SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11717-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

JONATHAN DENTON Respondent

Before:

Mr J. A. Astle (in the chair)
Mr J. Evans
Mrs S. Gordon

Date of Hearing: 16-18 April 2018

Appearances

Paul Ozin QC of 23 Essex Street, London WC2R 3AA, instructed by Daniel Purcell, solicitor of Capsticks Solicitors LLP, 1 St George's Road, London SW19 4DR for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent made by the Solicitors Regulation Authority ("SRA") were that on dates between September 2012 and September 2015:

1.1 He involved himself in, and held out Locke Lord (UK) LLP ("the Firm") as being involved in transactions that bore the hallmarks of dubious financial arrangements or investment schemes and in doing so breached all or any of Principles 2, 4, 5, 6, 8 and 10 of the SRA Principles 2011 ("the Principles").

1.2 He misled third parties by producing false invoices from his company Ikaya Limited ("Ikaya") to individual investors purportedly to show the source of investment monies, in breach of Principles 2 and 6 of the Principles.

1.3 He failed to protect client money and assets, in that he directed or requested improper withdrawals from the Firm's client account, and in doing so breached Principles 2 and 10 of the Principles and Rule 20(1) of the SRA Accounts Rules 2011 ("the SAR").

1.4 He acted for a company of which he was the sole director and 100% shareholder, Ikaya, in relation to seven investment schemes ("the Investment Schemes") and for individual investors in the Investment Scheme(s), in a situation where there was a conflict, or a significant risk of a conflict between any or all of (1) the interests of Ikaya; (2) the interests of the beneficiaries of the trusts and individual investors (where he was acting for them) or any of them; (3) his own individual interests as director and sole shareholder of Ikaya; and/or (4) the interests of the Firm and his own interests as a member/fee earner, and in doing so breached Principles 2, 3 and 4 of the Principles and Outcomes O(3.4) and O(3.5) of the SRA Code of Conduct 2011 ("the SCC").

1.5 He directed or requested payments into, and transfers or withdrawals from, the Firm's client account which were not related to an underlying legal transaction or a service forming part of his normal regulated activities and in doing so breached Principle 2 of the Principles and Rule 14.5 of the SAR.

1.6 On or about February – April 2013, he knowingly made statements which he knew to be untrue as to the status of individual investments in Investment Schemes administered by the Respondent on behalf of Ikaya and in doing so breached Principles 2 and 6 of the Principles.

1.7 He failed to deal with his regulator in an open, timely and co-operative manner in breach of Principle 7 of the Principles.

2. Dishonesty was alleged in respect of allegations 1.1 – 1.6. However, whilst dishonesty was alleged, proof of dishonesty was not an essential ingredient for proof of any of the allegations.

Documents

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

- Notice of Application dated 15 September 2017
- Rule 5 Statement and Exhibit DWRP1 dated 15 September 2017
- Respondent's letter dated 14 November 2017
- Applicant's Substantive Hearing Supplementary Bundle
- Applicant's Schedule of Costs dated 9 April 2018
- Correspondence sent by or on behalf of the Respondent

Preliminary Matters

Application to Adjourn

4. On 29 March 2018, the Tribunal received an application from the Respondent to adjourn the proceedings. The Applicant objected to that application. On 12 April 2018 the Tribunal informed the parties that the application was refused, but granted leave for a renewed application on the basis of fresh grounds or new evidence in support of the matters raised in the application.

5. On 13 April 2018, the Respondent's solicitors in his criminal matter wrote to the Tribunal requesting that the matter be adjourned on the basis that the Respondent was to be charged with 2 allegations of fraud. Attached to the letter was an email from North Yorkshire Police confirming that, in accordance with CPS advice, the Respondent was to face 2 charges of fraud. It was submitted that the criminal proceedings were imminent and related to substantially the same matters as those under consideration by the Tribunal. There was a very real danger that to continue with the proceedings before the Tribunal would "muddy the waters" in relation to the criminal proceedings. Should the Tribunal continue with the proceedings, the Respondent would not be in attendance "because of the significant risk of causing prejudice to the later criminal proceedings."

6. The application was opposed. Mr Ozin QC submitted that the mere fact of the imminent commencement of the criminal proceedings was not, of itself, sufficient to necessitate an adjournment; the Respondent must demonstrate that there was a real risk of serious prejudice to one or both of the proceedings which may lead to injustice. The Tribunal was referred to the Court of Appeal decision in R v Solicitors Disciplinary Tribunal ex parte Gallagher [1991] (unreported), in which it was found that:

   - the possibility of prejudice by the disclosing of a defence was remote where the criminal hearing was a year away;
   - the waters of justice may be muddied where the Tribunal's decision was "a day or two" before the criminal proceedings began;
   - the Judge in any criminal trial could deal with the risk of adverse publicity;
   - there was a public interest in disciplinary proceedings being disposed of quickly.

7. The Tribunal noted that in ex parte Gallagher, the solicitor was not facing dishonesty allegations before the Tribunal. To that extent, that case was distinguishable from this Respondent's case. The Tribunal considered that there was a risk that the Respondent could suffer prejudice at any future criminal proceedings. The Tribunal, in considering the application, had to balance the risk of prejudice to the Respondent with the duty to protect the public and the reputation of the profession. Subject to the receipt of representations to contrary, the Tribunal determined that in order to ameliorate the risk of prejudice to the Respondent, it would hear the Respondent's evidence in private; this would avoid his disclosing any potential defence in the pending criminal proceedings. Further, in the event that the Respondent attended the hearing and gave evidence, there would be two versions of its judgment (i) a public judgment that made no reference to the detail of the evidence given by the Respondent and (ii) a private full judgment that would be embargoed until the conclusion of the criminal proceedings. Both parties were provided with time to make any representations; no representations to the contrary were received by either party. Accordingly, the Tribunal directed as detailed above.

Application to Proceed in the Respondent's Absence

8. The Respondent did not attend the hearing and was not represented. Mr Ozin QC applied for the hearing to proceed in the Respondent's absence. He referred the Tribunal to the cases of GMC v Adeogba [2016] EWCA Civ 162 and R v Jones [2001] EWCA Crim 168 which detailed the factors that the Tribunal ought to consider. The Respondent, it was submitted, had voluntarily waived his right to attend. It was clear that he had been properly served in accordance with the Tribunal's Rules. It was also plain that adjourning the proceedings would not yield his attendance.

9. 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 plain that the Respondent had notice of the hearing. He had been informed of the Tribunal's decision in relation to avoiding the risk of any prejudice to any later criminal proceedings arising out of these proceedings; he had made no submissions in that regard. Notwithstanding the Tribunal's direction as regards the Respondent's evidence, the Respondent had not attended the hearing. 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. In light of these circumstances, it was just to proceed with the case, notwithstanding the Respondent's absence.

Application to Amend the Rule 5 Statement

10. The Applicant applied to amend the Rule 5 Statement to add breaches of Principle 2 of the Principles to allegations 1.3 and 1.5. It was submitted that this would not cause the Respondent any prejudice as:

- he had been informed of the application in a letter dated 20 March 2018, and thus had been provided with adequate notice. No response had been received in relation to the application;

- allegations of dishonesty had already been made in relation to both allegations; and

- the application to amend was made as a result of the clarification made by the decisions in Ivey v Genting Casinos (UK) Ltd (t/a Crockfords) [2017] UKSC 67 and Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366.

11. It was submitted that the conduct alleged in allegations 1.3 and 1.5 amounted to a clear failure of steady adherence to an ethical code.

12. The Tribunal noted that the Respondent had corresponded with the Applicant and the Tribunal subsequent to knowledge of the application and had made no objection. The Tribunal considered that for the reasons cited by the Applicant, the Respondent would not suffer any prejudice in the event the Rule 5 statement was amended as requested. Accordingly, it granted the application to amend.

Disclosure

13. In his correspondence with the Tribunal and the Applicant, the Respondent requested disclosure of documents belonging to Sionne. In his email of 16 April 2018 to the Tribunal, the Respondent stated: "My main point for the adjournment is that the SRA has failed to obtain from the second trustee the statements showing movement of capital and yield as well as the underlying investment contracts. It cannot be right to proceed while this information can be obtained from Sionne Limited."

14. The Tribunal had no power to order the Applicant to disclose documents that were not in its possession or under its control. Nor did it have the power to direct the Applicant to obtain any documents from third parties. Accordingly, the Respondent's application for disclosure was refused.

Factual Background

15. The Respondent was born in 1959 and admitted to the Roll of Solicitors in February 1989. He remained on the Roll and did not hold a current practising certificate. He was a member of the Firm from 26 March 2012 to 1 January 2014. Thereafter he became an employee of the Firm in the role of "Of Counsel". On 23 July 2015 to 23 October 2015, the Respondent was placed on garden leave.

16. As a member of the Firm, the Respondent was entitled to bonuses if he exceeded his billing targets. As "Of Counsel", the Respondent was entitled to 10% of his monthly fees once a certain aggregated amount had been billed. As a result of that arrangement, the Respondent earned £14,487.31 in addition to his basic salary of approximately £50,000 in 2014.

17. The Respondent was the director and sole shareholder of Ikaya, a client of the Firm. Ikaya was incorporated on 20 July 2012. The Respondent's wife was the company secretary. Sionne was a company incorporated on 24 August 2012. As at 11 September 2013, SO was the director and sole shareholder of that company. The Respondent was the sole fee earner acting for Ikaya and Sionne, who had retained the Firm. The retainer letter was dated 5 September 2012 and was signed by the

Respondent on behalf of Ikaya, and was also signed by the Respondent in his capacity as a solicitor for and on behalf of the Firm. Notwithstanding his being placed on garden leave, the Respondent continued to act in respect of Ikaya and Sionne with the knowledge and acquiescence of the Firm. Seven Trusts were established with Ikaya and Sionne as joint trustees during 2012 to 2015. The Trusts were governed by Trust Deeds entered into by individual investors and signed by the investor and the Respondent and SO as the trustees of the Trusts.

18. The Respondent and SO were connected to other companies to which monies from the Trusts were paid:

- BHIEB Texas ("BHIEB") was incorporated on 9 May 2012. The Respondent was BHIEB's director from 7 December 2012 to 28 January 2013, at which point he resigned and SO was appointed the director. Ikaya owned 75% of the shares, with the remaining 25% owned by BHIL (a limited company).

- The Respondent owned 49/1375 shares in BHIL, and had also been employed as legal counsel there prior to joining the Firm. The Respondent's shares were re-purchased by the company on 11 December 2014.

- OMSLP was registered on 17 May 2010. SO and MAP were the partners of that company.

19. Some investors were provided with a print out of presentation slides which explained the investment opportunity. The slides explained (amongst other things) that:

- An experienced trader needed to acquire a credit line from a bank. The bank needed secure capital on its balance sheet to offer the line of credit, however the line of credit did not need to be secured against the deposit. The minimum stake for "suitable parties" was £1million.

- To qualify for an invitation investors needed to sign the NDNCA (Non-circumvention, Non-disclosure Agreement) and provide proof of liquid and investable funds.

- The investor would then meet with the UK lawyer co-ordinating the programme.

- Should the investor be deemed suitable, they would be formally invited to enter the UK bare trust, depositing their funds as a beneficiary of the trust and its returns.

20. The slides provided an Investor example split into 9 stages:

"Stage 1: The trust places their funds into the custodian bank account which is in its name.

Stage 2: These funds are then pledged via a secure 'blocking of funds' or administrative hold from being removed or used by the trust for a period of 12 months.

Stage 3: The bank having obtained identifiable external funds (for audit purposes) which it now holds on deposit, extends a credit line to the trader, this line of credit is 'Non Recourse' and contains 'no risk' to the secured bank deposit, it is typically in a ratio of 10:1.

Stage 4: With a clearly defined line of credit the trader can now establish their Trading principle which is held by the custodian bank.

Stage 5: The Trader now goes out to the market and offers for sale the new issue of MTN's [medium term notes] to the pool of buyers with which they have previously secured these products, typically Banks and Pension Funds, who acquire this at agreed discount to face value and with a certainty of annual yield.

Stage 6: Once all the issue of MTN has been sold, the trader then acquires stock from the issuer at the agreed discount market paying for it with the new buyers money.

Stage 7: The buy/sell managed programme operates for a period of 10 months. During this period the client will receive a return every month on their deposit of 6%. This money can be paid to any entity the client specifies. The investor receives a monthly bank statement of his sub-account position.

Stage 8: At the end of the programme the bank retracts the traders credit line and releases the administrative hold on the deposit account.

Stage 9: Having unblocked the deposit account the client has full control of their capital again is free to remove 100% of their original capital or review and enter into a new programme should they desire."

21. An example was also provided as regards an MTN transaction as follows:

"A Bank issues £1BN of MTN (Debt) carrying a 5% yield and a term of 10 years, it is not allowed to undertake the sale itself as it needs to be an arms length transaction so it instructs a trader to act as a market maker.

Our trader agrees subject to buyers interest to acquire the debt for £948,000,000.

Buyers secure the MTN for £950,000,000 or a discount to the face value of 5% and pay the trader to secure the allotment of this instrument.

Our trader now pays the bank the agreed fee to acquire the debt, using the buyers money. The trader retains £3,000,000 or 0.2% as their payment for undertaking this risk free transaction.

> The bank now has an additional £948,000,000 of cash on its balance sheet, money which it can lend out many times to smaller corporate entities and individuals, and a commitment to repay the holder of the MTN £1,000,000,000 in ten years time."

22. The Trust Deed contained the following clause:

> "Principal Bare Trust
> The Trustees shall hold the entire Trust Fund and the income thereof upon trusts, absolutely, and separately so that each Fund is held exclusively for the benefit of the relevant Beneficiaries."

23. The schedule to the Trust Deed particularised the amount of the monthly return to the investor.

24. The Firm and the Respondent were instructed by Ikaya and Sionne in respect of Trust No's 1, 2 and 3 in around early September 2012, around October 2012 and around December 2012 respectively. In an email dated 23 October 2012, the Respondent was asked by a potential investor in Trust No 3 to confirm two key points, namely that "the money deposited into the trust will only be at risk if the bank it is deposited into fails" and that "at the end of the defined trading period, capital will be returned in full to the person who deposited it". In response in an email of the same date, the Respondent stated: "... I can confirm that the risk is insolvency risk on the bank where the funds are deposited and secondly at the end of the defined trading period the capital is returned."

25. The papers for Trust No 1 included a covering letter dated 20 September 2012, that was signed by both the Respondent and SO as Trustees. The letter did not have an addressee. It stated that the Trust held assets under a Bare Trust and attached a copy of the Trust Deed. The letter further stated that the Trustees declared that they had no beneficial ownership of the funds, and that the funds were held in the client account of the Firm. It also confirmed that full due diligence had been undertaken and that the funds were "good, clean clear, unencumbered and of non-criminal origin."

26. The papers also included a letter to the "Investment Manager". It was signed by both the Respondent and SO as the Trustees. The letter stated that there was a minimum of £1,090,000 of available funds and that "we are sophisticated in this type of investment and this opportunity was not solicited in any manner". The letter referred to a letter from "our solicitors Locke Lord (UK) LLP". The Firm's letter was dated 21 September 2012 and was written on the Firm's headed paper. The Firm's letter confirmed that it was "the advisers to the Trustees". It attached the engagement letter with Ikaya and Sionne, a print out of a client matter report showing the balance held on client account on behalf of the Trustees, and a transaction report in respect of the funds.

27. In a review of the Trust ledgers, the Forensic Investigation Officer ("FIO") identified the monies that had passed through the Firm's client account as follows:

Trust No.	£	US$	€
1	1,245,000.00	2,599,971.56	Nil
2	3,702,500.00	249,960.00	Nil
3	14,490,000.00	Nil	247,262.30
4	Nil	Nil	Nil
5	843,047.00	11,756,702.23	1,777,832.92
6	7,698,514.84	679,2787.76	Nil
7	262,500.00	Nil	Nil
TOTAL	**£28,241,822.09**	**$15,285,912.55**	**€2,025,095.22**

Witnesses

28. None.

Findings of Fact and Law

29. 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. The Tribunal considered all the evidence before it, including any submissions from the parties.

30. **Allegation 1.1 - between September 2012 and September 2015 the Respondent involved himself in, and held out the Firm as being involved in transactions that bore the hallmarks of dubious financial arrangements or investment schemes and in doing so breached all or any of Principles 2, 4, 5, 6, 8 and 10 of the Principles.**

Applicant's Submissions

30.1 There was published guidance that warned against investments that bore the hallmarks of fraud. In the Law Society Yellow Card Warning Notice of July 2001 it was stated that fraudulent investment schemes were increasing and that "the legitimacy of such investments must always be questioned". In giving examples of such schemes it was stated:

> "Investors are often persuaded that these types of investment 'can be bought and sold by investing say $8.8m to purchase a prime bank instrument with a face value of £10m by a prime bank, which will mature in one year and one day or can be traded in a second tier bond market for an immediate 7% profit'. The fraudster will often claim that these instruments are so special that the banks are keeping them secret and therefore will not discuss them with the general public."

30.2 Mr Ozin QC submitted that whilst the scheme proposed by the Respondent was "not on all fours" with the Warning Notice, it was very similar. The timescale over which the scheme occurred was one year (as opposed to a year and a day), and the special invitation to take part in the scheme was not dissimilar to the scheme not being publically available.

30.3 The Warning Notice also detailed a number of "Common characteristics of banking instrument fraud", including:

- Large transactions
- Promises of further sizeable transactions
- Issuing bank not clearly identified
- Overwhelming amount of transaction description

30.4 The Warning Notice also detailed a number of "typical phrases", including:

- Issuing Bank
- Non-circumvention and Non-disclosure agreement
- Good clear cleared funds of non-criminal origin

30.5 Some of the common characteristics and typical phrases warned of, featured in the schemes. This should have caused the Respondent to question the bona fides of the schemes.

30.6 On 10 September 2013, the SRA issued a Warning Notice in respect of High-yield investment fraud. The notice advised that "Frauds vary and fraudsters learn to avoid red flag phrases. Firms need to ensure that they understand the proposed scheme and that it makes legal and logical sense. Fraudsters use meaningless terminology but also use genuine terms to mask their frauds. It is important to assess the overall proposal and, if a genuine term is used, to check robustly whether it is being used in the correct context." The notice highlighted "Private Placement Schemes" as a common description.

30.7 As regards the common characteristics, the notice advised that "It is your duty to comply with your professional obligations and exercise proper caution in considering any scheme involving the "investment" of money or the transfer of funds that are presented to you." A list of common characteristics of fraudulent financial arrangements was listed including:

- Very high rate of return and disproportionate rewards, often within a short time frame - Mr Ozin QC submitted that this was a feature of the schemes with large returns on capital in a very short space of time.

- Very large sums of money required for entry into the scheme - Some schemes required investment of £250,000 upwards.

- Prime Bank Guarantees, Promissory Notes or Letters of Credit being offered or being the product underpinning the scheme - the scheme into which the investors were investing was one where the product was the line of credit.

- Large projects that are difficult to verify - the Trusts had a number of investors all investing different amounts with varying rates of return.

30.8 The scheme being offered, in short, was that the investment provided security for a line of credit much larger than the security fund. The trader purchased an MTN which could then be sold on, discharging the debt and creating a profit for investors. This process could be repeated in rapid succession. Whilst the margins were small, the sums involved were substantial such that significant profit was generated. The invested funds were never in jeopardy, save if the bank failed, and would be returned in full to the investor at the end of the investment period. To enter the scheme investors needed to sign an NCNDA, and would need to be 'invited' to be part of the scheme. Mr Ozin QC submitted that it was clear that the scheme bore a number of hallmarks of fraud to which the Respondent should have been alive.

Concerns of FBI, Firm and Met Police

30.9 On 21 February 2013, the attorney for Company A (the proposed investment vehicle for Trusts 1-3), wrote to the BHIEB (c/o the Respondent) confirming that the request for the initial 10% program advance had been made to the Royal Bank of Canada ("RBC"), but that it had been delayed. In a letter of 7 March 2013, the Respondent was informed that the request to wire the funds had been refused and that Company A had been told to contact the FBI. On doing so, Company A was informed that neither the Company nor JL was under investigation. The FBI contacted the Firm around 13 March 2013 in relation to the release of the funds, and asked whether authorisation had been provided for the release of $2,000,000 directly to JL. The FBI was concerned that JL was trying to divert the monies for his personal use as he had "some history of prior investment fraud". A number of emails passed between the Respondent and others at the Firm relating to this matter and the concerns expressed by the FBI. The Firm also informed the Respondent of its concern that if JL had authority to transfer funds to another account there was a risk of loss.

30.10 The Respondent received a screenshot of the monies which were purportedly being held in the RBC account. He also received an email from Company A's trading partner asking that a letter it had drafted be placed on BHIEB's and the Firm's letterhead. The letter should be signed and sent to the FBI. It granted authority for the immediate release of the monies sent to Company A.

30.11 Given the information received from the FBI and the correspondence between the Respondent and the Firm, a conference call took place on or around 18 March 2013. According to the Firm, the Respondent agreed to abort the transaction and return the monies to the investors. The Firm believed that capital was repaid to investors in April 2013.

30.12 Notwithstanding the agreement by the Respondent to abort the transaction, he continued to progress it and the credit facility was activated on 9 April 2013. On that date JL wrote to the Respondent and BHIEB explaining that due to the delays in activating the credit facility, Company A would be accelerating payment of funds that would have been due, by monetisation of two assets. On 12 April 2013, an update was sent to the investors in Small Trusts 1, 2 and 3. It was signed by the Respondent and SO in their capacity as Trustees and stated that the invested capital was secure in a Trustee signatory account in London. (For further details see allegation 1.6 below). Following a letter from the Respondent on 13 April 2013 requesting the timeline for the payments for BHIEB, the Respondent was informed that Company A had closed

on a transaction on 12 April 2013. The payment in relation to that transaction was expected on or around 17 April 2013 following which £5,000,000 would be sent to the Firm.

30.13 On 10 May 2013, a further update was sent to the investors explaining that Company A was in a position to remit profits but that issues in the USA were causing delays. The update confirmed that the Trustees had been able to "verify the availability of these funds" and that they expected to be able to make payments by the end of the next week.

30.14 On 23 May 2013, the Firm was contacted by the Metropolitan Police and asked to "establish the veracity of £7 million remitted from your Dallas office account in the name of Company A … on 8 April 2013". This was reported to the Respondent who explained that he had clarified the position with the Police and confirmed that the funds were secure in a London Barclays account.

30.15 On 12 June 2013, an IFA who had been liaising with the Respondent on behalf of some of the investors emailed an update explaining that the Respondent had confirmed that he saw "no obstacle to making a swift payment for the second 4 weeks money early next week". On that same date, the Respondent emailed a letter before action on behalf of BHIEB addressed to Company A and other parties to the trading agreements, requesting all funds be paid to the Firm within 7 days failing which the Firm would commence proceedings seeking payment of the outstanding funds due and damages in the estimated sum of £13,000,000.

30.16 On 14 June 2013, the Respondent and SO as Trustees issued a further 'Communication to all Investors', which stated that they would "shortly be in a position to commence payments in respect of the Trust. Whilst the trading has been taking place and generating returns, the delay has occurred in the counter parties banking system."

30.17 Mr Ozin QC submitted that the warning notices, together with the factual events ought to have put the Respondent on notice that the transactions bore the hallmarks of fraud or dubious financial arrangements or investment schemes. He was under a duty to conduct due diligence regarding the third parties to whom he was authorising the release of monies. The duty to do so became more and more apparent with the involvement of the FBI, the Police and the concerns expressed by the Firm. As opposed to protecting his clients' interests, the Respondent continued with the transaction. He provided statements to investors and their advisors that were not true, and that he knew were not true.

30.18 The Applicant also relied on:

30.18.1 the release of monies to unrelated third parties for purposes other than those permitted by the trusts:

- On 18 October 2012, £123,000 was paid to APS. APS were not a trading or investment company. The payment did not relate to any investment, was not authorised by the Trust deeds and was contrary to the assertions made as to the security of the monies.

- In October 2013, $1,000.000 and €550,000 were paid out to Asociacion Karma Guen, which appeared to be a Buddhist retreat in the Andalusian mountains. These payments did not relate to any investment, were not authorised by the Trust deeds and were contrary to the assertions made as to the security of the monies.

30.18.2 the payment of capital investment monies from Trust No 3 to investors in Trust Nos 1 - 3 as purported payment of profits/returns on capital:

- Payments were made from the Firm's client account purporting to represent profits on investments. The ledger for Trust No 3 showed that all the payments were made using Trust No 3 funds. The use of the funds for this purpose was not authorised by the Trust deeds and was contrary to the assertions made as to the security of the monies.

30.18.3 the repayment of capital to Investor R1 and Investor S using the capital investment of another, unrelated investor:

- Investors R1 and S complained about the failure to return their capital investments. Their capital investment was repaid on 19 June 2014. In a statement prepared for the proceedings brought by Investors R1 and S, the Respondent stated that the repayment had been made "as a gesture of goodwill" from returns on an ongoing monthly trade. However, the ledger showed that the monies were actually paid using monies deposited on behalf of another investor. The use of the funds for this purpose was not authorised by the Trust deeds and was contrary to the assertions made as to the security of the monies.

30.18.4 continuing to receive monies in/pay monies out after becoming aware of the concerns of the FBI, the Police and the Firm:

- The ledgers showed that notwithstanding the concerns of law enforcement agencies of which the Respondent was aware, and his stated intention to repay investors and abort the transaction, the Respondent continued to receive monies into and pay monies out of the Trusts. Investment monies continued to be received in 2013/14 and monies were also being paid out during that period.

30.19 Mr Ozin QC submitted that the 'Know Your Client' procedures and due diligence undertaken in respect of the investors provided them with a degree of comfort as regards the investment, as did the Respondent, his position at the Firm, and the Firm itself. The investors did not know that the same level of due diligence was not being conducted in relation to the traders the Respondent instructed. The Respondent's failure to conduct due diligence in all the circumstances was culpable, and was in breach of the Principles as alleged.

30.20 The Respondent's conduct constituted a breach of principle of integrity. The Tribunal was referred to the case of Newell-Austin v SRA [2017] EWHC 211 which found that a solicitor that allowed her firm to be involved in transactions which bore the hallmarks of fraud constituted a proper foundation for a finding of a lack of integrity.

The breach did not require proof of underlying criminality; proof of facts indicating the existence of the obvious risk of criminality was sufficient. Thus the Applicant did not need to establish that the schemes were fraudulent; it was sufficient to show that they bore the hallmarks of fraud.

30.21 The proper test for integrity was that espoused in Malins. The test was objective and was satisfied where it was demonstrated that Respondent had failed to steadily adhere to a moral code. It was clear that the Respondent had failed so to do and thus his conduct lacked integrity in breach of Principle 2. His failure to undertake any due diligence meant that he had not carried out his role as the solicitor to the Trusts effectively and in accordance with sound financial and risk management principles. Further, he had failed to act in the best interests of his clients, failed to provide a proper standard of service, failed to maintain the trust the public places in him and in the provision of legal services and failed to protect client money and assets. Mr Ozin QC submitted that there were 3 different respects in which he acted for clients, namely:

- he acted directly for Investor A;
- he acted for Ikaya;
- he dealt with client money that was being held in the Firm's client account on trust for the investors.

30.22 When determining the alleged breaches of Principles 4, 5 and 10, it did not matter which formulation of the client was considered; the Respondent had breached those Principles whether the client was Investor A, Ikaya or the underlying investors. The Respondent had full knowledge of the contents of the Trust Deeds and the representations made to the investors as regards the security of their monies and the operation of the schemes. Taking each of the formulations in which he acted for clients, the breaches of the Principles were evident.

Dishonesty

30.23 It was submitted that the appropriate test for dishonesty was that formulated by Lord Hughes in Ivey:

> "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."

30.24 The Respondent's conduct in (a) becoming involved in a scheme bearing the hallmarks of dubious transactions, (b) continuing to receive and disburse investors' funds after becoming aware of the concerns of law enforcement agencies and after

stating that he would abort the transaction, (c) falsely informing investors that their investments were progressing as planned when he knew that was not the case, (d) using investors' funds to pay unrelated third parties, and (e) using investors funds to pay purported profits and repay other investors, would be considered dishonest by the ordinary standards of reasonable and honest people.

The Tribunal's Findings

30.25 The Tribunal determined that the scheme, given that there was zero risk to capital with comparatively large rates of return, looked dubious from the outset. It noted the content of the Law Society and SRA warning notices, and found that a number of the matters detailed therein were present for the Investment Schemes. The Tribunal found that not only did the Respondent fail to check robustly (as the Law Society warning notice advised), he failed to check at all. He undertook no, or no adequate due diligence in relation to the third party traders to whom he provided investors funds. The Tribunal found that not only did the Respondent fail to exercise proper caution, he failed to exercise any caution whatsoever.

30.26 The Tribunal considered that the Respondent ought to have been extremely concerned when he received a letter 7 days after the Trust was said to have begun trading, stating that the request for the trading advance had been delayed. The involvement and concern of the FBI together with the receipt of the email on 13 March 2013 from Company A's trading partner with the suggested letters to be placed on headed paper and sent to the FBI was a significant departure from what the Respondent would have anticipated in a genuine transaction and ought to have caused alarm bells to go off as regards the scheme and/or Company A. These were clear indicators that the scheme might be dubious.

30.27 By 18 March 2013, the Respondent was fully aware of the concerns of the Firm, and had assured the Firm that he would abort the transaction and repay funds to investors. On the contrary, the Respondent did not abide by that assurance, and continued with the Investment Schemes.

30.28 The Tribunal noted an email exchange between RBC's General Counsel, Company A and the Respondent. Company A had written to RBC's General Counsel regarding RBC's refusal to release the funds, amongst other matters. RBC's General Counsel, in an email dated 2 April 2013 to which the Respondent was copied, responded to the matters raised. As regards the funds, they would remain frozen until such time as the requirements for transferring those funds (of which the relevant parties had already been advised) were satisfied. In the same email, General Counsel denied receipt of the deposit of $2.5 billion in Venezuelan sovereign bonds and Euro$600 Million, which Company A asserted had been verified by RBC as having been received. RBC denied all allegations made in relation to the Venezuelan bonds and the Euro$600 Million and demanded that Company A and all its associated and affiliated entities "cease and desist all activities, demands and communications with RBC" in that regard.

30.29 In his response to General Counsel, the Respondent stated that in relation to the additional issues outlined "as you can appreciate I am only interested in the recovery of my client's … funds of GBP 7 million which are frozen at RBC … Any other

issues between RBC and [Company A] are of no concern to me. My client seems to be "collateral damage" in your dispute".

30.30 The email clearly indicated that RBC disputed that substantial amounts had been deposited by Company A and/or its associates, as was claimed by Company A. It also stated that the funds remained frozen until Company A had satisfied the necessary requirements for the release of the funds. This was extremely serious and hugely alarming. The Tribunal found that far from being uninterested, and given the previous indicia of fraud, the Respondent ought properly to have been overwhelmingly concerned about the legitimacy of the scheme and Company A. Any solicitor, given the previous indicia of dubious nature of Company A and/or the Investment Schemes would, on receipt of such an email, have immediately sought to retrieve any funds paid over to Company A, and sever any further dealings with it. Further, the receipt of such an email would have prompted a solicitor who was acting in compliance with his duties, to undertake enquiries into Company A, its officers and any other companies associated with it.

30.31 The police interest in May 2013, of which the Respondent was aware, was a further indicator to the Respondent that the transaction might be dubious.

30.32 By the time of the 10 September 2013 Warning Notice issued by the SRA, no profits had been received by the Respondent in relation to the Investment Schemes. That Warning Notice made clear that often promoters of fraudulent schemes would want the solicitor to 'hold investor funds' in client account, and warned that money should not pass through the client account where there was no underlying legal transaction. It also warned that even where the solicitor was not acting for the investors, it could not be assumed that the investors were owed no duties as a matter of professional conduct; the solicitor had to abide by his public obligations as a lawyer and the overriding duty to act in the public interest.

30.33 The Tribunal determined that there were numerous red flags and warning signs which the Respondent could not have failed to understand and which required him to act with extreme care and caution. The Tribunal found that the Respondent knew that the Investment Schemes bore the hallmarks of dubious financial arrangements or investment schemes.

30.34 It was clear from the retainer letter that the Respondent was instructed by Ikaya and Sionne. The Tribunal found that, by virtue of the advice and assistance he had provided to Investor A (as to which see allegation 1.4 below) the Respondent also acted for Investor A. The Respondent was under a duty to act in the best interest of those clients, provide them with a proper standard of service, and protect their money and assets. Given the clear indicia that the schemes were dubious, the Tribunal found that in order to perform those duties and obligations, the Respondent was required to conduct due diligence and undertake further enquiries in relation to Company A, its officers and its associates. That requirement became all the more obvious after the concerns expressed by the FBI and the Firm. The Respondent ignored the red flags, and rather than acting as his duties required him to do, he re-delivered the investors funds to Company A by paying the returned funds to Company A's London Barclays account. In failing to undertake the necessary due diligence and further enquiries, and in continuing with his involvement in the Investment Schemes, the Respondent acted

without due regard to his duties and obligations. Furthermore, he had positively acted contrary to those duties by paying monies to unrelated third parties, using capital belonging to one investor to repay others, and distributing capital as purported profit. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent had breached Principles 4, 5 and 10 of the Principles.

30.35 The Respondent's conduct demonstrated that he had failed to carry out his role in the business effectively and in accordance with sound financial and risk management principles. He had undertaken no due diligence on behalf of his clients, and had encouraged them to invest in a venture that, as the Tribunal had already found, bore the hallmarks of being a dubious investment scheme from the outset. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent had breached Principle 8 of the Principles.

30.36 Members of the public would expect a solicitor to act in their best interests and safeguard their funds. The Respondent failed to do this. That failure was compounded by the knowledge he had of the permitted use for the funds; despite that knowledge, he directed and/or authorised that funds be used for unpermitted purposes. Such conduct clearly diminished the trust the public placed in him and in the provision of legal services. The Respondent continued to act where he knew that the transactions were dubious. Members of the public would be troubled by the Respondent's conduct in the circumstances, especially given the nature of the red flags that were apparent to him. The Respondent's conduct clearly diminished the trust the public placed in him and in the provision of legal services. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent had breached Principle 6 of the Principles.

30.37 The Tribunal determined that no solicitor, acting with integrity, would ignore the clear and persistent warning signs that the transactions were dubious. The Respondent, it had been determined, was aware of the dubious nature of the Investment Schemes. The Tribunal found that this was not a case where it slowly became obvious over time that the transactions were questionable. It was clear from the outset that the transactions might be dubious given that there was no risk to capital and high returns. The later events simply served to emphasise and confirm that that was the position. The Respondent had numerous opportunities to withdraw from the Investment Schemes and safeguard his clients' monies. Instead, he offered false assurances as to the progress of the transactions and paid non-existent 'profits' to some of the investors. He continued to receive monies in and pay monies out of the Trusts, despite the red flags. He had shown no regard for his clients' monies or the duties and obligations he owed to them. The Tribunal found that such conduct was clearly lacking in integrity. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent had breached Principle 2 of the Principles.

30.38 The Tribunal accepted that Applicant's submission that the appropriate test for dishonesty in this jurisdiction was that formulated in Ivey.

30.39 Given the nature, persistence and number of red flags present, the Tribunal found that it was inconceivable that the Respondent did not recognise the dubious nature of the Investment Schemes. Those red flags would have been even more obvious to someone with the Respondent's experience. Following the communication from the

FBI, the Firm became concerned. During a telephone conference, the Firm was assured by the Respondent that he would abort the transaction and return the funds to investors. He failed to do so. Not only did he act contrary to his assurance, he failed to undertake any investigation into Company A and its associated entities. The email he was copied into in April 2012 from RBC's General Counsel clearly identified issues of grave concern, in which the Respondent stated that he had no interest. Notwithstanding the very clear indicia that the Investment Schemes were dubious, the Respondent continued to operate the schemes. He provided investors with false assurances by way of the investor updates which contained information that he knew to be untrue. He also provided investors' advisors with information he knew to be untrue. The Tribunal did not accept that the Respondent believed that he saw "no obstacle to making a swift payment for the second 4 weeks money early next week" as he advised an IFA. This clearly was not the case when on the same day that the IFA passed that information onto investors, the Respondent was sending a letter before action to Company A and its associated entities. The Respondent had used investment monies to pay supposed "profits" to investors, and had used capital monies belonging to one investor to repay capital to other investors. He had also used investment monies to pay apparently unrelated third parties (e.g. Asociacion Karma Guen. The Respondent knew that these actions were in breach of his duties and obligations, contrary to the Trust Deeds and contrary to the assertions made to the investors. Reasonable and decent people operating ordinary standards of honesty would find that the Respondent, in knowingly acting as above had acted dishonestly. Accordingly, the Tribunal found allegation 1.1 proved beyond reasonable doubt, including that the Respondent's conduct was dishonest.

31. **Allegation 1.2 – the Respondent misled third parties by producing false invoices from his company Ikaya to individual investors purportedly to show the source of investment monies, in breach of Principles 2 and 6 of the Principles.**

Applicant's Submissions

31.1 On 1 October 2013, the trader for Trust 5 requested due diligence information including proof of funds. Mr Ozin QC submitted that the request was made to provide the appearance of sufficient due diligence being undertaken in order to obtain the funds. A proper analysis of the documents indicated that the Respondent authorised the fabrication of invoices so as to facilitate the transfer of investment funds. In an email chain between the Respondent and his PA at the Firm, it was clear that the Respondent had instructed that invoices be created, with one being back-dated to August, and that the invoices should have non-sequential numbers.

31.2 Two invoices were created for Ikaya, with payment to be made to the Firm's USD client deposit account. Invoice No 6 was addressed to Investor A for "… advising on regulatory and commercial issues in respect of the establishment of a litigation and gold fund, preparation of all contracts and relevant due diligence, drafting, funding and transaction documents". The bill was in the amount of US$500,000, and was signed by the Respondent on behalf of Ikaya. Together with the invoice was a letter to Asociacion Karma Guen (the recipients of the monies). The letter stated that Ikaya was "a special purpose company established for the sole purpose of providing consultancy services. In particular it has advised [Investor A] in connection with the establishment of a litigation and separately gold fund … Please find enclosed a copy

invoice and confirmation of payment from [Investor 1]". The letter was signed by the Respondent on behalf of Ikaya.

31.3 Invoice No 4 was addressed to investors R1 and S, and was said to relate to "...advising on regulatory and commercial issues in respect of the establishment of private equity and vulture fund, insolvency issues and disposal of assets, acquisition of relevant assets, attending meetings and drafting fund documents". The bill was in the amount of US$500,000, and was signed by the Respondent on behalf of Ikaya. Together with the invoice was a letter to Asociacion Karma Guen in similar terms to those detailed above. Both letters were dated 7 October 2013.

31.4 Enquiries made in relation to Asociacion Karma Guen revealed that it was a Buddhist retreat.

31.5 There was no evidence that the Respondent had undertaken the work described in the invoices, or that Ikaya had been instructed by the investors to undertake such work. Further, the investors confirmed that they had no previous knowledge of the invoices.

31.6 In fabricating and producing the invoices to a third party in order to purportedly comply with due diligence requirements, the Respondent had failed to act with integrity and had failed to behave in a way that maintains the trust the public placed in him and in the provision of legal services.

Dishonesty

31.7 Mr Ozin QC submitted that the Respondent's conduct in this regard was dishonest; reasonable and honest people operating ordinary standards would consider that a solicitor who created deliberately misleading invoices in the knowledge that they would be relied on as evidence of receipt of funds, had acted dishonestly.

The Tribunal's Findings

31.8 The Tribunal examined the documentary evidence. The Tribunal noted that as at 7 October 2012, neither of the invoices had been created; this was clear from the email correspondence between the Respondent and his PA. It was also clear that Ikaya had not been established for "the sole purpose of providing consultancy services".

31.9 The Tribunal found that the invoices had been created on 7 October 2012. The purpose of their creation was so as to facilitate the payment out of the monies. The Tribunal found beyond reasonable doubt that the Respondent, in causing the invoices to be fabricated and sent to a third party in order to create a misleading impression, had acted in breach of the Principles as alleged. No solicitor, acting with integrity would create false invoices so as to mislead the recipient. In doing so the Respondent had failed to adhere to the ethical standard of the profession and the higher standards expected of him as a member of the profession. His actions failed to maintain the trust members of the public had in him and the provision of legal services. Members of the public would not expect a solicitor to create false documents with the intention of misleading third parties. The Respondent, in knowingly and deliberately creating false invoices for the purpose of misleading third parties as to the source of the

monies, had plainly been dishonest. Reasonable and decent people operating ordinary standards of honesty would consider his conduct to be dishonest in this regard. Accordingly, the Tribunal found allegation 1.2 proved beyond reasonable doubt, including that the Respondent's conduct had been dishonest.

32. **Allegation 1.3 - He failed to protect client money and assets, in that he directed or requested improper withdrawals from the Firm's client account, and in doing so breached Principles 2 and 10 of the Principles and Rule 20(1) of the SAR.**

Applicant's Submissions

32.1 Rule 12.1 of the SAR defined 2 categories of monies which a firm may hold: office money which is money belonging to the firm and client money which is money held or received for a client or as trustee and all other money which is not office money. The investment monies held in the Firm's client account were not office monies; by definition they were client monies. Those client monies should only have been released in accordance with Rule 20.1 of the SAR. Instead the Respondent caused those monies to be released for improper purposes, namely:

- Monies were transferred to unrelated third parties (see paragraphs 30.18 and 30.39 above)
- Monies were used to pay "profit" to other investors (see paragraphs 30.18 and 30.39 above)
- Monies were used to repay investor capital (see paragraphs 30.18 and 30.39 above)

32.2 The improper withdrawal of funds from the Firm's client account in the circumstances described above amounted to a clear failure on the part of the Respondent to adhere to the ethical code of the profession in breach of Principle 2 of the Principles. In allowing funds to be improperly used, the Respondent failed to protect client money and assets in breach of Principle 10 of the Principles.

Dishonesty

32.3 In directing payments to be made from assets held on behalf of clients in purported payment of returns or refunds of investments, the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people. The Respondent knew, at the time of making the payments, the basis on which the funds were held and the use to which the funds ought to have been put and were actually put.

The Tribunal's Findings

32.4 The Tribunal found that the monies held by the Firm in its client account on behalf of Ikaya and Sionne, were client monies. Accordingly, any use or release of those monies should have been in compliance with the provisions of Rule 20.1 of the SAR. The monies had been paid by the underlying investors for the purposes of investment, and were held by Ikaya and Sionne as joint trustees. The Respondent was aware that this was the case; he was the solicitor with conduct of the matter, he was the sole

owner of Ikaya and was the "UK lawyer coordinating the programme". The Tribunal, in its findings in relation to allegation 1.1 above, had determined that the Respondent had failed to undertake any or any proper due diligence as regards third parties. In paying client monies away to unrelated third parties who were not investment vehicles, the Respondent had breached the SAR. The monies were improperly utilised. In using investment monies to repay other investor capital or as "profits", the Respondent had breached the accounts rules as alleged. His failure to protect client money was evident, and the Tribunal found beyond reasonable doubt that the Respondent had breached Principle 10 of the Principles. The Tribunal found beyond reasonable doubt that in paying, or causing client monies to be paid away in the particular circumstances, the Respondent had acted without integrity, in breach of Principle 2 of the Principles. No solicitor acting with integrity would knowingly cause or allow client monies to be paid away in breach of the accounts rules, contrary to clients' instructions and in breach of the terms on which the client deposited those monies.

32.5 The Tribunal determined that the Respondent's conduct was dishonest. He had knowingly paid away monies to unconnected third parties in breach of the terms of the trusts. He had used investors' money to pay alleged profits and to reimburse other investors' capital, stating that those monies were as a result of trading profits when he knew that was not the case. Reasonable and decent people operating ordinary standards of honesty would consider this conduct to be dishonest. Accordingly, the Tribunal found allegation 1.3 proved beyond reasonable doubt, including that the Respondent's conduct had been dishonest.

33. **Allegation 1.4 - He acted for a company of which he was the sole director and 100% shareholder, Ikaya, in relation to the Investment Schemes and for individual investors in the Investment Scheme(s), in a situation where there was a conflict, or a significant risk of a conflict between any or all of (1) the interests of Ikaya; (2) the interests of the beneficiaries of the trusts and individual investors (where he was acting for them) or any of them; (3) his own individual interests as director and sole shareholder of Ikaya; and/or (4) the interests of the Firm and his own interests as a member/fee earner, and in doing so breached Principles 2, 3 and 4 of the Principles and Outcomes O(3.4) and O(3.5) of the SCC.**

33.1 Outcome O(3.4) required that "you do not act if there is an own interest conflict or a significant risk of an own interest conflict".

33.2 Outcome O(3.5) required that "you do not act if there is a client conflict, or a significant risk of a client conflict, unless the Outcomes in 3.6 or 3.7 apply".

33.3 Outcome O(3.6) required that "where there is a client conflict and the clients have a substantially common interest in relation to a matter or a particular aspect of it, you only act if:

(a) you have explained the relevant issues and risks to the clients and you have a reasonable belief that they understand those issues and risks;

(b) all the clients have given informed consent in writing to you acting;

(c) you are satisfied that it is reasonable for you to act for all the clients and that it is in their best interests; and

(d) you are satisfied that the benefits to the clients of you doing so outweigh the risks.

33.4 Outcome O(3.7) required that "where there is a client conflict and the clients are competing for the same objective, you only act if:

(a) you have explained the relevant issues and risks to the clients and you have a reasonable belief that they understand those issues and risks;

(b) the clients have confirmed in writing that they want you to act, in the knowledge that you act, or may act, for one or more other clients who are competing for the same objective;

(c) there is no other client conflict in relation to that matter;

(d) unless the clients specifically agree, no individual acts for, or is responsible for the supervision of work done for more than one of the clients in that matter; and

(e) you are satisfied that it is reasonable for you to act for all the clients and that the benefits to the clients of you doing so outweighs the risks.

Applicant's Submissions

33.5 It was obvious to the Respondent that given the various capacities in which he was acting there was a conflict, or a significant risk of a conflict of interests arising. He was the sole shareholder of Ikaya, which was the Firm's client, and he was the sole solicitor with conduct of that matter.

Ikaya and Investor A

33.6 As a solicitor, he acted for the Investor A company/ies: (i) he was involved in commenting on and reviewing the Private Placement Memorandum ("PPM"); (ii) the PPM itself recorded it had been prepared by the Firm; (iii) according to emails the Respondent reviewed, provided advice/comments and saw the final version of the PPM before it was published, thus he knew it held the Firm out to be the originator of the document; (iv) the PPM stated that the Firm was the "advisor to the trustees" and "legal advisors to the Trustees" in respect of the Investor A investment (v) he advised on the terms and basis of the Trust; and (vi) in an email dated 2 March 2015, the Respondent stated: "I can confirm that I am the advising lawyer to [Investor A] and a Trustee of the Secure Trust Account referred to in the PPM". This was not withstanding an email of 20 September 2013, where the Respondent stated that Investor A was "not really the client".

33.7 The interests of Investor A and Ikaya were not aligned. It was in the interests of Ikaya to maximise the amount of money coming into the Investment Schemes so that it could obtain commission on the profits. It was in the interests of Investor A to ensure

that its investments were fully protected and that it received the expected return on profits and the repayment, at the due date, of its capital investment. The significant risks of conflict were self-evident:

- The Respondent's interests were aligned with Ikaya as he was the sole owner.
- The Respondent stood to benefit financially from his share of the profits as Trustee.
- The Respondent stood to benefit financially from his personal commission earned as the fee earner on the Ikaya matter.

33.8 Further, as the advising solicitor to Investor A, the Respondent ought to have advised of the significant risks and hallmarks that the Investment Schemes were dubious (see allegation 1.1 above). Notwithstanding the significant risks of conflict, the Respondent advised Investor A, whilst acting as Trustee for the Trusts, owner of Ikaya and solicitor with conduct of the matter.

33.9 The Respondent authorised the payment of Investor A investment monies to repay capital to other unrelated investors. This was in breach of the terms on which Ikaya held the monies and was contrary to Investor A's interests. There was a clear conflict between Investor A and Ikaya in this regard.

Ikaya and the Firm

33.10 The Respondent negotiated his fees with Ikaya. It was in Ikaya's interests to keep the legal fees to a minimum. It was in the Respondent's interests as a member/fee earner to maximise fee income, particularly given the bonus scheme in operation. Further, the Respondent as the solicitor with conduct of the matter signed the retainer letter on behalf of the Firm, which included an hourly rate of £450. He also signed the letter on behalf of Ikaya as a Trustee. Mr Ozin QC submitted that signing the letter in his separate capacities would have alerted the Respondent to the very significant risks of conflict between his competing roles.

33.11 In acting when there were actual conflicts and significant risks of conflicts arising, the Respondent had allowed his independence to be compromised, had failed to achieve the Outcomes as alleged and had failed to act in the best interests of his clients. Further the Respondent had acted without integrity.

Dishonesty

33.12 In acting in the circumstances with the resultant conflicts of interest, the Respondent, in the knowledge of the conflicting duties which arose, had acted dishonestly according to the ordinary standards of reasonable and honest people.

The Tribunals Findings

Ikaya and Investor A

33.13 The Tribunal found that there was a significant risk of conflict between Ikaya, the Respondent and Investor A for the reasons detailed by the Applicant above. Not only did the Respondent act where there was a significant risk of conflict, he acted where there was an actual conflict as was evidenced by his use of Investor A investment monies to repay the capital of other unrelated investors. That there were significant risks of conflict arising and actual conflicts would have been obvious to a solicitor with the Respondent's level of experience. The Tribunal determined that the Respondent had acted where there was a client conflict or a significant risk of a client conflict. The conditions detailed in Outcomes O(3.6) and O(3.7) had not been met. Accordingly the Respondent had failed to achieve Outcome O(3.5) as alleged.

Ikaya and the Firm

33.14 The risk of a conflict was plain at the outset, given that the Respondent was the sole fee earner on a matter where his company was the client. The competing interests between the fees payable by Ikaya to the Firm were evident. It was plain that it was in the Respondent's bests interests to maximise the fees, and that it was in Ikaya's best interests to keep the fees to a minimum. The risk of conflict between the Respondent's incentive to maximise his personal billing so as to increase his bonus, and the fees payable by Ikaya was plain.

33.15 The Tribunal determined that the Respondent had acted where there was own interest conflict or a significant risk of an own interest conflict, and in doing so had failed to achieve Outcome O(3.4) as alleged.

33.16 The Respondent's independence was clearly compromised. He had a vested interest in the monies being provided by Investor A. As the owner of Ikaya it was in his interest to maximise investment monies in the Trusts. He failed to advise Investor A of the potential risks. It was also in his interest to repay the capital so as to allow the Trusts to continue. To do so he used monies invested by Investor A. The Tribunal found that the Respondent had plainly failed to act in his clients' best interests in breach of Principle 4, and had failed to maintain his independence in breach of Principle 3. No solicitor acting with integrity would knowingly act where their independence was compromised, and where there were actual and significant risks of conflict between clients' and the solicitor's own interests.

33.17 The Tribunal determined that the Respondent's conduct was dishonest. He had deliberately continued to act where there was a conflict of interests in circumstances where he stood to benefit from that conflict. Further, he had used the capital of Investor A to repay the capital of other investors. Not only was this a conflict, but it was a purpose that he knew was not permitted by the Trust Deed entered into by the investors. Reasonable and decent people operating ordinary standards of honesty would consider that it was dishonest for a solicitor to benefit from acting in prohibited circumstances. They would also consider it dishonest to knowingly use monies otherwise than for the permitted purpose. Accordingly, the Tribunal found

allegation 1.4 proved beyond reasonable doubt, including that the Respondent's conduct had been dishonest.

34. **Allegation 1.5 - He directed or requested payments into, and transfers or withdrawals from, the Firm's client account which were not related to an underlying legal transaction or a service forming part of his normal regulated activities and in doing so breached Principle 2 of the Principles and Rule 14.5 of the SAR.**

Applicant's Submissions

34.1 The use of the client account to deposit and hold investment monies was not a proper use of the client account as there was no underlying legal transaction. Even in circumstances where the Respondent was acting for the underlying investors (for example Investor A), there was still no necessity for the investment monies to be paid into the client account. The FIO found that a total of £28,241,822.09, $15,285,912.55 and €2,025,095.22 passed through the Firm's client account in respect of the investments.

34.2 Concerns were raised by the Firm in an email to the Respondent dated 19 December 2013, where it was stated, amongst other things: "I will also need to I would like to understand why such a transaction requires the use of a Locke Lord client account".

34.3 In February 2014 the Firm continued to raise concerns with the Respondent about the use of its client account. In an email to the Respondent following an explanation by him in relation to the funds, it was stated: "… I do not understand your explanation … please let me know why these monies did not go directly from the investors bankers to the Trust of Funds bankers in circumstances where there is no underlying transaction in which the firm is involved …"

34.4 Mr Ozin QC referred the Tribunal to Guidance Note (v) to Rule 14.5 of the SAR which stated:

> "Rule 14.5 reflects decisions of the Solicitors Disciplinary Tribunal that it is not a proper part of a solicitor's everyday business or practice to operate a banking facility for third parties, whether they are clients of the firm or not … It should also be borne in mind that there are criminal sanctions against assisting money launderers."

34.5 The movement of funds through the Firm's client account in the absence of any underlying legal transaction and in the context of a scheme bearing the hallmarks of dubious transactions and where some payments were made without the authority of the clients on whose behalf such funds were held, amounted to a clear failure by the Respondent to steadily adhere to an ethical code and was in breach of Principle 2.

Dishonesty

34.6 In knowingly allowing funds to be used other than for their specified purpose and in using the Firm's client account as a banking facility in furtherance of a scheme that

bore the hallmarks of fraud, the Respondent had acted dishonestly by the ordinary standards of reasonable and honest people.

The Tribunal's Findings

34.7 The Tribunal noted that in the body of the Rule 5 Statement, the Applicant alleged that the Respondent, as well as acting in breach of the accounts rules, also acted in breach of Principle 6. This breach had not been particularised in the allegation, nor had there been an application to amend the Rule 5 Statement to include a breach of Principle 6. The Tribunal found that the breach had not been properly alleged against the Respondent, and as such, it made no determination as to whether the Respondent's conduct was in breach of Principle 6.

34.8 It was plain that there was no underlying legal transaction. This was clearly a concern of the Firm, hence the emails referred to above. The Tribunal noted that in response to those concerns, in an email dated 4 March 2014, the Respondent stated that he was discussing "that in future the funds [do not pass] through us."

34.9 The Tribunal determined that given the Respondent's extensive experience, he was aware that the Firm's account could not be used as a bank account. The routing of the money through the Firm's account was designed to give a veneer of authenticity to the scheme. The Tribunal noted that when challenged by one of the Investors as to what would happen if the Respondent "ran off" with the investor's money, the Respondent informed him that he could sue the Firm. The investors placed particular reliance on the fact that monies were paid into the Firm's client account. The Tribunal found that the Respondent's had knowingly breached Rule 14.5, and in doing so had acted without integrity. No solicitor acting with integrity would deliberately and by design breach the accounts rules so as to lend authenticity to a scheme that bore the hallmarks of fraud, and from which he stood to benefit. Such conduct was clearly dishonest. Reasonable and decent people operating ordinary standards of honesty would consider that a solicitor who had deliberately breached the accounts rules so as to provide an aura of authenticity to transactions that bore hallmarks of fraud was dishonest. They would find that dishonesty compounded by his continuing to do so despite the concerns raised by the Firm. Accordingly, the Tribunal found allegation 1.5 proved beyond reasonable doubt, including that the Respondent's conduct had been dishonest.

35. **Allegation 1.6 - On or about February – April 2013, he knowingly made statements which he knew to be untrue as to the status of individual investments in Investment Schemes administered by the Respondent on behalf of Ikaya and in doing so breached Principles 2 and 6 of the Principles**

Applicant's Submissions

35.1 The Respondent made repeated assertions as to the progress of the investments and the location of investment monies which he knew to be untrue. In an Update to all Investors dated 12 April 2013 which was signed by the Respondent it was stated, amongst other things:

> "Invested capital has now been positioned with a Trustee signatory account based in London.
>
> Capital is held under Trustee only control and contractually remains on account for the duration of the trade programme".

35.2 The monies were not held in an account under Trustee only control; monies had been paid into an account belonging to Company A on 10 April 2013.

35.3 In the "Communication to all Investors" dated 10 May 2013, and signed by the Respondent, it was stated, amongst other things:

> "The profits are currently in the UK under the control of the foundation and have to pass via the US paymaster ... Within our capacity as Trustees, the Foundation has also afforded us the opportunity to verify the availability of these funds, which we are pleased to confirm has been completely satisfied."

35.4 The FIO was unable to find any evidence that any profit had been received or was being held in the UK as asserted.

35.5 In providing misleading statements, the Respondent failed to maintain the trust the public placed in him and in the provision of legal services. Further his conduct in making misleading statements that he knew would be relied upon, amounted to a failure of steady adherence to a moral code.

Dishonesty

35.6 In deliberately misleading clients as to the status of their investments by making untrue statements, the Respondent had been dishonest by the ordinary standards of reasonable and honest people.

The Tribunal's Findings

35.7 The Tribunal noted that this allegation was limited to dates between February and April 2013. Accordingly, in considering the allegation, the Tribunal did not consider the contents of the Communication to all Investors dated 10 May 2013, as this fell outside the timeframe particularised in the allegation.

35.8 A total of £7,000,000.00 had been paid to Company A on 15 February 2013. That sum was returned by RBC to the Firm and was credited to the Firm's account on 5 April 2013. Between 8 and 10 April 2013 a further £7,000,000.00 was paid to a London branch of Barclays in favour of Company A.

35.9 The Tribunal examined the correspondence between the Respondent and Company A, internal emails of the Firm and the notifications sent to investors. In a Communication to all Investors (undated, but evidently sent between 14 February and 12 April 2013) which was signed by the Respondent, he stated that "All capital is held safely in a Transaction account under the signatory of the Trustees". The Tribunal found that this was untrue; as detailed above at that time the monies were in Company A's RBC account. That account was not under the control of the Trustees.

This was clear from the emails between the Respondent and Company A. The Respondent received a screenshot of the funds held at RBC as at 12 March 2013. The Respondent requested a further screenshot of the balance as at 13 March 2013. On 14 March 2013, the Respondent received a transfer authorisation request authorising the transfer of the funds from Company A's RBC account to a Bank of America account. Had the Respondent been in control of the account, he would not have needed to see or request screenshots showing that monies were located in the account, he would simply have requested that information from the bank, or accessed the account online.

35.10 In the Update to all Investors dated 12 April 2013 which was signed by the Respondent, he stated that "Invested capital has now been positioned with a Trustee signatory account based in London". The Tribunal found that this was not the case. Whilst the monies had been returned to the Firm by RBC, they had been paid into a London Barclays account, however that account was in the name of Company A. Thus, the assertion that "Capital is held under Trustee only control ..." was also untrue.

35.11 The Tribunal noted that during the period February to April 2013, the Respondent became aware of concerns expressed by the FBI in relation to JL of Company A. He was also aware that RBC had a number of issues relating to Company A as detailed above at allegation 1.1. His response to the matters raised was less than satisfactory.

35.12 The Tribunal found that the Respondent had knowingly made untrue statements to the investors in the communications sent to them. He was fully aware that the funds were not in the UK when he stated that they were. Further, he was fully aware that neither Ikaya nor Sionne as Trustees had control of the accounts in which the funds were held, whether with RBC or Barclays. In knowingly making untrue statements the Respondent had breached the Principles as alleged. Public trust in solicitors and the provision of legal services was diminished by the Respondent's conduct. A number of the investors had complained to the Applicant about the Respondent's conduct, and in particular his failure to retain their monies in a ring-fenced account which could only be accessed by the Trustees. No solicitor acting with integrity would send out circulars that contained statements that the solicitor knew to be untrue. Such conduct was clearly dishonest. Reasonable and decent people operating ordinary standards of honesty would consider that a solicitor who had deliberately provided untrue information to investors as regards their investment had acted dishonestly. Accordingly, the Tribunal found allegation 1.6 proved beyond reasonable doubt, including that the Respondent's conduct had been dishonest.

36. **Allegation 1.7 - He failed to deal with his regulator in an open, timely and co-operative manner in breach of Principle 7 of the Principles**

Applicant's Submissions

36.1 The Respondent was formally notified of the Applicant's investigation in a letter dated 21 October 2015. In that letter the Respondent was asked to contact the FIO "to arrange an appropriate and convenient time to meet and discuss the matter further." The Respondent did not respond to the letter. Having ascertained that the Respondent had instructed solicitors, the FIO wrote to the Respondent care of his solicitors. That

letter, dated 4 November 2015, enclosed a notice pursuant to Section 44B of the Solicitors Act ("S44B Notice") requiring the Respondent to provide all client files and accounting and financial records in all formats pertaining to Ikaya and BHIEB within 14 days of delivery of the notice. No response was received, and a further letter was sent by the FIO to the Respondent's solicitor dated 18 November 2015.

36.2 On 18 November 2015, the Respondent's solicitor emailed the FIO. He explained that beyond the papers held by the Firm, the Respondent "had only a very small number of documents relating to these matters in his possession and he gave copies to North Yorkshire police." He further explained:

> "[The Respondent] has indicated that he would be happy to arrange a meeting with you, at which no doubt clarification could be provided in relation to the documents that you seek. I am in a slightly difficult position in that I was not instructed at the time of his interview with North Yorkshire Police, during which I understand he gave a full account. I have asked the police to provide me with the tapes or transcript of the interview and they have agreed to do so. It would be far preferable that I was able to consider the content of these interview (sic) before any interview with you."

36.3 In an email dated 25 November 2015, following continued correspondence between the FIO and the Respondent's solicitor, the FIO expressed his concern at the Respondent's assertion that he did not have many documents, particularly as, given that he was the director of Ikaya and his wife was the Company Secretary, the documents were still under the Respondent's control.

36.4 On 21 March 2016, the Respondent's solicitor emailed the FIO to explain that the Respondent was not willing to provide any comment in relation to the matters under investigation until the police investigation was concluded. On 26 May 2016, the FIO sent an Explanation With Warning (EWW) letter to the Respondent, enclosing the Forensic Investigation Report. That letter required the Respondent to answer the allegations as well as provide additional requested information by 10 June 2016. No response was received.

36.5 In failing to respond to the various requests for information, the Respondent had failed to comply with his legal and regulatory obligations and had failed to deal with his regulator in an open, timely and co-operative manner, in breach of Principle 7.

The Tribunal's Findings

36.6 The Tribunal found that the Respondent had failed to substantively respond to the S44B Notice and the EWW letter. The Tribunal considered that whilst the Respondent was seemingly reserving his position until the determination of the police investigation, his duty to the regulator and to comply with the Rules and Principles was continuing. In failing to respond, the Respondent had chosen to ignore those obligations, preferring to protect his position in relation to potential criminal proceedings. Whilst he might have believed he had good reason not to respond to the enquiries and provide the requested information, this did not negate his obligation. In choosing not to respond, the Respondent had failed to comply with his legal and regulatory obligations and had failed to deal with his regulator in an open, timely and

co-operative manner as alleged. Accordingly, the Tribunal found allegation 1.7 proved beyond reasonable doubt.

Previous Disciplinary Matters

37. None.

Mitigation

38. None.

Sanction

39. The Tribunal had regard to the Guidance Note on Sanctions (December 2016). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

40. The Tribunal found that the Respondent's conduct was motivated by financial gain. He stood to gain financially from his involvement in BHIEB and Ikaya, and also as the fee earner with conduct of the matter. His conduct was planned and was a flagrant breach of the trust placed in him by his clients and investors who relied on his status as a solicitor, and as the solicitor to the Trusts, when providing him with their funds. He was extremely experienced and was directly in control of the circumstances. He consciously acted contrary to the assertions he had made to investors and the terms of the Trust Deeds. The Tribunal assessed the Respondent's culpability as extremely high.

41. He had caused significant harm to individual investors, who had lost substantial amounts of money, some of whom were left suffering severe financial difficulties as a result of those losses. The harm he had caused to the reputation of the profession was immeasurable. His conduct demonstrated a complete departure from the standards of integrity, probity and trustworthiness expected of a solicitor. The seriousness of his misconduct was aggravated by his proven dishonesty. His actions were deliberate, calculated, repeated and sustained over a period of time. He continued to allow and facilitate the misapplication of trust monies despite assuring his Firm that he would abort the transactions. He knew that the transactions bore the hallmarks of being dubious. He also continued in the face of the concerns expressed by law enforcement agencies both nationally and internationally. The Respondent knew that he was in material breach of his obligations to protect the public and the reputation of the profession. Although the Respondent had no previous findings, his dishonesty and disregard of his obligations as a solicitor were completely reprehensible, such that his previous good character was not sufficient to mitigate the seriousness of his misconduct. Given the serious nature of the allegations the Tribunal considered and rejected the lesser sanctions within its sentencing powers such as no order, a reprimand or restrictions. The Tribunal determined that the Respondent's conduct was such that he needed to be immediately removed from practice so as to protect the public and reputation of the profession. The Tribunal found that the Respondent's failings and the harm caused was so severe that the only appropriate and proportionate

sanction to protect the public and the reputation of the profession was the permanent removal of the Respondent from the profession. Accordingly, the Tribunal struck the Respondent from the Roll.

Costs

42. Mr Ozin QC applied for costs in the sum of £82,532.90. This took account of reductions made for the reduced hearing time. The Tribunal queried the proportion of the costs claimed that were in fact attributable to the Firm. Whilst an Order had already been made by the Tribunal that the Firm pay costs of £30,000.00, this did not necessarily represent the actual costs incurred as a result of the investigation into the Firm. The Applicant did not have a costs schedule that detailed the separate costs incurred for the Respondent and the Firm.

43. The Tribunal determined that the Respondent was liable for 70% of the overall costs incurred in the investigation into him and the Firm. The total costs incurred were £119,732.90. The Respondent was therefore liable for £76,613.03 (taking account of the consequential reductions as a result of the reduced hearing time). The Tribunal considered that the costs should be further reduced to take account of any duplication occasioned by the transferring of the matter from the Applicant's previously instructed solicitors to its currently instructed solicitors. The Tribunal considered that the appropriate and reasonable amount of costs that should be paid by the Respondent in the circumstances was £70,000.00.

Statement of Full Order

44. The Tribunal Ordered that the Respondent, JONATHAN DENTON, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £70,000.00.

Dated this 15th day of May 2018
On behalf of the Tribunal

J. A. Astle

J. A. Astle
Chairman

Judgment filed
with the Law Society
on 17 MAY 2018