The Respondent appealed successfully against the Order of the Solicitors Disciplinary Tribunal dated 21 March 2018 as set out in the Tribunal's Judgment dated 6 April 2018. On 16 October 2018 Holman J set aside the Order and Judgment and remitted the allegations to the Tribunal for redetermination. Purcet v Solicitors Regulation Authority [2018] EWHC 2879 (Admin)

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11705-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

FRANCISCO XAVIER RODRIGUEZ-PURCET — Respondent

Before:

Mr A. N. Spooner (in the chair)
Mr T. Smith
Mr S. Marquez

Date of Hearing: 20-21 March 2018

Appearances

Andrew Tabachnik QC of 39 Essex Chambers, 81 Chancery Lane, London WC2A 1DD, instructed by Paolo Sidoli, solicitor, of Russell-Cooke Solicitors, 2 Putney Hill, London SW15 5AB, for the Applicant.

John Hughes, solicitor, of John Hughes & Co, PO Box 125, Liverpool L37 2WR appeared by telephone for the Respondent's preliminary applications only. The Respondent did not appear.

JUDGMENT

Allegations

1. The allegations against the Respondent made by the Solicitors Regulation Authority ("SRA") were that:

1.1 The Respondent procured, arranged and received (both into his personal bank account and into the account of a company of which he was the 100% shareholder) monies which were derived from Axiom Funds and which were corrupt and improper payments from a company (Legal Applicant's Limited) ("LAL") owned and run by a personal friend (RH) that supplied services to Tandem XJA Limited (trading as Tandem Law) ("Tandem"), and thereby breached Principles 2 and 6 of the SRA Principles 2011 ("the Principles"). Dishonesty was alleged, although proof of dishonesty was not a requirement for proof of the allegation.

1.2 The Respondent arranged for (or acquiesced in) the passing to third parties (without client consent) of confidential information belonging to Tandem clients so that the said third parties could cold-call the clients offering re-mortgage services, and the thereby breached Principles 2 and 6 of the Principles. Recklessness was alleged, although proof of recklessness was not required for proof of the allegation.

Documents

2. The Tribunal reviewed all the documents submitted by the parties, which included:

- Notice of Application dated 18 August 2017
- Rule 8 Statement and Exhibits PAS1 and PAS2 dated 18 August 2017.
- Respondent's Answer to the Rule 8 Statement dated 25 September 2016[1]
- Applicant's Schedule of Costs (undated)

Preliminary Matters

3. As regards his representation of the Respondent, Mr Hughes explained that he had been instructed to act by the Respondent in 2017. For several weeks the Respondent had been unable to provide him with instructions as regards the substantive matter. Given the lack of instructions, he was unable to represent him at any substantive hearing, however as regards the preliminary applications it was professionally proper for him to represent the Respondent's interests. As an officer of the Supreme Court, it was his duty to ensure that the Respondent's interests were protected. His professional difficulty did not arise from his not being instructed, but from his inability to take instructions; he was able to make submissions as regards the preliminary applications.

<u>Adjournment Application</u>

4. Mr Hughes submitted that given the Respondent's state of health, it would be unfair, unreasonable and contrary to natural justice for the hearing to proceed. Whilst it was accepted that it was in the public interest for matters to be determined, it was

[1] There was an error on the date of the document which should have been dated 2017 as opposed to 2016. This was a clear error as the document referred to events on dates post September 2016.

submitted that the public would be protected by the imposition of an interim Order under Section 43 of the Solicitors Act 1974 (as amended) ("a Section 43 Order"), until such time as the Respondent was well enough to defend the dishonesty allegation. Mr Hughes referred the Tribunal to the report of Sean O'Donnell that had been prepared on the Respondent's behalf. Mr O'Donnell was a Registered Mental Health Nurse and an Accredited Cognitive Behavioural Therapist, with 20 years' experience as a practising clinician in mental health. He had treated the Respondent in the past, and was currently treating him. His report was based on his assessment of the Respondent and sight of his medical records. It was Mr O'Donnell's recommendation was that the hearing be adjourned until:

- A full assessment could take place into the Respondent's mental health needs; and
- There was a review of his medication to ensure that it was therapeutically effective.

5. Further, the Respondent should remain in therapy so that his management plan could be revisited and his secondary presentations could be reduced.

6. Mr O'Donnell determined, on the basis of psychometric test scores, that the Respondent was suffering from severe anxiety and depression. These conditions were being further compounded by stress which had resulted in the Respondent experiencing symptoms which might be indicative of early warning signs of a potential relapse with his underlying medical condition. The Respondent was also reported to be experiencing a number of additional matters that were adversely affecting his health. Full details were set out in the report of Mr O'Donnell to which the Tribunal had full regard.

7. Mr O'Donnell stated that the Respondent appeared to be showing soft signs which could be indicative of a relapse in his major mental health condition. If this was to occur then, based on probability and the Respondent's historical behaviour patterns, Mr O'Donnell argued that the stress of the hearing would be the main triggering factor.

8. Mr Hughes submitted that if there was any doubt as to the Respondent's medical status, there should be further investigation and the matter should be adjourned for those enquiries to be made. As regards the report of Dr Mogg (a consultant psychiatrist), obtained by the Applicant, the Tribunal should treat that report with caution as Dr Mogg had not seen the Respondent and had not had access to his medical records. Should the Tribunal be minded to rely on Dr Mogg's findings, fairness dictated that Mr O'Donnell should be given the opportunity to comment on Dr Mogg's report. Notwithstanding his lack of knowledge of the Respondent and his history, Dr Mogg determined that the reported symptoms were commensurate with a relapse in the Respondent's underlying medical condition. Given the Respondent's current state of health and his inability to give instructions, reasonable adjustments were irrelevant. To proceed with the hearing was unfair and would put the Respondent at a disadvantage.

9. Mr Tabachnik QC accepted that Dr Mogg had not seen the Respondent or his medical records; his report was a desktop review of Mr O'Donnell's findings. Whilst Dr Mogg accepted that the Respondent's symptoms were commensurate with a relapse in his underlying condition, a number of the reported symptoms could equally occur in people who did not have the Respondent's illness, but were facing a particularly stressful situation. The extent of the Respondent's symptoms were not entirely clear; Mr O'Donnell's report suggested that those symptoms were not "full-blown". Mr O'Donnell's report relied on the Respondent's self-report of his symptoms and there was no comment in the report of what Mr O'Donnell observed of the Respondent's presentation during his appointment. As regards the tests undertaken by the Respondent, they were diagnostic and had not been validated in a medico-legal context. Further, Mr O'Donnell's out of scores in the report (e.g. 17 out of 33) were incorrect. In addition, it was Dr Mogg's opinion that the scores reported were not out of the ordinary for any individual who was highly stressed at the prospect of facing disciplinary proceedings.

10. Dr Mogg opined that reasonable adjustments would facilitate the Respondent's attendance at the hearing, such as regular breaks and direction to previous statements as a memory prompt. Whilst it was plausible that the Respondent's health had deteriorated in recent weeks, he would need to be quite severely impaired to be unable to participate in proceedings including providing his solicitor with instructions.

11. Mr Tabachnik QC referred the Tribunal to the case of The Governor and Company of the Bank of Ireland v Jaffrey and Gill [2012] EWHC 734 (Ch) in which Mr Justice Vos referred to the judgment of Mr Justice Norris in the case of Mark Levy (Trustee in Bankruptcy of Ellis-Carr) v Ellis-Carr [2012] EWHC 63 (Ch). At paragraph 36 of that judgment, in relation to medical evidence submitted in support of an application to adjourn Norris J stated:

> "In my judgment it falls far short of the medical evidence required to demonstrate that the party is unable to attend a hearing and participate in the trial. Such evidence should identify the medical attendant and give details of his familiarity with the party's medical condition (detailing all recent consultations), should identify with particularity what the patient's medical condition is and the features of that condition which (in the medical attendant's opinion) prevent participation in the trial process, should provide a reasoned prognosis and should give the court some confidence that what is being expressed is an independent opinion after a proper examination. It is being tendered as expert evidence. The court can then consider what weight to attach to that opinion, and what arrangements might be made (short of an adjournment) to accommodate a party's difficulties. No judge is bound to accept expert evidence: even a proper medical report falls to be considered simply as part of the material as a whole (including the previous conduct of the case). The letter on which the Appellant relies is wholly inadequate."

12. Mr Tabachnik QC made no issue in relation to Mr O'Donnell's qualifications; he remarked that it was concerning that there was no report or certificate from a Doctor when the Respondent was seeing his GP, who had referred him to Mr O'Donnell. Given that Mr O'Donnell was the Respondent's treating practitioner, the Tribunal should consider how independent the report was. The Tribunal should also consider

the extent to which the report did anything more than relay the symptoms that the Respondent had himself reported. It did not contain any diagnostic analysis nor did it consider whether the hearing could take place with reasonable adjustments. The report had been prepared on behalf of the Respondent and, it was submitted, was not independent. The question the Tribunal needed to determine when considering what weight was to be placed on the report was whether the balance of the report was right so that it presented a credible independent basis so as to justify any adjournment based on its contents.

13. Mr Hughes submitted that Mr O'Donnell had produced the report as the Respondent's treating clinician; that fact did not mean that the report was not independent. The Respondent did not have the funds to obtain an independent psychiatric report and the report of Mr O'Donnell was a proper report, and more proper than the report of Dr Mogg who had not seen the Respondent or had access to his medical records.

14. As regards the comments of Norris J, whilst the report was "not on all fours", Mr O'Donnell:

- had knowledge of and familiarity with the Respondent's condition
- was independent
- detailed recent consultations
- detailed the Respondent's medical condition
- detailed the problems the Respondent was likely to face

15. The Tribunal carefully considered the submissions made by the parties and their respective medical reports. The Tribunal determined that it was appropriate to rely on the report of Dr Mogg. Whilst he had not seen the Respondent, his report was a commentary on the findings of Mr O'Donnell and the process by which those findings had been reached. The Tribunal accepted the shortcomings in the report of Mr O'Donnell identified by Dr Mogg. The Tribunal noted that Mr O'Donnell's report was highly caveated with lots of 'mays' and 'could be's'. There had been no consideration by him of any measures that could be taken such as to enable the Respondent to take part in the proceedings. There was no prognosis of when it was anticipated that the Respondent may be well enough to take part in any hearing, nor did the report state that the Respondent lacked litigation capacity. The Tribunal accepted that Mr O'Donnell was mistaken in the 'out of' scores that he detailed in the report. The Tribunal also accepted that the majority of the symptoms that the Respondent was described as suffering from, were not specifically related to his condition and the psychometric scores were not out of the ordinary for a well person facing a stressful situation.

16. The Tribunal considered and applied the comments of Norris J, whose decision the Tribunal was bound to take into account. The Tribunal found that with suitable adjustments, the Respondent could take part in the proceedings and notwithstanding his medical condition, the Respondent would have a fair trial. The Tribunal was an experienced and expert body, and was accustomed to dealing with matters where reasonable adjustments were required. Given its determination that the Respondent could have a fair hearing with reasonable adjustments to take account of his health, the Tribunal refused the application to adjourn the substantive hearing.

Application for the Tribunal to declare that given the Respondent's admissions and acceptance of the sanction sought, a hearing to declare him dishonest was not a proper use of SDT time and resources.

17. Mr Hughes submitted that given that the Respondent had accepted recklessness as regards allegations 1.1 and 1.2, the only outstanding issue to be determined was that of dishonesty. The Respondent was an unadmitted person, as such the only sanction available was a Section 43 Order. The Respondent had already offered, in open correspondence, to be subject to such an order. As regards dishonesty, the Respondent had not been questioned or interviewed by the police; there was no criminal investigation. The Tribunal was being asked to consider and determine the honesty of the Respondent, who had admitted the majority of the allegations made against him. This was onerous and excessive. Nothing further could be achieved by proceeding with the hearing. Accordingly, the Tribunal should declare the proceedings a nullity.

18. Mr Tabachnik QC submitted that there was no justification for withdrawing or staying the allegation of dishonesty. Not only was the allegation serious, but there was a clear regulatory justification for that allegation to be determined. Whilst the Respondent currently stated that he did not wish to return to work in the profession, it was always open to him to apply for any Section 43 Order to be revoked or varied. Any decision made as regards the revocation or variation of such an Order, or any application to work within the profession, should be made on a fully informed basis. There was no abuse of process in the Tribunal's determination of the allegation of dishonesty. As regards any police involvement, this was irrelevant in terms of the Tribunal's considerations.

19. The Tribunal found that there were no grounds upon which it could stay the allegation of dishonesty as an abuse of process; there was no abuse of process on the basis that the Respondent had admitted the allegations save dishonesty. It was not a matter for the Tribunal to determine which allegations should be brought by the regulator; the Tribunal's role was to consider whether allegations, which had been certified as showing a case to answer, were proved to the requisite standard, taking account of all the evidence in the matter. The involvement or lack of involvement of the police where dishonesty was alleged was not a relevant consideration for the Tribunal in the exercise of its function. Nor did the Tribunal have jurisdiction to strike out an allegation on the basis that the consideration of that matter would not make a difference to any sanction that it could impose.

20. Accordingly, and given that the Tribunal had no jurisdiction to accede to the application, the Respondent's application was refused.

Application to Proceed in the Respondent's Absence

21. Following the Tribunal's refusal of the adjournment application, the Tribunal informed Mr Hughes that the matter would proceed at 10.00am on 21 March 2018. Mr Hughes confirmed that he would not be in attendance. The Respondent did not attend the hearing on 21 March 2018. Mr Tabachnik QC applied for the hearing to proceed in the Respondent's absence. He referred the Tribunal to the criteria set out in R v Jones [2001] EWCA Crim 168 which detailed the factors that the Tribunal

ought to consider. The Tribunal was also referred to GMC v Adeogba [2016] EWCA Civ 162. Whilst there had been no High Court decision that applied Adeogba in proceedings before the Tribunal, it had been applied by the Tribunal in other matters where Respondents had failed to attend. The Tribunal was reminded of its decision in relation to the adjournment application. It was submitted that to adjourn the matter on the basis that the Respondent had failed to attend would be inconsistent with the refusal to adjourn. The Respondent was aware that the matter was proceeding; his non-attendance was voluntary.

22. The Tribunal considered the authorities cited, and noted the requirement for it to consider with the utmost care and caution proceeding in the Respondent's absence. It was clear that the Respondent had notice of the hearing, and would have been informed by Mr Hughes of the refusal to adjourn. The Tribunal was satisfied that in this instance the Respondent had chosen voluntarily to absent himself from the hearing. It was in the public interest and in the interests of justice that this case should be heard and determined as promptly as possible, given the serious nature of the allegations. In light of these circumstances, it was just to proceed with the case, notwithstanding the Respondent's absence.

Factual Background

23. The Respondent was not admitted to the Roll of Solicitors. At all material times from about August 2011 to April/May 2013, he was employed by Tandem as its Head of Marketing and Business Development.

The Axiom Funds

24. At all material times:

- JP SPC 1 was a segregated portfolio company incorporated in the Cayman Islands in 2007 and comprising various sub-funds, known as "segregated portfolios";
- Axiom Legal Financing Fund, Segregated Portfolio ("the Axiom Fund") was a segregated portfolio of JP SPC 1;
- JP SPC 4 was another segregated portfolio company incorporated in the Cayman Islands;
- Axiom Legal Financing Funding Master, Segregated Portfolio ("the Axiom Fund Master") was a segregated portfolio of JP SPC 4;
- The Axiom Fund owned shares in, and was the feeder fund for, the Axiom Fund Master; and
- The Investment Manager of the Axiom Fund and the Axiom Fund Master was (i) The Synergy Solution Limited ("Synergy") between 25 May 2009 and 1 March 2012, and (ii) subsequently Tangerine Investment Management Ltd ("Tangerine") from 1 March 2012 upon the signing of a Deed of Assignment in relation to the Investment Management Agreement entered into by Synergy.

25. The phrase "the Axiom Fund(s)" and "Axiom" where used below refers to both the Axiom Fund and the Axiom Fund Master.

26. By 2012, investors had invested over £100 million in the Axiom Fund.

27. The Axiom Fund was promoted to investors as a feeder fund that invested in the Axiom Fund Master, which would provide funding to law Firms in the UK to finance the conduct of legal cases.

28. From August 2012 onwards articles appeared on the internet (including, in particular, on a website called "Offshore Alert") accusing Timothy Schools, who had established the Axiom Fund, Synergy and Tangerine of fraud, and alleged that the Axiom Funds were a fraudulent scheme. Timothy Schools was a former solicitor; he was struck off the Roll of Solicitors on 14 May 2014 (Case No. 10968-2012).

29. On 26 October 2012, the directors of the Axiom Funds suspended the calculation of net asset values for participating shares and suspended share redemptions, with effect from 30 September 2012.

30. In December 2012, the Axiom Funds' directors applied to the Grand Court of the Cayman Islands to appoint receivers. That application was granted and on 12 February 2013, Grant Thornton were appointed as receivers of the Axiom Funds.

31. On 26 February 2013, the solicitors acting for the receivers sent a letter to Tandem demanding repayment of the monies that had been provided to it, on the grounds that the monies had not been used in accordance with the terms of the Litigation Funding Agreement ("LFA"), which constituted an event of default.

32. On 21 May 2013, the receivers of the Axiom Funds commenced civil proceeding against various people associated with Tangerine and others, seeking damages of over £100m on various grounds including fraud, conspiracy, breach of fiduciary duty and breach of contract.

33. The Axiom Funds remain in receivership.

Tandem

34. Tandem was incorporated on 3 November 2010 and became a recognised body on 8 August 2011. Mr Andrew Lindsay owned 95% of the shares in Tandem with Ms Marina Frankel owning the remaining 5%. They were, at all material times from 3 November 2010, the directors and principals of Tandem[2]. The Respondent was, as stated above, employed by Tandem as its Head of Marketing and Business Development.

[2] Mr Lindsay and Ms Frankel were the subject of separate proceedings before the Tribunal (Case No. 11576-2016). On 29 November 2017 the Tribunal struck Mr Lindsay off the Roll of Solicitors and indefinitely suspended Ms Frankel. The Tribunal's Order against Mr Lindsay was subject to appeal to the High Court (Administrative Court) by Mr Lindsay. The Order remained in force pending the High Court's decision on the appeal. The Tribunal had not been notified of an appeal by Ms Frankel.

35. On 26 April 2013, the SRA received an email informing it that a Notice of Intention to Appoint Administrators had been filed the previous day. Tandem went into administration on 3 May 2013. Its assets were purchased by another firm under a pre-pack sale arrangement.

36. Tandem applied for funding in December 2011. It received total payments of £5,920,225 from the Axiom Fund between 21 December 2011 and 16 October 2012 as follows:

DATE	**AMOUNT**
21 December 2011	£287,500
25 January 2012	£475,000
29 February 2012	£237,500
4 April 2012	£264,100
23 April 2012	£475,000
27 April 2012	£302,488
22 May 2012	£573,000
28 June 2012	£573,000
2 August 2012	£657,358.33
16 August 2012	£1,238,062
16 October 2012	£837,216.37

Witnesses

37. The following witnesses provided statements and gave oral evidence:

- Lindsay Barrowclough – Forensic Investigation Officer

38. The written and oral evidence of the witness is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence and submissions. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

39. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

40. **Allegation 1.1 - The Respondent procured, arranged and received (both into his personal bank account and into the account of a company of which he was the 100% shareholder) monies which were derived from Axiom Funds and which were corrupt and improper payments from a company LAL owned and run by a**

personal friend (RH) that supplied services to Tandem, and thereby breached Principles 2 and 6 of the Principles.

Applicant's Submissions

40.1. The Respondent received kick-backs or secret profits, payment of which was derived from Axiom monies. The Respondent used his position at Tandem to pay referral fees to LAL. A portion of the net profits were then paid by LAL to the Respondent. That arrangement was manifestly corrupt.

40.2 The Respondent was aware that, prior to the receipt of funding from Axiom, Tandem had been unable to obtain anything beyond nominal funding through traditional routes. He was also aware of the receipt of funds from Axiom, and that there was no other real source of funding or income during his employment at Tandem.

40.3 LAL was run and owned by RH, a friend of the Respondent. It was engaged by Tandem to undertake client related services. During the period 28 June 2012 to 24 April 2013, Tandem paid LAL the sum of £281,333 for its services.

40.4 On 22 July 2012, RH sent a spreadsheet to the Respondent. The Respondent forwarded the spreadsheet to Andrew Lindsay in an email dated 25 July 2012. His commentary in that email was: "see spreadsheet 75% of bottom figure i.e. excess is ours. 24 cc needs sorting." The spreadsheet referred to in the email showed that for "Week 4", Tandem had paid LAL £12,500. When costs were deducted there was an excess of £5,905. The spreadsheet showed a cumulative excess of £24,430. Mr Tabachnik QC submitted that these amounts were the excess that was described by the Respondent as "ours", and it was plain that there was an agreement between the Respondent, RH and Andrew Lindsay to divide the profits between them.

40.5 In his Answer, the Respondent admitted that he received monies from LAL, stating that "It is expected that the payments I received by [LAL] (sic) will be considered reasonable by any honest people (sic)…"

40.6 On 27 September 2012, the Respondent sent an internal email asking for "an invoice from 24/7 cc to Legal Apps for £48,280 for professional management services and email [RH]". However, there was no evidence that 24/7 had ever performed any professional management services and further, there was no reason why the invoice could not have been prepared and paid by Tandem.

40.7 On 2 January 2013, Andrew Lindsay emailed his personal bank details to the Respondent. The Respondent forwarded those details to RH on 4 January 2013 stating:

> "Please send 50% to Andrew as below and rest to mine at usual Barclays account. Can you do an invoice please."

40.8 RH replied on 5 January 2013 as follows:

> "Now then. Just want to check a few things before I send this money. Invoice to be made out to 24/7CC as previous? Invoice number to be 2 (last quarter it

> was invoice number 1). I pay half to Andrews account below (do I make it out to be a second 24/7cc account for Legal Applicant's accounts purposes and not in Andrews name, ie call it 24/7cc acc 2 to show on my banking). Second half of money I send to original Barclays account for 24/7cc where I sent the first quarter payment. Always best to check these things before hand. As Blackadder famously said, we are not at home to Mr Cockup! Or at least try not to be!"

40.9 The Respondent replied the same day stating "Second payment is to [bank account details provided] that is mine." The bank details provided in that email did not match the bank details for 24/7.

40.10 In his Answer, the Respondent did not assert that he had performed any work for LAL. As regards the payments his Answer explained that LAL could "make any payments to whoever" and that "this should not have been the concern of the SRA". Further, Andrew Lindsay was aware of the payments. Whilst in his Answer the Respondent explained that 24/7 had performed services for LAL, in his interview he stated that he did not think that there was any relationship between LAL and 24/7CC and that 24/7CC "might have" done some work for LAL but he didn't know.

40.11 It was submitted that the payments from LAL to, or for the benefit of the Respondent were clearly kickbacks. The fact that Andrew Lindsay was aware of those payments did not legitimise them. The procuring and receipt of monies as described above was clearly in breach of the Principles as alleged.

Dishonesty

40.12 It was submitted that the appropriate test for dishonesty was that formulated by Lord Hughes in Ivey v Genting Casinos (UK) Ltd (t/a Crockfords) [2017] UKSC 67:

> "When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

40.13 Mr Tabachnik submitted that the Respondent's conduct was plainly dishonest. He could not have believed that Axiom consented to his benefitting directly out of monies loaned to Tandem. Once it was clear that at least part of the monies paid to LAL was not for disbursements, but was, in substance, a kick-back so as to benefit the Respondent (and possibly others) the corrupt nature of the payments was clear. Insofar as any payments to LAL represented genuine referral fees (payment of which was permitted pursuant to Tandem's agreement with Axiom) there was no allegation of improper conduct. It was the additional element of any payment that was designed

to be a profit that was circulated back to the Respondent that was the subject of the allegation of dishonesty. In the alternative, it was submitted that the Respondent's conduct was reckless as he unreasonably ran the risk that the payments were corrupt and improper and outside the scope of permissible uses.

Respondent's Submissions

40.14 In his Answer, the Respondent denied allegation 1.1. He explained that the payments received by LAL were for services carried out on Tandem's behalf, and that the activities carried out by LAL were disbursements, payment of which was permitted by Axiom. The fact that RH was his friend was irrelevant, as RH had duties and responsibilities as a company director. Andrew Lindsay was aware of the payments, and had expressed no concerns or reservations.

40.15 The Respondent denied that he had been dishonest and submitted that members of the public would not consider his actions dishonest as:

- The payments were approved payments under the Axiom Fund
- They were determined to be disbursements by Andrew Lindsay who authorised the pricing and services
- The payments to the Respondent were disclosed to Andrew Lindsay
- The services were offered at market rates
- The services were necessary for Tandem

40.16 In letters dated 2 and 15 February 2018 sent to the Applicant by Mr Hughes, the Respondent accepted that his actions had been reckless. During his submissions relating to the preliminary applications detailed above, Mr Hughes confirmed that the only live issue in the proceedings was dishonesty.

The Tribunal's Findings

40.17 The Tribunal noted that whilst there was an unequivocal admission as to recklessness, there was no clear admission of the underlying facts or breaches of the Principles as alleged. The Tribunal determined that the monies paid to LAL by Tandem was derived from Axiom monies. This was not disputed by the Respondent. It was clear from the 27 September 2012 email, and the spreadsheet attached thereto, that of the monies received, there was an "excess" amount. That made clear that a percentage of that "excess" belonged to the Respondent and Andrew Lindsay. There was nothing in that email, or any subsequent email to suggest that any payment was as a result of services performed. When asked in his interview about any payment into his account, the Respondent stated that he did not remember one. On 26 January 2018, following the service of his Answer and the disclosure to him of additional matters, the Respondent was asked to provide his bank statements so as to ascertain any payments made to him by LAL. He failed to do so. When asked about the emails detailed above, the Respondent was unable to provide an explanation. The Tribunal found beyond reasonable doubt that 27 September 2012 email, taken together with the email chain of 2 – 5 January 2013 established that Axiom monies were being taken by the Respondent as a secret profit, those monies being siphoned through LAL. In taking a kick-back, it was evident that the Respondent had failed to act with integrity, in that he had failed to adhere to the ethical standards of the profession. He had also

diminished the trust placed in him and in the provision of legal services. Members of the public would not expect an employee in a solicitors practice to enter into an arrangement whereby monies loaned to the firm for particular purposes were routed through a different company in order for it to be given to the Respondent as a financial benefit. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent had breached Principles 2 and 6 of the Principles as alleged.

40.18 The Tribunal agreed that the appropriate test when considering dishonesty was that set out in Ivey. The Tribunal found that the Respondent knew, and was complicit in the overpayment of monies to LAL so that he could personally benefit from those payments. Reasonable and decent people operating ordinary standards of honesty would consider that the Respondent's conduct was dishonest. The Tribunal considered that the Respondent's dishonesty was of the highest order. He, together with others, had devised a scheme whereby he would personally gain from monies that he knew had been loaned to Tandem for specific purposes. The Tribunal found beyond reasonable doubt that the Respondent had been dishonest. Accordingly the Tribunal found allegation 1.1 proved beyond reasonable doubt, including that the Respondent had been dishonest. Given its findings, it was not necessary for the Tribunal to consider whether the Respondent had been reckless as recklessness had been pleaded in the alternative to dishonesty.

41. **Allegation 1.2 - The Respondent arranged for (or acquiesced in) the passing to third parties (without client consent) of confidential information belonging to Tandem clients so that the said third parties could cold-call the clients offering re-mortgage services, and the thereby breached Principles 2 and 6 of the Principles. Recklessness was alleged, although proof of recklessness was not required for proof of the allegation**

Applicant's Submissions

41.1 The Respondent was a director of Window To Ltd ("WTL") from 14 December 2012. He was a director of Crosslaw Ltd ("CL") from 20 July 2011 to 14 December 2011. The Respondent arranged for, or acquiesced in the passing of confidential client information to those companies for the purpose facilitating the cold calling of those clients with a view to offering re-mortgage services. In an email to Andrew Lindsay dated 12 February 2013, the Respondent explained that "[WTL] is going to contact all rtb clients to offer a remortgage service".

41.2 DC, the managing director of CL, emailed the Respondent on 12 February 2013 explaining that "the aim was to call as Tandem and give then a case update to open the call". He queried whether they could call on behalf of, or as agents of Tandem, to which the Respondent replied "Its fine". When DC asked "So basically we can say we are calling from Tandem?" the Respondent replied "Yes".

41.3 The calls to clients led to a number of complaints, which caused the cold-calling to cease.

41.4 Mr Tabachnik QC submitted that it was clear that the Respondent was heavily involved in the campaign. This was evidenced in the email correspondence and had not been denied by him. In allowing confidential client information to be used in a

cold-calling scheme, the Respondent had acted without integrity and had diminished the trust the public placed in him and in the provision of legal services contrary to Principles 2 and 6 of the Principles. Further, his conduct had been reckless as he had paid no regard to the interests of Tandem clients.

Respondent's Submissions

41.5 In his Answer, the Respondent explained that "the clients were not cold called because they were already clients and they had provided consent to be contacted and presented with further opportunities". He denied that his conduct had lacked integrity and stated that he could "hardly believe that dishonest or recklessness allegations have been raised against me".

41.6 In letters dated 2 and 15 February 2018 sent to the Applicant by Mr Hughes, the Respondent accepted that his actions had been reckless as regards allegation 1.2.

The Tribunal's Findings

41.7 As with allegation 1.1, the Tribunal noted that whilst there was an unequivocal admission as to recklessness, there was no clear admission of the underlying facts or breaches of the Principles as alleged. The Tribunal determined that the scheme devised used confidential client information. The emails demonstrated the Respondent's involvement with the scheme, and the complaints received by Tandem demonstrated that clients had not consented to the passing on of their confidential information. The Tribunal found that the Respondent's conduct in this regard lacked integrity; a person working in a solicitor's office should not use confidential client information to promote a money making or marketing scheme without first obtaining client consent. Whilst the Respondent was not a solicitor, he was clear about the importance of obtaining client consent; indeed in his denial he asserted that he had obtained consent from clients. The passing of confidential client information without client consent understandably diminished the trust the public placed in the Respondent and the provision of legal services. Given its findings, the Tribunal found beyond reasonable doubt that the Respondent had breached Principles 2 and 6 of the Principles, and that his conduct had been reckless. Accordingly, the Tribunal found allegation 1.2 proved beyond reasonable doubt, including that the Respondent's conduct was reckless.

Previous Disciplinary Matters

42. None.

Mitigation

43. None.

Sanction

44. The Tribunal had regard to the Guidance Note on Sanctions (5th Edition). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. The Tribunal was mindful of the

fact that a Section 43 Order was regulatory, not punitive and its purpose was to enable the regulator to exercise control over the employee.

45. The Tribunal found the Respondent's conduct was motivated by financial gain for himself, to the detriment of the Axiom Fund. His actions were planned and he, together with others, had direct control of the circumstances. His conduct had caused harm to the reputation of the profession and to the Fund; none of the Axiom monies loaned to Tandem had been repaid, and thus the Fund had suffered a significant financial loss. His conduct was aggravated by his proven dishonesty. The Tribunal was satisfied that it would be undesirable for him to be employed by a solicitor in connection with his or her practice as a solicitor without the permission of the SRA. This was necessary for the protection of the public and the reputation of the profession. Accordingly, it was appropriate and proportionate to make a Section 43 Order restricting the employment of the Respondent.

46. The Tribunal noted its powers under Section 47(2E) of the Solicitors Act 1974 (as amended), and considered whether the Respondent's conduct merited a disciplinary sanction in addition to the regulation imposed by the Section 43 Order. Mr Tabachnik QC submitted that the regulator did not consider that a financial penalty was appropriate in this matter, and that a Section 43 Order was sufficient. Given the submissions of Mr Tabachnik QC, the Tribunal accepted that a Section 43 Order was sufficient to achieve the protection of the reputation of the profession, and concluded that in the circumstances, a disciplinary sanction was not appropriate.

Costs

47. Mr Tabachnik QC applied for costs in the sum of £46,123.38. This amount included the costs of the preparation of the report by Dr Mogg, but did not include appropriate consequential reductions made due to the shortened hearing time. The Tribunal was concerned at the level of costs, and in particular the additional costs incurred by Mr Tabachnik QC's involvement in drafting and reviewing documents and his attendance at a hearing where the issues were not such that a barrister of his experience was required. The Tribunal also noted that very little of the evidence served by the Applicant was relied on by the Applicant in the presentation of its case. The Tribunal reduced the costs to reflect those areas where it considered that the costs claimed were not merited. The Tribunal determined that the reasonable, appropriate and proportionate amount that the Respondent should contribute to the costs in this matter was £35,000.00.

Statement of Full Order

48. The Tribunal Ordered that as from 21 March 2018 except in accordance with Law Society permission:-

    (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor FRANCISCO XAVIER RODRIGUEZ-PURCET;
    (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Francisco Xavier Rodriguez-Purcet;
    (iii) no recognised body shall employ or remunerate the said Francisco Xavier Rodriguez-Purcet;

(iv) no manager or employee of a recognised body shall employ or remunerate the said Francisco Xavier Rodriguez-Purcet in connection with the business of that body;

(v) no recognised body or manager or employee of such a body shall permit the said Francisco Xavier Rodriguez-Purcet to be a manager of the body;

(vi) no recognised body or manager or employee of such a body shall permit the said Francisco Xavier Rodriguez-Purcet to have an interest in the body;

And the Tribunal further Ordered that the said Francisco Xavier Rodriguez-Purcet do pay the costs of and incidental to this application and enquiry fixed in the sum of £35,000.00.

Dated this 6th day of April 2018
On behalf of the Tribunal

A. N. Spooner
Chairman