Neutral Citation Number: [2007] EWCA Civ 233

Case No: C1/2006/0961 and 0963

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE DIVISIONAL COURT
(MOSES LJ AND BURNTON J)

Royal Courts of Justice
Strand, London, WC2A 2LL

15th March 2007

Before :

PRESIDENT OF THE QUEEN'S BENCH DIVISION
LORD JUSTICE LAWS
and
LORD JUSTICE SCOTT BAKER

- -

Between :

Paul Baxendale-Walker	**Appellant**
- and -	
The Law Society	**Respondent**

- -

(Transcript of the Handed Down Judgment of
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Official Shorthand Writers to the Court)

- -

Roger Stewart QC (instructed by Messrs Irwin Mitchell) for the Appellant
Timothy Dutton QC and Chloe Carpenter (instructed by Messrs. Russell Cooke) or the Respondent

Hearing dates : 20th February 2007

- -

Judgment

President of the Queen's Bench Division :

This is the judgment of the court.

1. These proceedings arise from the decision of the Solicitorôs Disciplinary Tribunal dated 5 April 2005, with reasons handed down on 14 July 2005. The Law Society complained that the appellantôs conduct was ñunbefitting a solicitorò in two separate respects. It was alleged, first, that between 4 February 2002 and 5 March 2002, he gave evidence in High Court proceedings before Etherton J which the court found to be ñmanifestly untrueò. This allegation was dismissed. It was further alleged that the appellant ñprovided a reference in circumstances which he knew or ought to have known were improper and/or unprofessionalò. This allegation was admitted, but the precise ambit of the admission proved uncertain. The Tribunal found the appellant guilty of conduct unbefitting a solicitor, and suspended him from practice for three years. The Tribunal further decided that the Law Society (the Applicant before the Tribunal and the Respondent to the current appeal) should pay 30% of the appellantôs costs of the proceedings.

2. The Divisional Court (Moses LJ and Burnton J) dismissed the appellantôs appeal against the Tribunalôs decision to suspend him from practice. The cross appeal by the Law Society against the Tribunalôs decision on costs was allowed, and the appellant was ordered to pay 60% of the Law Societyôs costs of the disciplinary proceedings.

3. Moses LJ identified three issues for decision by the Divisional Court:

   (a) whether the Tribunal was functus officio once it had announced its order on 5 April 2005. This issue was not pursued before us.
   (b) whether the penalty imposed by the Tribunal was wrong in principle, on the basis that it was excessive and disproportionate? (the sentence issue)
   (c) whether the Tribunal erred in law when it ordered the Law Society to pay 30% of the appellantôs costs of the disciplinary proceedings? (the costs issue)

The Facts

4. This summary is largely drawn from Moses LJôs detailed analysis which we gratefully adopt.

5. The appellant was born in 1964. He was admitted as a solicitor in 1990. From 1994 he was in sole practice. During 1994, and in particular May and July 1994, he provided advice on the setting up of arrangements for loans from a pension fund. The precise details are irrelevant for present purposes. However, in accordance with a memorandum drafted by the appellant in July 1994 pension fund monies were paid into his client account, and in September 1994 were distributed by way of a loan for £2.135m out of the pension fund to a company called Kesking Limited and 19 subsidiaries. Security was provided for the loan agreement, but the document proved worthless. After the loan transaction was completed, the appellant attempted to find a new replacement administrator for the pension scheme, and in October 1994, the administration of the scheme was vested in Independent Financial Partnership

Limited, one of whose directors was a Mr Brian Smyth. He was the principal point of contact with the appellant. He made extensive inquiries about the loan arrangements, and expressed his own considerable concern about its propriety.

6. At the disciplinary hearing the appellant asserted that a Mr Xavier, a Malaysian solicitor whom he had met in London in July 1994, had informed him that a Mr Nurkiman was one of the two owners of Kesking Limited. After the distribution of loans from the pension fund, it became urgent to ensure that pensioners received outstanding payments from the balance of the funds. By then Mr Nurkiman was the sole trustee. It was necessary to transfer the balance of the pension fund from the Royal Bank of Scotland, Guernsey to Barclays Bank in Harrogate. Mr Nurkimanôs signature was required to effect the transfer and enable authority to be given to the bank to accept two signatories, Independent Financial Partnership Limited and well known solicitors in this country, Russell Jones and Walker. A letter dated 28 November 1994, to that effect, was sent to Mr Nurkiman.

7. On 30th November Mr Smyth wrote to the appellant explaining that no signature had been received from Mr Nurkiman, and pointing out that ñwell before Christmasò the administrators would need the trusteeôs address, proof of identity in the form of a passport, and that Barclays Bank would need to take out bank references. An attendance note from Mr Smyth, dated 30 November 1994, forms a minute of a telephone conversation on that date with the appellant. It records that Mr Smyth reminded the appellant that ñ2 million had been put into a less than liquid investment, with no security for the fund and that the agreement to do this pre-dated the sale of the company and hence had been signed by individuals who were not actually in officeò. The note includes a further reference to a discussion about payments to pensioners ñé which may or may not happenò, and Mr Smyth raised the question whether it was certain that money laundering was not involved. The note further recalled that a previous administrator had told the appellant that he was ñplaying with dynamiteò. The accuracy of this note was never denied by the appellant.

8. By letter dated 1 December 1994 from Mr Smyth for the administrators, to the solicitors, Russell Jones & Walker, it was recorded that ñBarclays had insisted that they find out more about Mr Nurkiman and we believe that they have been in touch with you directò. A note on the letter records that the appellant would deal with the matter, and refers to matters such as passport, birth certificate and identification of signatures by a solicitor. This letter was not addressed to the appellant himself. However during the course of the hearing before Etherton J it emerged that he had indeed written a reference for Mr Nurkiman dated 2 December 1994, in answer to a request from the manager of Barclays Bank PLC in Harrogate. In addition to this reference, the appellant wrote a further letter confirming that signatures on attached documents to Barclays Bank corresponded to signatures ñthat we have seen from those same persons as on other documentsò.

9. The reference, which formed the basis for the second allegation against the appellant, reads:

> ñRe: Mr Nurkiman
>
> We are pleased to confirm that Mr Nurkiman is known to this firm and has satisfied our identification requirements in relation

> to Money Laundering Regulations 1994. We are further pleased to confirm that he a person of integrity and good standing.
>
> We nevertheless disclaim all and any responsibility for any loss or damage consequent upon any actions you may take.ò

10. The trustee took proceedings against a number of defendants, claiming that the £2.135 million paid out by way of loans to Kesking and its subsidiaries constituted a dishonest breach of trust. The present appellant was the third defendant. At the end of the lengthy hearing before Etherton J, he concluded that he should view the appellantôs evidence with ñconsiderable cautionò. He was left in ñconsiderable doubtò whether the appellant was giving ñhonest evidence as to his actual recollection, as opposed to reconstructing what he believed or would like to believeé ò.

11. The judgment went on to record that there were ñsome particular incontrovertible mattersò casting doubt on the appellantôs honesty, and his credibility as a witness, and on the ñtruthfulness and reliability of his oral evidenceò. The judge identified his evidence in relation to a memorandum as ñmanifestly untrueò. The appellantôs explanation about events surrounding the memorandum was ñridiculousò, and although the particular issue was of relatively minor importance in the overall context of the issues before the judge, it provided ñvery grave concernò about the appellantôs overall credibility on more important matters.

12. Another matter that cast doubt on the appellantôs honesty and the reliability of his evidence, related to a telephone conference in August 1994 with a barrister specialising in company law work. The details of the transaction are unimportant, but the judge concluded that either the appellantôs note of the telephone conference was ñentirely inaccurate, and deliberately soò, or the alternative account, given by another witness, was equally inaccurate, ñand deliberately soò, and that the appellant connived in the creation of the false account. The note of the telephone conversation, written by the appellant, was intended ñfor future use in case it should transpire that a breach of trust was committed, and was worded with that in mindò.

13. There were a number of additional factors which provided support for what Etherton J described as a ñcompelling argumentò that the appellant was dishonestly participating in, or dishonestly reckless whether a breach of trust was involved. In the end, however, he decided that the trustee had failed to establish that the appellant was acting dishonestly as an accessory to the breach of trust when the loans were made. It was a ñdifficult and finely balanced exerciseò. The appellantôs lack of professional judgment was described as ñremarkable and colossalò, and later as ñbreathtakingò.

14. For present purposes we should underline another ñincontrovertible matterò which undermined Etherton Jôs confidence in the appellantôs honesty, the Nurkiman reference. This was inaccurate in a number of serious respects. Etherton J observed that the appellant had ñno ground whatsoeverò for confirming that Mr Nurkiman was a person of integrity or good standing, and his evidence did not seem ñto give any proper explanation for the contents of the letterò.

15. The appellantôs explanation for his conduct was that he was under pressure to write the reference, and that having received documents signed by Mr Nurkiman in response to requests, he treated the documents as ña genuine and clear indication of Mr Nurkimanôs existence and that he was playing his proper role in the transactionò. He believed that Mr Nurkiman was personally known to Mr Xavier, and he took the view that he was justified in writing references about Mr Nurkimanôs integrity and good standing because, as Etherton J summarised it,

> ñHe had been dealing with a client, through another lawyer who apparently knew the client well, who was involved in a high value transaction and had been so involved for several months. Mr Nurkiman had responded to all requests made of him in a timely and proper manner. At the time and in the circumstances that presented themselves, namely the pressure from Mr Smyth and the knowledge that pensioners receipt of money depended on the document, he decided to proceed as he didò.

16. Etherton Jôs conclusions merit close attention:

> ñMr Baxendale-Walker had no ground whatsoever for saying that Mr Nurkiman was a person of integrity or of good standing. In cross-examination, Mr Baxendale-Walker sought to explain the letter on the basis that he had worked with Mr X (Xavier) for six months on a project involving a significant financial transaction in which Mr Nurkiman was one of the principals. This does not seem to me to give any proper explanation for a letter by a solicitor, apparently in connection with money laundering regulations, which gave the impression and, in my judgment, was intended to give the impression that one or more people in the firm had met and dealt with Mr Nurkiman personallyò.

17. The terms of Etherton Jôs judgment provided ample justification for the first allegation brought against the appellant by the Law Society. His conclusion that, in the end, the appellant could not be shown to have participated dishonestly in the transactions relating to the loan did not extinguish the alarming features relating to the appellantôs credibility revealed in the action.

18. The findings of the Tribunal are clear and unequivocal.

> ñ (116) The Tribunal did not agree with Mr Baxendale-Walker that the letter of reference given on behalf of Mr N to a bank, which reference was both improper and unprofessional, comes at the lower end of the scale of professional misconduct. Members of the public and organizations such as banks are entitled to expect to be able to trust a solicitor to the ends of the earth.

(117) At the time when Mr Baxendale-Walker gave the reference he had been qualified for five years. The Tribunal rejected Mr Baxendale-Walkerôs submission that at the time when he wrote the reference he was young and inexperienced. Mr Baxendale-Walker held a solicitorsô Practicing Certificate and was entitled to practice as a fully-fledged member of the profession and on his own account.

(118) People who are not qualified as solicitors are able to recognise that it is improper to give a reference on behalf of a person that they do not know. Solicitors know that they can only properly give references which are truthful in all respects. This inevitably precludes commenting on the attributes of a person who does not exist.

(119) The Tribunal was in no doubt that Mr Baxendale-Walker gave a false reference indicating that the person he referred to was a person of good standing when he neither knew nor had any opportunity to know whether that was accurate.

(120) Dishonesty had not been alleged against the Respondent in this respect and if it had been the Tribunal would have had no difficulty in making an order that Mr Baxendale-Walker be struck off the Roll of Solicitors. The Tribunal is further in no doubt that to write such a false reference was both improper and a serious breach of a solicitorôs professional duty. In writing such a letter the Respondent had been at the very least extraordinarily reckless with regard to this professional duty.

(121) The Tribunal concluded that it must impose a sanction and that a suspension for three years would be both proportionate to the seriousness of the allegation and would provide a clear indication, both to members of the solicitorsô profession and to members of the public, that such behaviour on the part of a solicitor is wholly unacceptable and would not be permitted to go unmarked even where dishonesty was not alleged.ò

The Sentence Issue

19. The first argument before the Divisional Court, and before us, was directed at the order for suspension, and its length. The submission is readily summarised. Suspension was not an appropriate sentence for the appellantôs offence. This amounted to an error of judgment, or gross carelessness, not dishonesty, and it caused no loss. Three yearsô suspension was plainly excessive, and out of line with a number of decisions of the Tribunal in other cases where similar issues were said to arise for consideration.

20. In the Divisional Court Moses LJ reflected on the judgment of Sir Thomas Bingham MR in Bolton v Law Society [1994] 1 WLR 512. In this case the Tribunal made an

order for suspension, notwithstanding a finding that the solicitor had not acted dishonestly when he dispersed a clientôs money to relatives without adequate security but, in the expectation that the money would be repaid. The Divisional Court, having heard further evidence of the solicitorôs good character, concluded that suspension was disproportionate and substituted a fine. The Court of Appeal held that the Divisional Court should not have interfered with the Tribunalôs decision. It regarded the solicitorôs conduct as a flagrant departure from elementary rules of practice, and, as Moses LJ explained, ñendorsed the conclusion that a flagrant disregard of elementary rules justified a suspension even in the absence of dishonestyò.

21. The starting point, as Sir Thomas Bingham explained, was that:

> ñLawyers practising in this country é should discharge their professional duties with integrity probity and complete trustworthinessé A professionôs most valuable asset is its collective reputation and the confidence which that inspiresé 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 a part of the priceò.

22. The decision in Bolton examined two complementary features of orders made by the Solicitorôs Disciplinary Tribunal. Such orders will often include traditional punitive elements, to ñpunishò the solicitor for his actions, and to act as a deterrent to others who might be tempted to behave in the same way. The second feature of such orders is ñto maintain the reputation of the solicitorsô profession as one in which every member, of whatever standing, may be trusted to the ends of the earthò. Whether an order includes a punitive element or not, an essential ingredient of all orders made by the Tribunal is the maintenance, in the public interest, of the collective reputation of the profession and continued public confidence in its integrity.

23. Addressing these considerations, Moses LJ regarded it as unsurprising that the Tribunal took the serious view it did of the appellantôs conduct in providing the reference for Mr Nurkiman. He agreed that ñfor a solicitor to write a reference about someone he has never met and about whom he knows nothing is a grave breach of his dutyò. The Tribunal was entitled to make its order on the basis that the appellant had been ñextraordinarily reckless with regard to this professional dutyò. In short, he had taken ña blinkered approach to his professional duties as a solicitorò, which, even if not dishonest, amounted to serious misconduct, meriting a substantial period of suspension.

24. Mr Stewart sought to persuade us that notwithstanding that this was a second appeal, governed by CPR 52.13, the decision of the Divisional Court raised an important point of principle or practice, or that there was some other compelling reason for the second appeal to be heard. Mr Stewart also endeavoured to draw attention to decisions of the Disciplinary Tribunals where the eventual outcome was less severe than the order made in this particular case. On examination, none of the decisions was directly in point. In any event, however, unless Mr Stewart could demonstrate a serious disparity, or gross disproportion between the sentences imposed by the other disciplinary tribunals hearing different cases, his analysis, however detailed, could not advance the argument.

25. In our judgment the argument was unsustainable, and is unsustained. The reference was sought by a bank, in the context of money laundering regulations, which although much less draconian then than they are now, were nevertheless directed at the discouragement of profitable criminal conduct. The appellant knew that the reference was critical to the proper discharge of the bankôs duties, and fully appreciated that the bank would naturally rely on the accuracy of any reference he provided, just because he was a solicitor. Moreover his reprehensible behaviour occurred in the context of the lamentable absence of candour and unsatisfactory evidence when he endeavoured to explain himself before Etherton J. The Tribunal was fully entitled to conclude that his conduct in relation to the reference represented ñextraordinaryò recklessness, and that the consequent sanction should fully vindicate the profession.

26. No realistic criticism can be advanced against Moses LJôs analysis of the facts or his conclusion that the order for suspension was justified. It follows that no basis for interfering with the order made by the Tribunal, or indeed allowing it to be reargued, was demonstrated. Accordingly the renewed application in relation to the sentence issue was dismissed.

27. **The Costs Issue**

28. Section 47(2) of the Solicitors Act 1974 (the 1974 Act) provides:

> ñé On the hearing of any application or complaint made to the Tribunal under the Act, é The Tribunal shall have power to make such order as it may think fit, and any such order may in particular include provision for any of the following matters ï
>
> é
>
> i) the payment by any party of costs or a contribution towards costs of such amount as the Tribunal may consider reasonable.ò

29. This provides the starting point. An order for the payment of costs may be made in the absence of a finding of professional misconduct (Rule 22 of the Solicitors (Disciplinary Proceedings) Rules 1994).

30. The Tribunalôs decision was based on the conclusion that the first allegation made against the appellant by the Law Society was not established, and that a greater proportion of his own costs arose from his defence to this allegation. The order was not made on the basis that the Law Society had abused the process or proceeded against the appellant for improper motives. These grounds of complaint made by the appellant were rejected by the Tribunal. The Tribunalôs reasoning was not detailed. It merely acknowledged that the appellant ñhad been successful in his defence of the first allegation and in such circumstances it would not be right that the respondent pay the Law Societyôs costs. It would be right that the Law Society pay a proportion of Mr Baxendale-Walkerôs costsò. This was fixed at 30%. The Divisional Court concluded that the costs order was unjustified. Moses LJ approached the problem on the basis that it was not in dispute that in bringing the proceedings against the appellant the Law Society was acting as a disciplinary body, or regulator, taking proceedings in the public interest in the exercise of its public function. Accordingly,

he concluded that the principles relating to costs differed from those which applied in ordinary civil litigation. He continued:

> ñAbsent dishonesty or a lack of good faith, a costs order should not be made against such a regulator unless there is good reason to do so. That reason must be more than that the other party had succeeded. In considering an award of costs against a public regulator the court must consider on the one hand the financial prejudice to the particular complainant, weighed against the need to encourage public bodies to exercise their public function of making reasonable and sound decisions without fear of exposure to undue financial prejudice, if the decision is successfully challenged. ò

31. These principles were said to derive from a number of decisions summarised by Jackson J in Gorlov v Institute of Chartered Accountants [2001] EWHC Admin. 220 at part 4, paragraphs 30-35 and three principles distilled by Lord Bingham of Cornhill CJ in City of Bradford Metropolitan District Council v Booth [2000] COD 338.

32. The decision of the Divisional Court is criticised on a number of grounds. First, Mr Stewart submitted that there was no basis for interfering with the decision of the Tribunal. It was vested with a wide discretion as to costs under s47(2) of the Solicitors Act. It could not be said that the discretion had been wrongly exercised. The decision reflected the reality that a substantial proportion of the hearing before it related to discussion and clarification about precisely what was involved in the first allegation, which, after the evidence was analysed, culminated in its rejection. There was an additional policy consideration, arising from the Law Societyôs interest in providing support for the profession as a whole, that if the proceedings against the solicitor failed, common fairness required that the costs should indeed be borne by the profession as a whole, rather than the acquitted solicitor.

33. Moreover it was suggested that Moses LJôs analysis of the responsibilities imposed on a regulatory authority, and his conclusion that such an authority should not be required to pay costs in the absence of some improper motive, or wholly misconceived, was wrong. Support for this contention was derived from the observations of Waller LJ, sitting in the Divisional Court, in Law Society v Adcock [2006] EWHC 3212, that Moses LJ had:

> ñé .put the matter too highly in favour of the regulator. Lord Bingham does not, as I understand him, suggest that there should be a presumption, one way or another; he simply makes clear that there are particular circumstances to bear in mind where a public body or a regulator is concernedò.

34. We concluded that we should address and resolve this apparent difference of approach. Accordingly, leave to appeal the Divisional Courtôs decision on costs was given.

35. Our analysis must begin with the Solicitorôs Disciplinary Tribunal itself. This statutory tribunal is entrusted with wide and important disciplinary responsibilities for the profession, and when deciding any application or complaint made to it, section 47

(2) of the Solicitors Act 1974 undoubtedly vests it with a very wide costs discretion. An order that the Law Society itself should pay the costs of another party to disciplinary proceedings is neither prohibited nor expressly discouraged by s47(2)(i). That said, however, it is self evident that when the Law Society is addressing the question whether to investigate possible professional misconduct, or whether there is sufficient evidence to justify a formal complaint to the Tribunal, the ambit of its responsibility is far greater than it would be for a litigant deciding whether to bring civil proceedings. Disciplinary proceedings supervise the proper discharge by solicitors of their professional obligations, and guard the public interest, as the judgment in Bolton makes clear, by ensuring that high professional standards are maintained, and, when necessary, vindicated. Although, as Mr Stewart maintained, it is true that the Law Society is not obliged to bring disciplinary proceedings, if it is to perform these functions and safeguard standards, the Tribunal is dependant on the Law Society to bring properly justified complaints of professional misconduct to its attention. Accordingly, the Law Society has an independent obligation of its own to ensure that the Tribunal is enabled to fulfil its statutory responsibilities. The exercise of this regulatory function places the Law Society in a wholly different position to that of a party to ordinary civil litigation. The normal approach to costs decisions in such litigation ï dealing with it very broadly, that properly incurred costs should follow the ñeventò and be paid by the unsuccessful party ï would appear to have no direct application to disciplinary proceedings against a solicitor.

36. We have considered whether the authorities to which our attention was drawn suggest any different conclusion. On examination, they confirm it. In City of Bradford Metropolitan B C v Booth [2000] COD 3388, the Divisional Court was concerned with an order for costs made by justices against a vehicle licensing decision of a local authority on an appeal against its decision not to renew a private hire operators licence. Acting under s64(1) of the Magistrates Court Act 1980, which gave the Magistrates a discretion to make ñsuch order as to costsé as it thinks just and reasonableò, the justices ordered that the costs should follow the event and that the local authority should pay £750 costs, plus VAT, to the successful appellant.

37. The attention of the Divisional Court was drawn to R v Merthyr Tydfil Crown Court, ex parte Chief Constable Dyfed Powys Police (9 November 1998) R v Totnes Licensing Justices, ex p Chief Constable of Devon and Cornwall (1990), The Times, 28 May 1990, and Chief Constable of Derbyshire v Goodman and Newton (DC, unreported, 2 April 1998).

38. Lord Bingham CJ concluded that when the Justices relied on the principle that costs should follow the event they had misdirected themselves. Their approach was wrong. There were wider considerations, which were summarised in three propositions:

> ñ1. Section 64(1) confers a discretion on a magistratesô court to make such order as to costs as it thinks just and reasonable. That provision appliesé . as to the party (if any) which pays them.
>
> 2. What the court will think just and reasonable will depend on all the relevant facts and circumstances of the case before the court. The court may think it just

and reasonable that costs should follow the event, but need not think so in all cases covered by the subsection

3. Where a complainant has successfully challenged before justices an administrative decision made by police or regulatory authority acting honestly, reasonably, properly and on grounds that reasonably appear to be sound, in the exercise of its public duty, the court should consider, in addition to any other relevant fact or circumstances, both

i) the financial prejudice to the particular complainant in the particular circumstances is an order for costs is not made in his favour;

ii) the need to encourage public authorities to made and stand by honest, reasonable and apparently sound administrative decisions made in the public interest without fear of exposure to undue financial prejudice if the decision is successfully challengedò

39. In Gorlov v the Institute of Chartered Accountants in England and Wales [2001] EWHC Admin 220, a Panel of the Appeal Committee of the Institute of Chartered Accounts refused to award a chartered accountant the costs of disciplinary proceedings in which he was ultimately successful. Jackson J accepted that given the regulatory nature of the Institute, a professional body, acting in the public interest, Mr Gorlovôs success before the Appeal Panel was a factor in his favour, but not decisive. He identified the obligations vested in a professional body as ña factor which points against any automatic award of costs in disciplinary proceedings which failò. We need not address the eventual outcome of the proceedings in Gorlov, which was fact specific.

40. In our judgment Jackson J was right to equate the responsibilities of the Institute in Gorlov with the regulatory actions of the licensing authority in Booth. As Bolton demonstrates, identical, or virtually identical considerations apply when the Law Society is advancing the public interest and ensuring that cases of possible professional misconduct are properly investigated and, if appropriate, made the subject of formal complaint before the Tribunal. Unless the complaint is improperly brought, or, for example, proceeds as it did in Gorlov, as a ñshambles from start to finishò, when the Law Society is discharging its responsibilities as a regulator of the profession, an order for costs should not ordinarily be made against it on the basis that costs follow the event. The ñeventò is simply one factor for consideration. It is not a starting point. There is no assumption that an order for costs in favour of a solicitor who has successfully defeated an allegation of professional misconduct will automatically follow. One crucial feature which should inform the Tribunalôs costs decision is that the proceedings were brought by the Law Society in exercise of its regulatory responsibility, in the public interest and the maintenance of proper professional standards. For the Law Society to be exposed to the risk of an adverse costs order simply because properly brought proceedings were unsuccessful might have a chilling effect on the exercise of its regulatory obligations, to the public

disadvantage. Accordingly, Moses LJ's approach to this issue did not go further than the principles described in this judgment.

41. In our judgment, in agreement with Moses LJ, the Tribunal misdirected itself when it ordered the Law Society to pay part of the appellant's costs on the basis that the first allegation against him had failed and that costs should follow the event. This overlooked not only the public obligation of the Law Society, as we have analysed it, but the additional fact that the appellant brought the proceedings in relation to both allegations on himself. At the same time the order ignored the costs incurred by the Law Society in relation to the successful pursuit and eventual admission of professional misconduct in relation to the second allegation.

42. The end result was that serious professional misconduct, justifiably dealt with by a three year suspension, was established. In this way the integrity of the profession, and the maintenance of standards was vindicated. The Tribunal having misdirected itself, it fell to the Divisional Court to reconsider the costs order. Without being able to assess the amount of time taken up with the first allegation, but in the context of the appellant's responses to it, the Divisional Court took the view that fairness, properly reflecting the overall justice of the case, would be achieved by an order, not that the appellant should pay the whole of the Law Society's costs before the Tribunal, but that it should pay 60% of them. On this issue, in our judgment, it would be wrong for this court now to interfere. Accordingly, the appeal in relation to the costs issue should be dismissed.