that the Appellant's conduct failed to maintain the trust placed by the public in himself and the provision of legal services, in breach of Principle 6 of the SRA Principles 2011 (CPR 52.23(1)).
3. Whether the fine of £15,000.00 imposed on the Appellant was "wrong" (CPR 52.23(1)), i.e. "clearly inappropriate" (*Salsbury v Law Society* [2009] 1 W.L.R. 1286).

B. The tribunal's reasons

14. The tribunal's judgment, among other things, recorded the allegations against Mr Zivancevic, gave a summary of the factual background, and recorded that Mr Zivancevic had given oral evidence. Paragraph 8 dealt with allegation 1.1, in relation to both the alleged breach of principle 2 (by failing to act with integrity), and the alleged breach of principle 6 (by failing to behave in a way that maintained the trust placed by the public in Mr Zivancevic as a solicitor and in the provision of legal services). When setting out the SRA's case in paragraphs 8.1 to 8.9, the tribunal noted among other things that the SRA challenged the credibility of Mr Zivancevic's account of the circumstances of the payment. It also noted in paragraph 8.7 that reliance was placed by the SRA on the *Wingate* case (see section A7 above, and section C below).
15. The tribunal described the case for Mr Zivancevic at paragraphs 8.10 to 8.21. Among other things, it noted Mr Zivancevic's evidence that his request for payment into his personal account was made as a matter of expediency arising from the immediate concern that the client would depart to the USA without paying for the significant amount of work done. It also noted Mr Zivancevic's evidence that, while he had failed to account to the firm for the £900, this was an oversight. In paragraphs 8.15 to 8.21 the tribunal summarised submissions for Mr Zivancevic as to the principles to be found in the *Wingate* decision, and as to why it was that the facts in the present case did not come within those principles.
16. Factual conclusions, and observations on those conclusions, in relation to allegation 1.1 were set out by the tribunal in paragraphs 8.22 to 8.24. For present purposes I set out paragraphs 8.23 and 8.24:

8.23 The tribunal accepted [Mr Zivancevic's] evidence that due to being out of the office, on public transport and heading to a mediation, he did not consider it practical to obtain the firm's account details. The tribunal did not accept that it was not in fact possible for [Mr Zivancevic] to obtain these details, but accepted this was his genuine belief at the time. The tribunal did not consider that evidence to the requisite standard had been presented by [the SRA] that there was any deliberate intent to deprive the firm of the £900, either through the initial request or subsequent failure to account.

8.24 The tribunal was, however, very concerned by the request from [Mr Zivancevic] to a client to pay money into his personal account. The tribunal considered that there were no circumstances in which a solicitor should make such a request; the money was either client or office money and should be treated accordingly. Despite the pressures of work described by [Mr Zivancevic] in his evidence, the tribunal considered it a serious failure on his part not to notify the firm that he had

made the request. The tribunal did not accept that simple notification of that fact was impractical.

17. Turning to the question whether there had been a failure to act with integrity, the tribunal said in paragraph 8.25:

8.25 The Tribunal considered the test in *Wingate* and concluded that such is the importance of probity and transparency with regards to money generally, not only client money, that the combination of making the request that the money be paid into his own personal account and his failure to notify the Firm of this promptly failed to adhere to the ethical standards of the profession and lacked integrity in breach of Principle 2 of the Principles. [Mr Zivancevic] then continued to act for the client for a further four years and the tribunal considered that this would provide reminders of what was a highly unorthodox and ill-advised arrangement and present ample opportunity to correct the position. The tribunal found beyond reasonable doubt that the breach of Principle 2 of the Principles had been proved.

18. At paragraph 8.26 the tribunal dealt with the question whether, for the purposes of allegation 1.2, there was a failure by Mr Zivancevic to maintain the trust by the public in himself and in the provision of legal services:

8.26 The tribunal considered that the failures summarised above would also undermine the trust placed by the public in [Mr Zivancevic] and in the provision of legal services. The public would rightly consider that every solicitor should take adequate care to prevent money being paid into their own personal account by clients, failing to notify their employer and then failing to account for the money over an extended period of time. The tribunal found beyond reasonable doubt that [Mr Zivancevic] had accordingly breached Principle 6 of the Principles.

19. Paragraph 9 of the tribunal's judgment dealt with the assertion of dishonesty in allegation 2. After setting out the respective cases of the SRA and Mr Zivancevic, the tribunal made reference to the test of dishonesty in paragraph 74 of the Supreme Court judgment in *Ivey v Genting Casinos (UK) Ltd* [2017] UK SC 67, [2017] 3 WLR 1212. The tribunal noted that accordingly it had adopted what was, in effect, a two-stage approach:

- (1) the first stage was to establish the actual state of Mr Zivancevic's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held;
- (2) Once that was established, the tribunal then considered the second stage: whether Mr Zivancevic's conduct was honest or dishonest by the standards of ordinary decent people.

20. The tribunal then set out its findings on dishonesty in paragraphs 9.9 to 9.11:

9.9 ... the tribunal accepted that [Mr Zivancevic] made the request to Mr T to pay the money into [Mr Zivancevic's] personal account as he considered his client was about to leave the country and he did not wish either the Firm or himself to be left unpaid for the work completed to date. The tribunal was not satisfied that [the SRA] had presented evidence of intent when making the request to improperly retain the money. The tribunal considered that the reasonableness of the inference it was being asked to make was undermined by the size of the payment and the fact that it was a one-off. The tribunal had found the request highly inappropriate but considered that he, and the Firm, were entitled to the £900 requested.

9.10 Having carefully assessed [Mr Zivancevic's] account of the working day in question and [Mr Zivancevic's] approach to recovering the money from his client, the tribunal found that [Mr Zivancevic] genuinely believed that due to the pressure of circumstances on him, as an interim measure, he was entitled to request that the money be paid to his own personal account. The tribunal was not satisfied to the requisite standard that evidence of any intent to permanently retain the money had been proved. Applying the standards of ordinary, decent people to his actions given that belief, the tribunal found that dishonesty was not proved.

9.11 Regarding the failure to account to the Firm for the money received, the tribunal assessed the credibility of [Mr Zivancevic's] evidence that he simply forgot. Despite the fact that during his oral evidence he stated that he thought that he had paid the money to the Firm whereas in his written submissions he had always maintained that he forgot, the tribunal did not consider that the inference of dishonesty it was being asked to draw by [the SRA] was warranted to the requisite standard of proof. Whilst [the SRA] had produced documentary evidence suggesting that Mr T had asked [Mr Zivancevic] for an itemised account of the sums he had paid, which should have acted as a reminder for the payment made to his own personal account, the tribunal could not be sure that due to the pressures of work and through accounting not being his domain [Mr Zivancevic] had not simply forgotten the payment as was his evidence. Accordingly, the tribunal found that dishonesty was not proved in relation to the continuing failure to account or pay the Firm.

21. Matters relevant to penalty were dealt with by the tribunal in paragraphs 10 to 22. At paragraph 10 it was noted that there had been no previous tribunal findings concerning Mr Zivancevic. Paragraphs 11 to 15 summarised

mitigation advanced on Mr Zivancevic's behalf. Key points from findings by the tribunal in paragraphs 16 to 20 can be summarised:

- (1) Mr Zivancevic's motivation was to ensure that he and the firm received payment before the client left the country, and his actions were spontaneous. Nevertheless they involved a breach of trust and the request for money to be paid into his personal account was "highly inappropriate notwithstanding the pressure of circumstances". He had been entirely responsible for the circumstances leading to breaches of principles 2 and 6, and should have known the arrangement was inappropriate; his culpability was assessed as moderately high.
- (2) The harm caused to the firm was minimal and no financial harm had been caused to Mr T. The principal harm was to the reputation to the profession:

The tribunal considered that conduct lacking of integrity, in particular involving a payment to a solicitor from a client to a solicitor's personal bank account, was inevitably harmful to the reputation of and public trust in the profession.

- (3) Initial misconduct had been aggravated by failure to take appropriate steps to remind himself about the unusual arrangement so that he could be sure the harm would be limited by being promptly rectified. The tribunal did not consider that he displayed meaningful insight into the inappropriateness of his actions.
- (4) The tribunal accepted that this was a one-off episode and that Mr Zivancevic had accepted the underlying facts at an early stage.

22. The tribunal then said this in paragraphs 21 and 22:

21. Having assessed the misconduct as serious, the tribunal then assessed the appropriate sanction. The tribunal had found that [Mr Zivancevic's] actions had lacked integrity. Whilst the tribunal had not found [Mr Zivancevic] intended to improperly retain the payments made to him, this was nevertheless a serious finding of misconduct involving a payment from a client in circumstances no solicitor should allow to happen. In view of this seriousness and the potential for damage to the reputation of the profession, the tribunal did not consider that no order was an adequate sanction. Given the apparent lack of insight on the part of [Mr Zivancevic], and the fact that the tribunal did not consider the breaches to be minor, the tribunal considered that a reprimand was also insufficient to protect the reputation of the profession with the public.

22 The tribunal considered that a fine was the appropriate sanction. The misconduct was serious and involved an

improper payment requested from a client to a personal bank account. The tribunal considered that in all of the circumstances a fine within Level 3 of the indicative bands contained within the Guidance Note on Sanctions was appropriate. Based on the financial information provided by [Mr Zivancevic] the tribunal determined, as Mr Rifat had acknowledged on [Mr Zivancevic's] behalf, that no reduction based on inability to pay was warranted. The tribunal determined that a fine of £15,000 should be imposed on [Mr Zivancevic].

C. Allegation 1.1: integrity

23. Ground of appeal 6 (see section A7 above) was not pursued. This was a sensible concession on Mr Zivancevic's part. It rightly accepts that under the accounts rules the £900 was either client or office money and must be treated accordingly. Ground of appeal 6 had sought to rely on the tribunal's finding of a genuine belief by Mr Zivancevic that the circumstances entitled him to request that money be paid into his personal account. That belief was one of the matters which led the tribunal to acquit Mr Zivancevic of dishonesty. It does not in any way affect the obvious correctness of the tribunal's conclusion as to what the accounts rules required.
24. The main point raised as to integrity, in grounds of appeal 1 to 5, was whether the tribunal had properly applied the principles concerning integrity identified in *Wingate*. The judgment of Jackson LJ in that case, with which Sharpe and Singh LJJ agreed, sets out those principles in paragraphs 95 to 103. Material passages for present purposes are:
95. ... As a matter of common parlance and as a matter of law, integrity is a broader concept than honesty...
96. Integrity is a more nebulous concept than honesty. Hence it is less easy to define, as a number of judges have noted.
97. In professional codes of conduct, the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. ... The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards.
98. ... it is not possible to formulate an all-purpose, comprehensive definition of integrity. On the other hand, it is a counsel of despair to say: "Well you can always recognise it, but you can never describe it."
99. The broad contours of what integrity means, at least in the context of professional conduct, are now becoming clearer ...

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

101. The duty to act with integrity applies not only to what professional persons say, but also to what they do. It is possible to give many illustrations of what constitutes acting without integrity. For example, in the case of solicitors:

- (1) A sole practice giving the appearance of being a partnership and deliberately flouting the conduct rules ...;
- (2) Recklessly, but not dishonestly, allowing a court to be misled ...;
- (3) Subordinating the interests of the clients to the solicitors' own financial interests ...;
- (4) Making improper payments out of the client account ...;
- (5) Allowing the firm to become involved in conveyancing transactions which bear the hallmarks mortgage fraud ...;
- (6) Making false representations on behalf of the client ...;

102. Obviously, neither courts nor professional tribunals must set unrealistically high standards, as was observed during argument. The duty of integrity does not require professional people to be paragons of virtue. In every instance, professional integrity is linked to the manner in which that particular profession professes to serve the public ...

103. A jury in a criminal trial is drawn from the wider community and is well able to identify what constitutes dishonesty. A professional disciplinary tribunal has specialist knowledge of the profession to which the respondent belongs and of the ethical standards of that profession. Accordingly such a body is well placed to identify want of integrity. The decisions of such a body must be respected, unless it has erred in law.

25. In attractively presented submissions on behalf of Mr Zivancevic, a proposition was advanced that a breach of the accounting rules does not immediately amount to a breach of the "ethical" standards of the profession. On analysis, however, this proposition does not address the key requirements in *Wingate*. On the one hand, as Jackson LJ observes in paragraph 102,

professional people are not required to be paragons of virtue. A slip involving a minor breach of an accounting rule may not amount to a failure to act with integrity. However if the rule that was broken is particularly important then the breach *may*, consistently with Jackson LJ's principles, amount to a lack of integrity. Similarly, what would otherwise be a minor breach *may*, consistently with those principles, have occurred in a manner which involves a lack of integrity.

26. I have stressed the word "may" because as noted in Jackson LJ's paragraph 103, when read with paragraph 102, it is the tribunal which has the specialist knowledge to determine whether there has been a failure to adhere to ethical standards concerning the manner in which the profession seeks to serve the public.
27. It would be plainly wrong in law if a tribunal, after finding a breach of a rule and without giving further thought to the matter, automatically made an assumption that there must have been a lack of integrity. But that is not what happened in the present case. The tribunal's judgment in paragraph 8.25 made no such assumption. On the contrary, in the context of the profession of solicitor, it stressed the importance of probity and transparency with regard to money generally.
28. A submission was then advanced that the facts of the present case bore no relation to those in the illustrations given in Jackson LJ's paragraph 101. This contention was supported by a submission that the illustrations in paragraph 101, when read with Jackson LJ's paragraph 100, showed that for lack of integrity there must be an element of misleading. I do not agree: neither of illustrations (3) and (4) necessarily involves misleading. In the present case the key features can be seen from paragraph 8.25 of the tribunal's judgment: probity and transparency in relation to money are central to the services which solicitors seek to provide.
29. A further submission was made that the tribunal had failed to explain why what happened involved anything more than "simple misconduct". Here, too, it seems to me that the answer is found in paragraph 8.25 of the tribunal's judgment. Requesting payment of money into a solicitor's personal account was "highly unorthodox and ill-judged". This was a severe criticism. While it was stressed for Mr Zivancevic that the sum of £900 was "small", it cannot in my view be regarded as so trivial as to negate the strength of the tribunal's criticism.
30. A further line of attack on the tribunal's conclusions involved an analysis of the tribunal's reasons why it did not accept that Mr Zivancevic acted dishonestly. Those reasons were, in broad summary, that Mr Zivancevic genuinely held a belief that expediency justified the request, and that the failures to notify and to pay the firm involved an oversight. The submission seems to be that if those matters negated dishonesty then they must equally negate lack of integrity. That submission, however, is inconsistent with Jackson LJ's clear statement in paragraph 95 that integrity is a broader concept

than honesty. It cannot be assumed that matters negating dishonesty will inevitably negate a lack of integrity.

31. It was further submitted that while the test for integrity was objective, it involved identifying and evaluating objectively the subjective beliefs of Mr Zivancevic. This submission, however, does not advance Mr Zivancevic's case. There is no reason to doubt that the tribunal was well aware of its own findings as to what was in Mr Zivancevic's mind. It was on the basis of those findings that the tribunal described the arrangement as "unorthodox and ill-advised".
32. As to other matters raised in grounds of appeal 1 to 5:
 - (1) It was accepted in oral submissions that if I were to make a finding, as indeed I do, that the tribunal's approach accorded with Jackson LJ's principles, then there could be no basis for the assertion of inconsistent verdicts (grounds of appeal 2 and 5); and
 - (2) It was similarly accepted that such a finding would negate a criticism that the tribunal's conclusion had been reached in circumstances where there had been a lack of proof to the relevant standard (grounds of appeal 2, 4 and 5).

D. Allegation 1.2: public trust

33. Jackson LJ's judgment in *Wingate* dealt with principle 6, concerning undermining the trust which the public places in the solicitor and in the provision of legal services, in paragraphs 104 to 106:

104. ... A solicitor breaches Principle 6 if he behaves in a way that undermines the trust which the public places in himself/herself and in the provision of legal services.

105. Principle 6 is aimed at a different target from that of Principle 2. Principle 6 is directed to preserving the reputation of, and public confidence in, the legal profession. It is possible to think of many forms of conduct which would undermine public confidence in the legal profession. Manifest incompetence is one example. A solicitor acting carelessly, but with integrity, will breach Principle 6 if his careless conduct goes beyond mere professional negligence and constitutes "manifest incompetence"; ...

106. In applying Principle 6 it is important not to characterise run of the mill professional negligence as manifest incompetence. All professional people are human and will from time to time make slips which a court would characterise as negligent. Fortunately, no loss results from most such slips. But

acts of manifest incompetence engaging the Principles of professional conduct are of a different order.

34. Grounds of appeal 1 to 5 made no separate points in relation to public trust. It was simply asserted that the complaints concerning findings of lack of integrity also applied to findings of undermining public trust. No separate arguments were advanced in written or oral submissions in relation to undermining public trust.
35. It seems to me that where, as here, Mr Zivancevic has not succeeded in his complaints about findings of lack of integrity, the circumstances of the present case are such that there is simply no room for him to be able complain about findings that his conduct undermined public trust.

E. Sentence

36. Ground of appeal 9, complaining about the tribunal's decision on costs, was not pursued orally. Thus the only complaint on sentence concerned the fine of £15,000 imposed on Mr Zivancevic.
37. The skeleton argument for Mr Zivancevic placed reliance on a document prepared by the SRA entitled, "Guidance on the SRA approach to financial penalties". On examination, however, this was a document concerned only with such fines as the SRA itself is able to impose.
38. At the hearing it was accepted that the tribunal's own "Guidance Note on Sanctions" (see paragraph 22 of the tribunal's judgment) set out the relevant guidance. Paragraph 25 of this document notes that a fine will be imposed where the tribunal has determined that the seriousness of the misconduct is such that a reprimand will not be a sufficient sanction, but neither the protection of the public nor the protection of the reputation of the legal profession justifies suspension or strike-off.
39. As to the level of fine, paragraph 26 sets out five bands. For level 1, the lowest level for conduct assessed as sufficiently serious to justify a fine, the range is £0 to £2,000. For level 2, conduct assessed as moderately serious, the range is £2,001 to £7,500. For level 3, conduct assessed as more serious, the range is £7,501 to £15,000. For level 4, conduct assessed as very serious, the range is £15,001 to £50,000. Level 5 concerns conduct assessed as significantly serious but not so serious as to result in an order for suspension or strike-off. In such a case the range is £50,001 to unlimited.
40. Paragraph 25 indicates that, among other factors, the tribunal must consider whether the seriousness of the misconduct, and giving effect to the purpose of the sanction, puts the case at near the top, middle or bottom of the category.
41. It was acknowledged by Mr Zivancevic that the court would only interfere with the tribunal determination as to sanction if satisfied that the tribunal's decision was clearly inappropriate: see *Salsbury v Law Society* [2009] 1 WLR 1286. This test was said to be met by a combination of factors in the present

case. They included that this was a case involving a “very small” amount in circumstances where the tribunal had found an honest oversight, that it was a one-off incident, that there were no previous or subsequent disciplinary findings against Mr Zivancevic, that there was no complaint from the client, and that Mr Zivancevic had acknowledged and accepted the facts at an early stage. It was not suggested that the tribunal had erred in identifying band 3 as the appropriate category, but it was urged that the tribunal had been wrong to set the fine at the very top of the band rather than much lower.

42. I am not persuaded by this submission. This is a case in which the tribunal had found both lack of integrity and failure to maintain the trust placed in Mr Zivancevic and the provision of legal services. The tribunal found Mr Zivancevic’s culpability to be moderately high. It found also that the initial misconduct was aggravated by failure on the part of Mr Zivancevic to take appropriate steps to remind himself about the unusual arrangement so he could be sure that the harm could be limited by being promptly rectified. He had not displayed meaningful insight into the inappropriateness of his actions. In paragraph 18, the tribunal’s judgment stressed again that the conduct involved payment from a client to a solicitor’s personal bank account. To my mind this submission in the present appeal involved a failure on the part of Mr Zivancevic to recognise the weight which needed to be given to aggravating features identified by the tribunal. In those circumstances I am not satisfied that the sentence was clearly inappropriate. It follows that the appeal against sentence fails.

F. Conclusion

43. For the reasons given above, which are essentially those advanced in writing and orally on behalf of the SRA, this appeal is dismissed. I ask counsel to seek to agree on appropriate consequential orders.