SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11859-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

CHARLES VALENTINE FRASER-MACNAMARA Respondent

Before:

Mr L. N. Gilford (in the chair)
Ms A. Horne
Mr M. R. Hallam

Date of Hearing: 25 - 27 March 2019

Appearances

Mr Rory Dunlop QC, barrister, of 39 Essex Chambers, 81 Chancery Lane, London, WC2A 1DD, instructed by the Solicitors Regulation Authority ("SRA"), The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant.

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The allegations made against Charles Valentine Fraser-Macnamara ("the Respondent") are that as the sole Director of Ecohouse Developments Ltd ("EDL") and/or sole Director of Black Country Legal Consultancy ("BCLC") and/or Director of Black Country Business Consultants Ltd ("BCBC") he:

1.1. From May 2012 to 15 January 2015 caused or allowed misrepresentations to be made to potential investors in EDL to the effect that:

1.1.1. EDL owned the land that would be developed, when EDL did not own such land.

1.1.2. EDL was an approved supplier of housing under a Brazilian Government Scheme, when EDL was not.

1.1.3. Funds invested in projects offered by EDL were secure, when they were not.

1.1.4. EDL was entitled to use and/or display the Olympic logo, when EDL was not.

1.1.5. EDL had been awarded ISO 9001 accreditation, when it had not.

In making any or all of these misrepresentations, the Respondent breached Principles 2, 3 and 6 of the Solicitors Regulation Authority ("SRA") Principles 2011 ("the Principles").

1.2. From 28 May 2012 to date, failed to maintain, preserved or deliver up adequate accounting records for EDL. In doing so he breached Principles 2, 6 and 7 of the Principles.

1.3. From 28 May 2012 to 15 January 2015 profited from, and/or misled members of the public into investing in EDL when he knew EDL was operating a Ponzi scheme. In doing so he breached Principles 2, 3 and 6 of the Principles.

1.4. From 28 May 2012 to 15 January 2015 involved himself in a dubious scheme and/or dubious transactions and/or caused or allowed transactions which bore the hallmarks of fraud and/or money laundering, and in doing so breached Principles 2, 3 and 6 of the Principles.

1.5. From 15 January 2015 to date, he provided false information about:

1.5.1. The amount he was paid, in daily consultancy fees, by EDL.

1.5.2. Whether he could access EDL's bank accounts before May 2014.

In providing this false information he breached Principles 2, 3 and 6 of the Principles.

1.6. Dishonesty is alleged in relation to allegations 1.1 to 1.5 above, but proof of dishonesty is not essential to prove any of those allegations.

Documents

2. The Tribunal considered all of the documents filed and served in this matter namely:

Applicant

- Application and Rule 5(2) Statement dated 16 August 2018 with Exhibit NXB1.
- Reply to the Respondent's Answer dated 24 October 2018.
- Applicant's Schedule of Costs at issue dated 16 August 2018.
- Response to first application for an adjournment dated 14 March 2019.
- Email chain between the Applicant and DS Ward dated 22 March 2019.
- Authorities bundle
- Applicant's Schedule of Costs at Substantive Hearing dated 15 March 2019.

Respondent

- Answer to EWW dated 13 July 2017.
- Answer to the Rule 5 Statement and exhibits dated 31 September 2018.
- Statement of Means and exhibit dated 27 November 2018.
- Supplementary statement and exhibits dated 14 February 2019.
- Application for an adjournment dated 11 March 2019
- Renewed application for an adjournment dated 21 March 2019.

Preliminary Matters

3. Application to Adjourn

The Respondent's Application

3.1 Having been refused an adjournment of the substantive hearing on the papers on 14 March 2019, the Respondent renewed his application in writing for consideration at the outset of the substantive hearing. The grounds upon which his application was predicated were that; (a) he had attended a voluntary interview with the Metropolitan Police on 20 March 2019; (b) the interview was conducted under caution and related to his "introduction to, and knowledge of, the Eco House housing developments in Brazil"; (c) his relationship with various companies, bodies and solicitors; (d) the police interview covered the same ground as the Allegations he faced at the Tribunal; (e) the Tribunal proceedings would "muddy the waters" of the police investigation and (f) he would be likely to suffer prejudice if the matter was not adjourned.

The Applicant's Position

3.2 The Applicant opposed the application predominantly on the ground that any potential criminal proceedings did not appear to be imminent. The Applicant further adduced an email to the SRA from DS Ward, dated 22 March 2019 and timed at 09:24 hours, in which he stated *inter alia*; "...Your proceedings have no influence on our investigation...I do not expect charges to be imminent."

3.3 Additionally Mr. Dunlop QC commended the Policy/Practice Note on Adjournments (October 2002) to the Tribunal, which he submitted encapsulated the legal principles to be applied in consideration of this application namely;

- The Tribunal should only adjourn if there is a risk that proceeding would "muddy the waters" of justice.
- There is unlikely to be such a risk, absent an imminent criminal trial.
- Even if such a risk does exist, this can be managed by the Trial Judge in the criminal proceedings.

3.4 Mr. Dunlop QC submitted that in the present matter a criminal trial was not imminent, and there was no certainty as to whether the Respondent would ever face a criminal trial. The Respondent had attended an initial police interview voluntarily, and had not even been charged. There existed no real risk of muddying the waters, and in the event that a criminal trial did take place in the future, any risk to the Respondent could be managed by the Trial Judge. He submitted that an adjournment should be considered the exception as opposed to promulgating a general rule that, where there exists any possibility of criminal proceedings, matters before the Tribunal should be held in abeyance until they are resolved. Mr. Dunlop QC submitted that the public interest required the expeditious adjudication of misconduct allegations.

The Tribunal's Decision

3.5 The Tribunal carefully considered the submissions made by the parties and applied the test set out in the Policy/Practice Note on Adjournments. The Tribunal determined that the test was conjunctive in that, in order to grant the application, the Tribunal had to be satisfied of:

- The existence/possibility of criminal proceedings relating to the same underlying facts as form the basis of the allegations before the Tribunal;

  AND

- A genuine risk that the proceedings before the Tribunal may "muddy the waters of justice" with regards to those criminal proceedings.

3.6 The Tribunal noted that the Respondent had not been charged with a criminal offence and concluded that the police investigation appeared to be an early stage. It was plain that a criminal trial was not imminent. The Tribunal acknowledged the view expressed in the email from DS Ward that proceeding to hear the allegations at the Tribunal would not impact on any potential criminal proceedings in any event. The Tribunal concluded that any risk and/or prejudice to the Respondent, if he faced a criminal trial in the future, could adequately be managed by the Trial Judge. The Tribunal was satisfied that proceeding to hear the allegations would not "muddy the waters", and concluded that any risk to the Respondent in proceeding was eclipsed by the overarching public interest in the expeditious adjudication of allegations pertaining to professional misconduct and dishonesty.

3.7 The Tribunal therefore refused the application to adjourn.

4. Application to proceed in the Respondent's absence

The Applicant's Application

4.1 Mr. Dunlop QC made an application for the Tribunal to proceed to hear the allegations levelled against the Respondent in his absence. He submitted that the salient authority from which the Tribunal should take guidance was GMC v Hyatt [2018] EWCA Civ 2796, which made plain that the principles promulgated in General Medical Council v Adeogba; General Medical Council v Visvardis [2016] EWCA Civ 162, were applicable, as opposed to R v Jones [2003] 1 AC 1, in that:

> "[34] all these authorities [Jones, Tait v Royal College of Veterinary Surgeons [2003] UKPC 34, and Norton v Bar Standards Board [2014] EWHC 2681 (Admin)] need to be treated with considerable care following the decision in .....[Adeogba] ... hearings in absence are therefore relatively common..."

4.2 Adeogba distinguished between criminal and regulatory proceedings at [19] – [20] in that:

> "[19] There are other differences too. First, the GMC represent the public interest in relation to standards of healthcare. It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage in the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed.
>
> [20] Second, there is a burden on medical practitioners, as there is with all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they sign up when being admitted to the profession."

4.3 Mr. Dunlop QC submitted that, whilst attendance of the Respondent was of prime importance, it cannot be determinative for the Tribunal when considering whether to exercise their discretion and proceed in his absence. The Respondent was aware of these proceedings, he was aware of the date when the substantive hearing was listed, he had been given legal advice not to attend or participate in these proceedings in case it muddied the waters of the criminal investigation, but he was not obliged to accept that advice and as such he had deliberately waived his right to attend. It was submitted that, in light of all of the attendant circumstances, the Tribunal could properly exercise its discretion to proceed in the Respondent's absence.

The Respondent's Position

4.4 In his letter dated 21 March 2019 the Respondent set out his position in the event that his renewed application to adjourn the proceedings was refused. He submitted *inter alia* that:

> "...The Tribunal already has my Rule 5 Reply and Reply to the SRA comments on the same, together with two further Statements of Means and submissions on costs. I would submit the above documents as my evidence and submissions on this matter if the adjournment request is denied... No discourtesy is intended to the Tribunal and, contrary to medical evidence, I was prepared to give evidence and deal with matters in relation to this matter prior to the intervening investigation by the Metropolitan Police..."

The Tribunal's Decision

4.5 The Tribunal considered the submissions made by the parties and the relevant authorities relied upon by Mr. Dunlop QC. The Tribunal had regard to the fact that the Respondent had engaged in these proceedings and had filed an extensive Answer to the Allegations, as well as subsequent statements. The Tribunal noted that the Respondent was still running Black Country Legal Consultancy, a legal services provider, and therefore weighed in the balance the overarching public interest in adjudicating upon the allegations of dishonesty levelled against the Respondent, against his right to attend. The Tribunal had regard to the legal advice that he had been given not to attend, not to participate in the proceedings any further, and not to give evidence to the Tribunal in light of the criminal investigation. The Tribunal determined that the Respondent was not obliged to accept that legal advice.

4.6 The Tribunal, whilst mindful of the decision in Hyatt considered all relevant circumstances when determining whether to exercise its discretion to proceed in the Respondent's absence namely:

- The Respondent was not legally represented in these proceedings.
- It was a matter for him whether he followed the legal advice given to him by his solicitor with regards the criminal investigation; he was not obliged to follow it.
- The likely length of an adjournment, were the Tribunal minded not to proceed in the Respondent's absence, was indefinite as there was no certainty as to when or indeed if the Respondent would be charged and face a criminal trial.
- The Officer in the Case regarding the criminal investigation expressed the view that the Tribunal proceedings did not infringe upon the criminal investigation.
- If the Respondent faced a criminal trial in the future, the Trial Judge was well able to manage any risk of prejudice to the Respondent.
- The Respondent had provided a full Answer and subsequent statements, which he invited the Tribunal to accept as his evidence and submissions should the matter not

be adjourned, thus any disadvantage flowing from his non-attendance was minimised.

- The overarching public interest in proceeding expeditiously to hear serious allegations of dishonesty weighed in favour of proceeding.

- The Respondent had expressly waived his right to attend by virtue of his letter dated 21 March 2019.

4.7 The Tribunal therefore concluded that it could properly exercise its discretion to proceed to hear the allegations in the Respondent's absence, as he had plainly waived his right to attend, and had asked that his written submissions be accepted as his evidence.

Factual Background

5. The Respondent was born in 1958 and was admitted to the Roll of Solicitors in October 1982. The Respondent practised as a sole practitioner under the style Fraser Macnamara Ltd ("FM") until January 2012. During that time the Respondent worked with and/or for Person A by providing, in his capacity as a solicitor, an escrow service to EDL, which was owned by Person A. "Escrow" is a financial instrument whereby an asset is held by a third party on behalf of two other parties that are in the process of completing a transaction. The escrow agent holds the funds or assets until it receives appropriate instructions, or until predetermined contractual obligations are fulfilled. In January 2012 Sanders took over the practice of FM, and so assumed conduct of the escrow service previously provided by FM to EDL, and in April 2012 the Respondent commenced work on a consultancy basis for Sanders in respect of the escrow services pertaining to EDL.

6. The SRA had previously brought proceedings against the Respondent and other solicitors, including the partners of Sanders, which were heard by the Tribunal on 31 October to 4 October 2016. These proceedings were predicated on the activities of Sanders, and the conflicts of interest which arose from them acting as escrow agent for both EDL and the investors in EDL's investment schemes. Those historical allegations against the Respondent were that he too had acted in a situation which gave rise to a conflict of interest from January 2012 until May 2013.

7. In or around early 2017 the SRA received an affidavit from CL, Chief Examiner in the Investigations Directorate of the Insolvency Service, on behalf of the Department of Trade and Industry, along with a "Form of Disqualification Undertaking ("the Undertaking") signed by the Respondent. The effect of the undertaking was that the Respondent was disqualified from acting as a director with effect from 1 February 2017 for a period of nine years, in respect of "conduct while acting for [EDL]." Receipt of CL's affidavit and the undertaking led the SRA to embark on further investigations as to the Respondent's conduct with regards to his Directorship of EDL.

Key Entities and positions held by the Respondent/Person A

8. *EDL*

8.1 EDL was incorporated on 28 May 2010 and marketed itself as a developer of investor-funded social housing for Brazilian families. It purported to construct properties under a Brazilian government social housing scheme. Private investors were invited to invest in EDL "development work" with a promised return of 20% payable on the 12 month anniversary of their initial investment. On 3 November 2014 EDL suspended worldwide operations following the intervention of the Brazilian federal police who were investigating allegations of money laundering and tax evasion. EDL went into Voluntary Creditors Liquidation on 15 January 2015, at which point it held no assets but had liabilities to investors in excess of £21 million.

8.2 Person A was the sole director of EDL from 6 August 2010 until 28 May 2012. The Respondent, according to the Applicant and based upon Companies House records, was the sole director of EDL from 28 May 2012. The Respondent maintained throughout these proceedings that he was appointed "Nominee Director" of EDL on or around May 2013 until its liquidation. The only shareholder and beneficial owner of EDL was Person A.

9. *Ecohouse Group Developments Ltd ("EGD")*

9.1 EGD was a company owned by Person A, which had no direct contractual relationship with investors, and which did not own any land in Brazil. The Respondent was the company secretary of EGD from its incorporation, on 11 December 2012, until its liquidation on 16 February 2015. Person A was the beneficial owner of EGD at all material times.

10. *Ecohouse Brazil Construcoes ("EBC")*

10.1 EBC was a company which did own land in Brazil, the extent of which is unknown. Person A was the beneficial owner of EBC at all material times.

11. *Fraser-MacNamara Ltd ("FM")*

11.1 FM was the Respondent's firm, in respect of which he was the director from 20 September 2005. FM was dissolved on 11 June 2015.

12. *Sanders*

12.1 Sanders bought FM as a going concern in January 2012, after which the Respondent continued to be paid as a consultant. Sanders took over the provision of escrow services for EDL.

13. *Black Country Legal Consultancy ("BCLC")*

13.1 The Respondent was the sole Director of BCLC from 20 September 2005 until 11 January 2017.

14. *Black Country Business Consultants Ltd ("BCBC")*

14.1 The Respondent was the sole Director from BCBC's incorporation on 28 January 2005 until 28 January 2017. He was appointed company secretary of BCBC from its incorporation and remains so to date.

15. *Malta Star Mergers Acquisitions Ltd ("MSMA")*

15.1 The Respondent was sole Director and Person A the beneficial owner, of MSMA at all material times.

Witnesses

16. The Tribunal heard oral evidence from CL. The written evidence of the witnesses 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 the facts 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 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

17. 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.

18. **Allegation 1.1 – From May 2012 to 15 January 2015 caused or allowed misrepresentations to be made to potential investors in EDL**

The Applicant's Case

18.1 Mr. Dunlop QC directed the Tribunal to the undertaking signed by the Respondent on 9 January 2017 in which he made number of admissions under the heading "MATTERS OF UNFITNESS" namely:

> "During the period January 2013 to Liquidation, I caused or allowed Developments [EDL] to make misrepresentations to potential investors as follows:
>
> - Developments [EDL] stated in marketing material and legal documents that it owned the land that it would be developed when it did not own such land;
> - Developments [EDL] stated in marketing material that it was an approved supplier of housing under a Brazilian Government Scheme when it was not;
> - Developments [EDL] stated in marketing material that funds invested in projects offered by Developments were secure when they were not;

- Developments [EDL] displayed the Olympic logo on marketing material notwithstanding that permission had not been obtained from the International Olympic Committee or the British Olympic Association;

- Developments [EDL] stated that it had been awarded ISO 9001 accreditation when it had not."

18.2 Mr. Dunlop QC submitted that the admissions made by the Respondent in signing the Undertaking demonstrate, at the very least, that he allowed EDL to make the pleaded misrepresentations which caused investors to invest in the schemes, and therefore to lose more than £21 million.

18.3 Mr. Dunlop QC further referred the Tribunal to the Respondent's reply to the Applicant's explanation with warning ("EWW") letter dated 13 July 2017 in which he stated "The factual circumstances relating to the liquidation of [EDL] are correct, as is the undertaking that I signed on the 9 January 2017."

18.4 However, Mr. Dunlop QC made plain that the thrust of the Applicant's case was that the Respondent caused the misrepresentations in light of the fact that:

- Brochures containing the misrepresentations were provided to investors between 6 December 2012 and 13 June 2013 when the Respondent was sole director of EDL.

- During this period 10 investors of the sample considered in CL's report received and relied upon the content of the brochures.

- In his capacity as sole director he must have been aware of the content of EDL's marketing materials, thus ultimate responsibility for their content was vested in him.

The Respondent's Position

18.5 The Respondent asserted that, whilst he accepted that the undertaking given was unequivocal, the Tribunal had to be cognisant of the basis upon which it was given. The Respondent stated that he "...was not aware of the brochures or other details in relation thereto and took no part in the active management or promotion of the Company [EDL] whilst a Nominee Director. His role was purely to act as International Legal Counsel and an Attorney for the purpose of signing various documents..."

18.6 He averred that he "was not responsible for the misrepresentations, if any, which were actually given to the public or otherwise."

The Tribunal's Decision

18.7 The Tribunal, in considering the stem of Allegation 1.1, concluded that representations were made to investors in EDL, predominantly via the brochures produced with regards to the scheme, as well as in ancillary forums which fell to be addressed in each limb of Allegation 1.1 below. The Tribunal was satisfied to the criminal standard that the Undertaking signed by the Respondent represented an accurate breakdown of the various representations that were made to potential investors in EDL.

18.8 The Tribunal concluded that a finding as to whether these representations amounted to misrepresentations which Respondent "caused and/or allowed" fell to be determined in respect of each limb in turn as set out below.

19. **Allegation 1.1.1 – EDL owned the land that would be developed, when EDL did not own such land.**

The Applicant's Case

19.1 Mr. Dunlop QC submitted that the assertion that EDL owned the land on which the alleged developments would be built, was made in various brochures provided by EDL to potential investors. He further submitted that the Reservation Agreements ("the Agreements"), which were attached as a schedule to the escrow agreements, perpetuated this misrepresentation in that; under paragraph A of the Recitals section in the Agreements it was stated "The Vendor [EDL] owns the land in Natal, North East Brazil, upon which it intends to construct a Social Housing Project..." The Respondent, signed at least one of the Agreements personally on 14 January 2013, and so presumably read it.

19.2 Contrary to those representations, the Respondent stated, in a letter dated 28 June 2016 to Howes Percival, that EBC owned the land as opposed to EDL. Solicitors acting on behalf of Person A, in a letter to Howes Percival, confirmed that ownership of the land in Brazil vested in EBC. None of the accounts filed by EDL at Companies House disclosed any such assets. The Respondent himself approved and signed the abbreviated unaudited accounts on behalf of EDL for the year ending 31 May 2012, signed 3 May 2013, and year ending 31 May 2013, signed on 14 April 2014. The Respondent informed Travers (insolvency practitioners instructed by EDL, and who placed EDL into administration) on 6 November 2014 that EDL "...had no assets but it did have substantial liabilities to investors' and outside creditors..." The statement of affairs for EDL prepared by the Respondent dated 15 January 2015, for the creditors meeting on the same date, and which contained a statement of truth, declared nil assets. EDL's accountant confirmed this position in a letter dated 10 March 2015 to Price Waterhouse Coopers (liquidators appointed on behalf of the creditors) by stating "not applicable" in response to a question regarding EDL's assets.

19.3 Mr. Dunlop QC averred that the assertions made in the brochures and as set out in the Agreements, were false as it was abundantly clear on the evidence that EDL did not own the land on which the developments would be built in Brazil. A distinction was drawn by Mr Dunlop QC between the misrepresentations made in the brochures and those made in the Agreements.

19.4 With regards to the former it was accepted that there was no evidence that the Respondent personally created the brochures; it was submitted that he must have nevertheless been aware of their content as he was the sole director of EDL when they were being distributed to potential investors who relied upon the accuracy of their content in order to inform their decision whether or not to invest in EDL. It was submitted that, in his capacity as sole director of EDL, responsibility for the brochures' content was vested in him. In relation to the latter, it was submitted that the Respondent personally affirmed the misrepresentation that EDL owned land by signing the Agreements which directly stated that EDL owned land.

The Respondent's Position

19.5 The Respondent asserted that he was not responsible for the content of marketing documentation, namely the brochures. The Respondent relied upon a contract ("the Contract") between EDL and EBC dated 3 January 2012 which stated *inter alia*:

> "...[EDL] is engaged in property development consultancy and sale of retail property in Natal, North Eastern Brazil and owns the right to effect the transfer of land [from EBC] and is in the course of building projects for the purposes of social housing..."

19.6 The Respondent did not accept that this was a misrepresentation of the facts; nor did he accept that the Agreements included false representations in relation to the true ownership of the land, or that he made any false representations by countersigning the Agreements on behalf of EDL. The Respondent's position was that EDL could compel transfer of the ownership of the land to itself, and so it did, in effect, own it. The Respondent submitted that his conduct was limited to acting as an attorney for the purpose of executing the Agreements on behalf of EDL and that he acted in no other capacity.

The Tribunal's Decision

19.7 The Tribunal accepted the admission regarding ownership of land contained in the Undertaking signed by the Respondent on 9 January 2017. The Tribunal accepted the evidence as to lack of assets held by EDL in the annual returns, abbreviated accounts and statements made by both the Respondent and Person A to Howes Percival and Price Waterhouse Coopers.

19.8 Having found that EDL did not own any land in Brazil, the Tribunal considered the content of the marketing material, in particular the "Bosque Residencial" brochure, in conjunction with the Agreements, and concluded that these documents misrepresented the true position with regards to ownership of land in Brazil.

19.9 The Tribunal considered the Respondent's assertion that the Contract between EDL and EBC vitiated any misrepresentation. The Tribunal rejected this assertion and concluded that even if EBC was a subsidiary of EDL (which it was not) and even if the contract between those entities had been drafted clearly so as to contain an entitlement on the part of EDL to compel the transfer of the land to it (which it did not) and was readily enforceable, this would not have made the representation any less false. The Tribunal concluded that there was a marked difference between owning land and holding a contract entitling one entity to compel another to transfer land to it.

19.10 The Tribunal found that the Respondent caused and allowed the misrepresentation upon which Allegation 1.1.1 was predicated, and so that Allegation was proved to the criminal standard.

20. **Allegation 1.1.2 - EDL was an approved supplier of housing under a Brazilian Government Scheme, when EDL was not.**

The Applicant's Case

20.1 Mr. Dunlop QC took the Tribunal to the brochures provided to investors which stated *inter alia*:

> "...Ecohouse [EDL] is a provider of the government-backed social housing programme Mihna Casa, Mihna Vida..... we are currently the only UK authorised company actually building in Brazil under the Mihna Casa, Mihna Vida social housing scheme..."
>
> "...the Bosque Development is being constructed and delivered as part of the Mihna Casa, Mina Vida Government backed housing programme..."

20.2 Mr. Dunlop QC submitted that whilst Mihna Casa, Mihna Vida was a genuine initiative neither EDL nor EBC were a part of it. Mr Dunlop QC took the Tribunal to a Brazilian Government statement issued on 14 August 2014 which stated "the Embassy has no prior knowledge of any agreement with any company bearing the name 'Ecohouse' related to 'Mihna Casa Mihna Vida' (Brazil's national housing programme) or any other federal programme..."

The Respondent's Position

20.3 The Respondent asserted that he was not responsible for the content of the marketing documentation namely the brochures. The Respondent further asserted that in any event the content pertaining to EDL as an "approved supplier" was not a misrepresentation. He maintained that purchasers of properties in Brazil via an EDL investment did so under the Minha Casa Minha Vida scheme. However, he accepted that "...EDL was not a constructor in the sense that it had its funding provided by the Brazilian Government via the La Cia Bank..."

20.4 The Respondent asserted that EDL was an approved provider and that the Brazilian Government "...authorised and directed the purchasers to those properties and provided the mortgage funding under the Minha Casa Minha Vida Scheme to enable those purchases to be completed..."

The Tribunal's Decision

20.5 The Tribunal accepted the admission pertaining to EDL not having been an "approved supplier" contained in the Undertaking signed by the Respondent on 9 January 2017. The Tribunal considered the brochures referred to and the statements contained therein which gave the clear impression that EDL was an "approved supplier." The Tribunal accepted the Brazilian Government statement, and found that there was never an agreement between the Brazilian Government and EDL in relation to the Minha Casa Mina Vida Scheme. The Tribunal rejected the Respondent's assertions that EDL were in any way "approved providers" and concluded that his assertions in that regard were no more than sophistry. The Tribunal was in no doubt that the statements made in EDL's brochures in this regard amounted to misrepresentations.

20.6 The Tribunal went on to consider whether the Respondent "caused or allowed" this misrepresentation to be made. The Tribunal could not be satisfied to the required standard that the Respondent played any direct role in the production of the brochures or their content. However, as sole director of EDL at the material time, the Tribunal concluded that he "allowed" them to be distributed to potential investors with misrepresentations contained therein. Their production and distribution was inevitably the Respondent's responsibility, as sole Director.

20.7 The Tribunal found that the Respondent allowed the misrepresentation upon which Allegation 1.1.2 was predicated proved to the criminal standard.

21. **Allegation 1.1.3 - Funds invested in projects offered by EDL were secure, when they were not.**

The Applicant's Case

21.1 Mr. Dunlop QC submitted that misrepresentations in relation to the security of investments were made to potential investors in EDL's marketing brochures prepared and distributed. There were a number of brochures in circulation and the relevant sections relied upon in support of this allegation are set out below:

> **"Q: If the developer goes bust part way through the project, what safeguards are in place to protect the investors' money**
>
> A: this is usually a valid question with most developments but the risk of this to our clients is zero… the only two possibilities you will be faced with are: 1) your funds will still be in the Escrow if the project does not go ahead. 2) Your unit will be built with the funds in the Escrow account…."
>
> **"Q: Are my funds fully secure and protected by UK legislation?**
>
> A: We can only draw down on funds in your escrow account upon official documentation being sent back to the UK escrow lawyer showing invoices on your individual unit."
>
> **"Q: Is this investment 100% guaranteed?**
>
> A: ….. [there is] an inherent element of risk in our investment but it has been minimised *(sic)* to the point where the worst case scenario is that the investor will own and control an asset with a value exceeding the amount invested. That is the nature of the security and then extent of the investors' risk."
>
> **"RETURNS AND SECURITY**
> … Remember that in the unlikely event that the project does not go ahead your funds are guaranteed to be returned by the administering lawyers from your Escrow account…"

21.2 It was submitted that reference to the fund's "administering lawyers" sought to provide a veneer of respectability to the scheme and added credence to the assertion that funds were secure.

21.3 Mr. Dunlop QC averred that the Respondent was actively promoting this misrepresentation as to the security of investments in the following YouTube videos which portrayed him stating the following:

"Ecohouse Group and Mina Casa Minha Vida – Investing in your World Ecohouse Brazil" which was uploaded on 28 January 2013:

> "… We protect clients' funds via an Escrow Account. When an investor makes the investment in the Ecohouse (EDL) product, the money goes into a separate account which is maintained by Lawyers. It's called an escrow account. Things can only be drawn down from that account when it is expended. In other words, when they have paid for and got the bricks and mortar then Ecohouse (EDL) draws down the money…"

"Ecohouse Group Video – Testimonial – Kishore Devji Dharamsi" which was uploaded on 15 May 2013:

> "…it's a total hassle free investment, you don't have to worry about anything, you get your return at the end of the year. You don't have to worry about anything and I like the extra layer of protection you have in terms of the escrow account so I can say that there is no way my money can be used except in building the unit assigned to me…"

"Ecohouse Group promotional video" which was uploaded October 2013:

> "…we offer high yield, straight forward investments to the international investor. Through our worldwide network we gather investors' funds. Protected by the escrow accounts this money finances all our building projects and pays a return of 20% per annum…"

21.4 Mr. Dunlop QC submitted that the representations alluded to above were false, as subsequent events demonstrated, in that EDL did go into liquidation and many investors were left with nothing, as EDL did not own any assets. It further transpired that funds were being released from the escrow account to the Respondent and Person A, rather than put into "bricks and mortar", contrary to that which was set out in the brochures and the YouTube videos in which the Respondent featured.

The Respondent's Position

21.5 The Respondent asserted that he was not responsible for the content of the marketing documentation, namely the brochures. With regards the YouTube videos the Respondent did not advance a positive case and stated "…[the Respondent] reserves his position in respect of the same [the YouTube video transcripts]…"

21.6 The Respondent asserted that reference made to "administering lawyers" was a reference to the escrow agents; Sanders. The Respondent reiterated that subsidiaries of EDL owned land in Brazil and, by virtue of the contract, EDL had the right to have that land conveyed to them.

The Tribunal's Decision

21.7 The Tribunal accepted the admission pertaining to an assertion that investor funds were secure, contained in the Undertaking signed by the Respondent on 9 January 2017. The Tribunal considered the brochures referred to, and the representations made, in turn. The Tribunal found that the representations made as to the security of investors' money misrepresented the true position. The Tribunal considered the following to amount to misrepresentations; "...risk of this [loss of investment if the project went bust] to our clients is zero...", "...worst case scenario is that the investor will own and control an asset with a value exceeding the amount invested..." and "...in the unlikely event that the project does not go ahead your funds are guaranteed to be returned by your administrating lawyers from your escrow account..."

21.8 The Tribunal considered the statements made in the three YouTube videos relied upon by the Applicant. The Tribunal concluded that the excerpts of the narrative provided by the Respondent in these videos amounted to misrepresentations in their entirety.

21.9 Having found that both the brochures and the YouTube videos contained misrepresentations with regards to the security of investors' funds, the Tribunal went on to consider whether the Respondent "caused or allowed" them to be made. The Tribunal could not be satisfied to the requisite standard that the Respondent played any direct role in the production of the brochures or their content. However, as sole director of EDL at the material time the Tribunal concluded that he allowed them to be distributed to potential investors with misrepresentations contained therein. The Tribunal concluded that in relation to the YouTube videos which consisted of the Respondent addressing the camera with a view to attracting potential investors in EDL he misrepresented the true position as to the security of investors' funds. In that regard the Tribunal was satisfied to the requisite standard that he caused those misrepresentations to be made.

21.10 The Tribunal found that the Respondent caused and allowed the misrepresentations upon which Allegation 1.1.3 was predicated proved to the criminal standard.

22. **Allegation 1.1.4 – [EDL] displayed the Olympic logo on marketing material notwithstanding that permission had not been obtained from the International Olympic Committee or the British Olympic Association**

The Applicant's Case

22.1 Mr. Dunlop QC referred the Tribunal to the brochures relied upon above and in particular a brochure entitled "Bosque Residencial," which displayed the Olympic logo at the bottom of the first page, that was provided to a number of investors.

22.2 Mr. Dunlop QC submitted that this was a misrepresentation in light of a letter dated 8 July 2016 from MW (senior legal counsel – Trademarks) which stated *inter alia* that EDL "…did not obtain the consent of either the IOC or the British Olympic Association for the use of the Olympic Rings in its marketing materials…"

The Respondent's Position

22.3 The Respondent accepted that the use of the Olympic logo without permission on EDL brochures. However, he averred that he had "no input whatsoever nor oversight whatsoever on the documentation which was dealt with specifically by Person A and those whom he controlled….at the time of the brochures referred to and thereafter the Respondent was a Nominee Director only…"

The Tribunal's Decision

22.4 The Tribunal accepted the admission pertaining to the use of the Olympic logo without permission, contained in the Undertaking signed by the Respondent on 9 January 2017. The Tribunal further accepted the Respondent's admission to the same in these proceedings, and the basis upon which he made that admission. The Tribunal concluded that EDL's marketing material, namely the brochures, misrepresented to investors that EDL was authorised to use the Olympic logo.

22.5 The Tribunal went on to consider whether the Respondent "caused or allowed" this misrepresentation to be made. The Tribunal could not be satisfied to the requisite standard that the Respondent played any direct role in the production of the brochures or their content. However, as sole director of EDL at the material time the Tribunal concluded that he "allowed" them to be distributed to potential investors with misrepresentations contained therein.

22.6 The Tribunal found that the Respondent allowed the misrepresentations upon which Allegation 1.1.4 was predicated proved to the criminal standard.

23. **Allegation 1.1.5 – [EDL] stated that it had been awarded ISO 9001 accreditation which it had not.**

The Applicant's Case

23.1 Mr. Dunlop QC took the Tribunal to an EDL brochure which was provided to investor TL, who invested in April 2014, that described the ISO accreditation purportedly held by EDL as "the internationally recognised accreditation for the quality management of business….significant mark[s] of assurance for the buyer…"

23.2 Mr. Dunlop QC submitted that this was reiterated in other marketing material, namely an EDL Newsletter from February 2013, which stated *inter alia* "…We are proud to announce that Ecohouse has been awarded ISO 9001 world class management certification…the coveted accreditation demonstrates the ability of each of our offices around the world to maximise efficiency and quality and further improve profit levels and investor satisfaction…"

23.3 Mr. Dunlop QC submitted that these statements were misrepresentations in light of the email from CM (International Certifications Ltd) dated 17 August 2016 that; "We can confirm that Ecohouse Group has not been certified by International Certifications limited *(sic)* and does not hold any valid certificates from us."

The Respondent's Position

23.4 The Respondent denied that these statements amounted to misrepresentations on the basis that EBC had a subsidiary company by the name of Conisa Constructions LTDA ("Consia") who were a major construction company in the region of Natal, and who held ISO 9001 accreditation. The Respondent accepted that, whilst the statements referred to may have been "slightly inaccurate", they were not "inaccurate in principle given that the construction company [Conisa] did have ISO 9001 accreditation and was being used. The Respondent reiterated that he "had no input or oversight" of EDL's marketing materials.

The Tribunal's Decision

23.5 The Tribunal accepted the admission pertaining to the ISO 9001:2008 accreditation without permission, contained in the Undertaking signed by the Respondent on 9 January 2017. The Tribunal further accepted the confirmation from International Certifications Limited that EDL (as a constituent of the Echohouse Group) had not been so certified. The Tribunal considered the Respondent's assertions with regards to Conisa and concluded that, even if Consia had been ISO accredited (as to which no evidence, beyond assertion, had been presented) and even if EDL did contract with that entity (despite there being no evidence adduced to demonstrate any connection between Consia and EDL) to undertake building work in Brazil, that did not vitiate the misrepresentation made in brochures and the newsletter that EDL themselves were ISO accredited. The Tribunal was therefore satisfied to the requisite standard that EDL stated that it had been awarded ISO 901:2008 accreditation when in fact it had not.

23.6 The Tribunal went on to consider whether the Respondent "caused or allowed" this misrepresentation to be made. The Tribunal could not be satisfied to the requisite standard that the Respondent played any direct role in the production of the brochures or their content, or the 2013 newsletter. However, as sole director of EDL at the material time, the Tribunal concluded that the Respondent "allowed" them to be distributed to potential investors with misrepresentations contained therein.

23.7 The Tribunal found that the Respondent allowed the misrepresentations upon which Allegation 1.1.5 was predicated proved to the criminal standard.

24. Breach of Principles

The Applicant's Case

24.1 Mr. Dunlop QC submitted that the Respondent's conduct with regards to any or all of the misrepresentations found breached Principles 2, 3 and 6.

24.2 Principle 2 required the Respondent to act with integrity. The Principle of integrity was considered in Wingate v Solicitors Regulation Authority [2018] EWCA Civ 366 in which it was held:

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

24.3 Mr. Dunlop QC averred that the Respondent breached this Principle in that he caused or allowed members of the public to be misled into investing with EDL of which he, a solicitor, was sole director.

24.4 It was submitted that a solicitor acting with moral soundness, rectitude and steady adherence to an ethical code would not have acted in this manner.

24.5 Principle 3 required the Respondent to ensure that his independence was not compromised. Mr. Dunlop QC submitted that the Respondent failed to do so in that he; (a) caused or allowed investors to be misled in relation to the nature and activities of EDL, a company from which he personally benefitted and; (b) caused or allowed transactions which bore the hallmarks of fraud to the detriment of investors.

24.6 Principle 6 required the Respondent to behave in a way that maintained the trust the public places in him and in the provision of legal services. Mr. Dunlop QC submitted that the Respondent failed to do so in that he caused or allowed members of the public to be misled into an investment which ultimately resulted in a collective loss to them of at least £21 million.

The Respondent's Position

24.7 With regards to Principle 2, the Respondent appeared to conflate the issues of dishonesty and want of integrity in his Answer to the Rule 5 statement. He submitted that he had "already been found guilty of lack of integrity (in the previous proceedings before the Tribunal) but that [did] not of itself give rise to a finding of dishonesty." The Respondent maintained his position that the EDL investment was not a Ponzi scheme.

24.8 The Respondent denied a breach of Principle 3 by virtue of the stated position that he did not mislead EDL investors, nor did he carry out transactions which bore the hallmarks of fraud.

24.9 The Respondent denied a breach of Principle 6 on the basis that, at all material times, he was not a practising solicitor and had not practised as such since January 2013. He was therefore not providing legal services. He accepted that he was bound by his admissions in the Undertakings, but denied that this amounted to evidence "of dishonesty…misleading the public…Ponzi scheme."

The Tribunal's Findings

24.10 The Tribunal considered each limb of Allegation 1.1 individually and collectively. Having found that the Respondent misled potential investors with regards to the true status of land ownership in Brazil and having actively sought to reassure them as to the security of any investment, the Respondent demonstrated a lack of integrity. The Tribunal further found that no solicitor acting with integrity would have allowed marketing material containing such misrepresentations to be disseminated to potential investors. The Tribunal was in no doubt that the Respondent had therefore breached Principle 2.

24.11 Principle 3 required the Respondent to ensure that his independence was not compromised. The Tribunal was not persuaded that investors in EDL were clients of the Respondent and thus concluded that breach of Principle 3 was not proved.

24.12 The Tribunal considered that the obligations imposed on the Respondent by virtue of Principle 6 extended to his role within EDL, albeit that it was outwith his actions as a solicitor. Despite the fact that the Respondent was not practising as a solicitor at the material time, his status as a UK registered solicitor had provided a veneer of respectability to the investment scheme. Having found that he caused or allowed misleading statements, this would inevitably have depleted the trust that the public placed in the legal profession. The Tribunal concluded that the Respondent had breached Principle 6 beyond reasonable doubt.

25. **Allegation 1.2 – Failed to maintain, preserve or deliver up adequate accounting records for EDL.**

The Applicant's Case

25.1 Mr Dunlop QC submitted that the Respondent made admissions in the Undertaking that he signed on 9 January 2017 in which he affirmed:

> "I caused or allowed [EDL] to fail to maintain, preserve or deliver up accounting records that were adequate in that the records did not explain:
>
> - For the period from 01 June 2013 (the date of the last filed accounts) to the date of administration:
> - Foreign payments totalling £11,090,221; (*sic*)
> - Payments to a co-director [Person A] totalling £457,000;
> - Payments to a connected company [Black Country, referred to as "Company A"] totalling £2,824,254;
> - Payments to a financial services provider [American Express] totalling £1,159,711;
> - Payments to another company totalling £219,000;
>
> - And generally:
> - Payments to another company totalling £3,0333,846.
> - Why [EDL] received no monies from Brazil in respect of the sale of the projects that investor monies funded."

25.2 It was submitted that there were further gaps in the accounting records filed with Companies House but those specifically referred to above were most notable.

25.3 Mr Dunlop QC submitted that a solicitor acting with moral soundness, rectitude and a steady adherence to an ethical code would have ensured that he acted in accordance with his obligations as a Director and registered solicitor, even if he was not in practice at the material time. Principle 7 required the Respondent to comply with legal obligations imposed upon him. He failed to meet his fiduciary duties as a Director, both with regard to the preservation, maintenance and delivering up of accounting records, and by virtue of being declared unfit. It was submitted that all of his actions in this regard rendered him in breach of Principles 2, 6 and 7.

The Respondent's Position

25.4 The Respondent asserted that he had provided all of the financial records within his control upon request. He further asserted that the "EDL server" would have full information pertaining to the accounts, but that he "does not know what has become of the same." The Respondent submitted that he was not a practising solicitor at the material time, and his conduct should be viewed in that context.

25.5 The Respondent therefore denied having breached Principles 2 and 6.

25.6 The Respondent asserted that the Undertaking which he signed, with regard to director disqualification, prevented him from denying a breach of Principle 7.

The Tribunal's Decision

25.7 The Tribunal concluded that neither assertion advanced by the Respondent amounted to a defence. In order to fulfil his fiduciary duties as a director of EDL the Respondent had the responsibility to maintain, preserve and deliver up EDL's accounting records. Indeed the Respondent himself accepted that position by virtue of the Undertaking which he signed.

25.8 The Tribunal rejected the assertion that his obligations were vitiated by the fact that he was not a practising solicitor at the material time. The Respondent remained registered, he was on the Roll, and he was providing legal services through BCBC/BCLC. As such he was bound by the SRA's ethical code and attendant Principles. His failure to meet the fiduciary duties placed upon him offended those Principles.

25.9 The gaps in EDL's accounting records could not and were not explained by the Respondent. The Tribunal found the Respondent's assertions as to his lack of knowledge of the transactions to be incredulous. Large sums of investors' money were being siphoned off to Person A, his family, and other associated businesses, absent of any plausible explanation. The Tribunal determined that the Respondent's actions, as sole Director, in allowing this to happen were the actions of a solicitor lacking integrity. As such the Tribunal concluded that the Respondent had breached Principle 2.

25.10 Furthermore, the public, in particular investors in EDL, expected the Respondent to ensure effective governance of invested funds in an open and transparent manner. The Respondent failed in this regard, and his failures lent only to undermine the inherent

trust vested in solicitors and in the provision of legal services. The Respondent therefore breached Principle 6.

25.11 The Respondent asserted that the Undertaking which he signed, with regard to director disqualification, prevented him from denying a breach of Principle 7. The Tribunal accepted that this amounted to an admission that the Respondent had not complied with the obligations imposed on him as Director of EDL pursuant to the Companies Act 1985. Breach of Principle 7 was therefore found beyond reasonable doubt.

25.12 The Tribunal concluded that Allegation 1.2 was proved beyond reasonable doubt.

26. **Allegation 1.3 – Profited from, and/or misled members of the public into investing in EDL when he knew that EDL was operating a Ponzi scheme.**

The Applicant's Case

26.1 Mr. Dunlop QC directed the Tribunal to a number of features in this case which, on his submission, demonstrated beyond reasonable doubt that EDL was a Ponzi scheme namely:

- Investors were misled into investing in EDL on the basis of lies and promises that were "too good to be true" for example; (a) that EDL owned land when in fact it did not; (b) that investments were secure when in fact they were not and (c) investors would receive a 20% return on their investment within 12 months. It was submitted that someone who is genuinely engaged in a building project is very unlikely to make such definitive promises, which may not be possible to deliver. Conversely, it was submitted, someone who was seeking to fool people into investing in a Ponzi scheme were more likely to make unrealistic promises of high returns in order to "dupe" as many investors as possible, safe in the knowledge that the promises were never going to be fulfilled.

- It was further submitted that it appeared from the Lloyds bank statements held for EDL from 5 January 2011 to 24 November 2014, that £45 million of the £45.9 million received by EDL was from investors, and that no funds were received from either the Brazilian government, mortgage companies, Brazilian house purchasers or EBC.

- EDL's accounts showed no record of any receipts from Brazil whatsoever. The huge and glaring gaps in EDL's accounts would not have been present if EDL was genuinely engaged in building and selling social housing in Brazil.

- Mr. Dunlop QC submitted that the absence from the papers before the Tribunal of EDL's bank statements from its incorporation in May 2010 until 5 January 2011 was insignificant. The Respondent had not suggested that EDL banked with another financial institution before the date the Lloyds statements started, or that deposits from Brazil were made to another EDL account. What the Respondent had averred was that EBC had received Brazilian funds from the developments it completed there. Thus it was submitted on behalf of the Applicant that, on the Respondent's own account, he had effectively accepted that; (a) no funds were ever deposited in the UK (to EDL) from Brazil; (b) EDL therefore circulated UK

invested funds; (c) it naturally followed that earlier investors in EDL were paid their annual 20% annuity from new investments and (d) 75% of invested funds were not remitted to Brazil, contrary to EDL's terms of agreement.

- The Respondent made vague references to "exchange rate purposes" thereby hinting that EBC received monies from the developments, but never sent it from Brazil to the UK to avoid disadvantages arising from exchange rates. That explanation did not stand up to scrutiny because, even if no money was sent to the UK, exchange rates would still have factored into EDL's account preparation. Mr Dunlop QC considered whether the Respondent meant that money stayed in EBC and Brazil so as to avoid payment of international transfer fees. Again it was submitted that this explanation did not stand up to scrutiny as (a) it was implausible because EDL made a huge number of international transfers, seemingly without any concern as to the banking fee that may attract; (b) this was inconsistent with his earlier account of "repatriating funds" and (c) if this were the case then EDL's accounting records would show that on x date EDL paid Sanders £y on behalf of EBC. There was no record of this nature in EDL's accounts.

- The only evidence, from anyone other than Person A or the Respondent, as to the first investors into the first EDL project (Arco Iris) having received payment from their properties, emanates from Sanders, who stated that £2.79 million was paid out to 103 investors. This figure is covered in the EDL Lloyds bank statements as payments to Sanders. It was therefore submitted that this set up was a classic Ponzi scheme, in that investors deposited £31.77 million with Sanders, who in turn deposited the same amount to EDL, who then returned £4.58 million to Sanders, of which £4.54 million was used to pay out early investors their original investment plus 20% after 12 months.

- The Respondent had not produced any independent evidence that the Arco Iris project was successfully completed, or if it was, that it was completed by EBC. Additionally there was no record on the internet as to Ecohouse having built hundreds of social houses in Arco Iris.

- The Respondent had been inconsistent in the number of units he claimed, to creditors, and to the Tribunal, were sold in Arco Iris; "at least 201", "180 to 200" and "up to 200." Person A, at a liquidators meeting on 15 January 2015, claimed that more than 400 units had been sold. It was submitted that these inconsistencies, in conjunction with the lack of independent evidence to corroborate any of the accounts given either by the Respondent or Person A, suggested that the "success" of the Arco Iris project was no more than a ruse to lure in further potential investors, which was in itself a classic hallmark of a Ponzi scheme.

- The EDL contractual documentation, no doubt deliberately it was submitted, was worthless in the event that units were not sold. Mr Dunlop QC took the Tribunal to Clause 7 of the Agreement, which effectively stated that payment to the investor was contingent upon sale of their unit. Clause 8 attempted to address the position if the unit was not sold. The cumulative thrust of the loosely drafted Agreement appeared to be that, if the unit sold, then EDL would repay the investor their deposited amount plus 20%. If the unit was not sold then EDL would use its "best endeavours" to transfer title in the unit to the investor.

- If this was not a Ponzi scheme, and the promise that 75% of investors' money would be sent to EBC, for the purpose of building social housing, was good, then this would in fact have occurred. It was submitted that EDL's bank statements demonstrated otherwise, in that of the £23.5 million deposited;

  - £4.23 million went to EBC.

  - In excess of £5.5 million went to companies operated by the Respondent namely BCBC, BCLC and MSMA.

  - £1.86 million went to Person A directly, and were described as "loans."

  - The Brazilian judgments on 13 October 2014 and 18 March 2015, show that of the money that was sent to EBC none was spent on construction, rather it was deviated for other purposes.

- Mr. Dunlop QC relied upon a number of factors which, he submitted, demonstrated that the Respondent knew that EDL was a Ponzi scheme namely;

  - He was the sole Director of EDL for a significant period of time, be it two years, as the evidence suggested, or slightly less, as he asserted.

  - He had access to EDL's accounts and bank statements, and thus would have been fully aware that no money was being deposited with EDL as a result of unit sales in Brazil.

  - The Respondent knew that EDL neither owned any land in Brazil, nor was approved by the Brazilian Government as a developer of such land, yet he signed Reservation Agreements which misled investors into believing that EDL owned the land.

  - He was aware that EDL was paying out large sums of money to Person A and his family in a manner which deliberately obscured the recipient of the payments. Payments were made from EDL to BCBC/BCLC, both of which were owned and operated by the Respondent, a solicitor on the Roll. This gave a "veneer of legitimacy" to the payments, and it would not have been apparent that the true destination of those payments was Person A, the only stakeholder and beneficial owner of EDL.

26.2 Mr. Dunlop QC submitted that no solicitor acting with integrity would involve themselves in, profit from or mislead the public into investing in a Ponzi scheme. The Respondent plainly breached Principle 2 in so doing.

26.3 It was submitted that the Respondent, having profited from the Ponzi scheme breached Principle 3, in that investors were misled as to the nature and activities of EDL.

26.4 It was further submitted that the Respondent undermined the trust that the public vested in him as a solicitor, and more generally in the provision of legal services, by his actions which breached Principle 6.

The Respondent's Position

26.5 The Respondent maintained that EDL's investment was not a Ponzi scheme. He further averred that:

- Ownership of land vested in EBC, which was a subsidiary of EDL, who had enforceable rights as to title pursuant to contract.
- EBC's company records, which would have shown transactions by way of deposit and payment, were not available and were not obtained by the liquidator of EDL
- It was accepted that EDL did not receive funds from the Brazilian government, but EBC did, but records of the same had been seized by the Brazilian Government.
- It was not accepted that old investors were paid from the funds of new investors. The Respondent asserted that investors were paid from monies due to EDL and released via the escrow agreements. These funds, it was submitted, were the property of EDL who could direct them to be paid as required. It was further averred that these payments were effected via EDL in the UK "for exchange rate purposes."

26.6 The Respondent denied that he "must have realised" that EDL was a Ponzi scheme and advanced the following reasons:

- EDL's auditors backdated his appointment as Director; he was only a director for 18 months as opposed to three years as alleged.
- He did not have full access to EDL's bank records.
- He did not accept that EDL did not own any land. He understood that it did own land via its contract with EBC.
- Money was deposited by the Brazilian Government in the manner set out above.
- He did not mislead, nor did he know that investors were being misled.
- All payments made to Person A were pursuant to contract, and he was entitled to them.
- The Respondent denied that his appointment as "Nominee Director" was to mask Person A's involvement in and control of EDL. He asserted that "... [Person A] was a high profile individual who represented the companies, and took part in investor seminars, lectures and investor tours on behalf of EDL...it was not the case that [he] sought to hide behind any nominee or otherwise..."

26.7 The Respondent asserted that he had been found guilty of a lack of integrity in the previous Tribunal proceedings, but denied breaching the same in respect of the current allegations, denied that he had breached Principle 3, and further denied that he had breached Principle 6 as he was not practising as a solicitor at the material time.

The Tribunal's Decision

26.8 The Tribunal considered each element of Allegation 1.3 in turn. The Tribunal rejected the Respondent's assertion that EDL's auditors backdated his appointment as Director, and that he was not actually appointed until May 2013. The Tribunal accepted the documentary evidence from Companies House as a record of truth, in that the Respondent was appointed on 28 May 2012. In light of the findings made in respect of Allegations 1.1 and 1.2 above, the Tribunal was satisfied that the Respondent had profited from and was complicit in having misled the public into investing with EDL.

26.9 Having reached these conclusions the Tribunal addressed its mind to (a) whether this was a Ponzi scheme and (b) whether the Respondent knew it was a Ponzi scheme. With regard to the former, the Tribunal was in no doubt that this was a Ponzi scheme. The Tribunal considered that all of features set out by Mr. Dunlop QC were persuasive, credible, corroborated with documentary evidence and represented classic Ponzi characteristics. The Tribunal rejected the Respondent's assertions made at any material time and during the course of these proceedings to the contrary.

26.10 With regard to (b) the Tribunal considered the submissions made by the Respondent and reached the following conclusions:

- If the Respondent was merely a "Nominee Director" it did not mean *per se* that he knew this was a Ponzi scheme. However, the Tribunal did not believe that he knew nothing, saw nothing and simply signed documents as directed by Person A. The Respondent had never asserted that he himself was "duped" into believing Person A's intentions, but maintained that EDL was not a Ponzi scheme. The Tribunal found this position to be incredulous and did not stand up to scrutiny, and therefore rejected the same.

- The Tribunal did not accept the Respondent's assertion that he did not have access to EDL's banking facility, statements or accounts. The Tribunal found it beyond belief that he did not have such access, and concluded that he did.

- The Tribunal concluded that the Respondent effected the payment of large sums of money to Person A, and indeed facilitated the same via his companies BCBC/BCLC. The Tribunal found that the manner in which these payments were made, namely EDL to BCBC/BCLC and then to Person A, sought only to hide where EDL's money was actually being spent.

- The Tribunal found that the Respondent knew that EDL's bank account consisted of investments paid into it, no money was deposited therein from the Brazilian Government or lenders, and that annuities were being paid to old investors from new investors' deposits.

26.11 The Tribunal was satisfied beyond reasonable doubt that the Respondent knew that EDL investment was in fact a Ponzi scheme and that he benefitted from and misled the public into investing in it.

26.12 The Tribunal went on to consider whether the Respondent had breached the Principles as alleged.

26.13 With regard to Principle 2, the Tribunal concluded that no solicitor acting with integrity would become involved in, and indeed facilitate, a Ponzi scheme. As such the Tribunal had no doubt that in doing so the Respondent breached Principle 2.

26.14 Principle 3 required the Respondent to ensure that his independence was not compromised. The investors were not "clients" in the conventional sense, and as such the Tribunal determined that Principle 3 did not extend to them. Breach of Principle 3 was therefore found not proved.

26.15 With regard to Principle 6, the Tribunal did not accept the Respondent's assertion that he had not breached it by virtue of the fact that he was not practising as a solicitor at the material time. The Respondent remained on the Roll and continued to offer legal services via BCBC/BCLC at all material times, and as such the Tribunal concluded that he was required to maintain public trust in solicitors and in the provision of legal services. The Tribunal found that his involvement in a Ponzi scheme, lending credibility to the same, undermined public trust in solicitors and in the profession, and as such the Respondent breached Principle 6.

27. **Allegation 1.4 – Involved himself in a dubious scheme and/or dubious transactions and/or caused or allowed transactions which bore the hallmarks of fraud and/or money laundering**

The Applicant's Case

27.1 Mr. Dunlop QC submitted that, even if the Respondent did not know EDL was a Ponzi scheme, he knew or should have known that it was dubious for the reasons set out in respect of Allegation 1.3. As a result, he should not have agreed to become a Director of EDL, as he did on 28 May 2012, or indeed at all. It was further averred that, even if the Respondent's assertions were true, with regards him holding the capacity as Nominee Director of EDL, acting under the instructions and control of Person A, this should have given him more reason not to have accepted the appointment. The Respondent should have known that being appointed under such terms served to provide a veneer of respectability to EDL and obfuscate Person A's involvement and control of EDL.

27.2 It was submitted that the Respondent went even further with regard to his involvement in this dubious scheme, in that he allowed BCBC/BCLC, companies which were entirely within his control, to facilitate payments which bore the hallmarks of fraud. Between 20 September 2013 and 28 July 2014, EDL made 19 payments to BCBC/BCLC totalling in excess of £2.8 million. From those funds the Respondent made a number of payments to Person A, which can only be described as dubious namely;

- £800,000 on 10 December 2013.
- £570,000 on 23 January 2014.
- £300,000 on 7 March 2014 (reference on bank statement was "Lucky Seven").
- £401,735.50 on 16 June 2014 (reference on bank statement was "Lucky Seven").

27.3 The purpose of these payments emanating from EDL to BCBC/BCLC was to obscure the fact that Person A was drawing out large sums of money from EDL. In other words, the purpose was to "launder" the money, through the vehicle of BCBC/BCLC which companies were owned and operated by a solicitor, thereby providing the veneer of legitimacy, which Person A sought to extract from EDL. This method of payment was dubious, as it would not be apparent that the true destination of the payments was Person A, the only shareholder and beneficial owner of EDL.

27.4 The Respondent also used a number of intermediaries to obscure payments that he, through BCBC/BCLC, received from EDL namely:

- £2.72 million to MSMA (the Respondent was the sole Director, and Person A the sole beneficial owner) in respect of which BCBC/BCLC raised invoices totalling £42,750 which was then remitted back to BCBC/BCLC.

- From the funds paid by EDL to BCBC/BCLC the Respondent transferred £69,007.93 to himself in respect of 'expenses and bills.'

27.5 It was submitted that there was no legitimate reason why the Respondent, as sole Director of EDL, used this approach to receive payment from EDL via intermediaries, other than to mask the extent of his payments.

27.6 Mr. Dunlop QC referred the Tribunal to other dubious payments from EDL to third parties, via intermediaries, absent any explanation as to how these payments related to EDL's supposed business, namely the construction of social housing in Brazil, and/or why these payments had to go through intermediaries.

- BCBC/BCLC paid Person C, an employee of MSMA, a total of £56,045.

- BCBC/BCLC paid HMRC £56,045 and £63,193 in respect of MSMA's PAYE/NIC liabilities.

- BCBC/BCLC paid Casis Media a total of £262,000 in respect of "share purchase/payment" absent any explanation as to how these payments related to EDL.

- BCBC/BCLC paid £140,000 on or around 3 October 2013, to RT on behalf of EDG.

27.7 Mr. Dunlop QC submitted that the Respondent's facilitation of these dubious payments, which bore the hallmarks of fraud and/or money laundering, was aggravated by the fact that the SRA had disseminated warnings to the profession against embarking on such conduct.

27.8 Mr. Dunlop QC referred the Tribunal to specific a warning notice issued in March 2009 which stated that; "....solicitors must not add credibility to dubious financial schemes... it is professional misconduct for solicitors to act or to continue to act in relation to [schemes] without carrying out sufficient enquiries to satisfy themselves that the transactions are not, in fact, fraudulent..." A further warning notice was issued in April 2009 in which the SRA set out "warning signs" of dubious schemes as; "...the promise of unrealistic returns...confusing and complex transactions involving

misleading descriptions or ill-defined terminology…vague reference to humanitarian or charitable aims…" On 10 September 2013 the SRA issued another warning notice entitled "High-yield investment fraud" which consolidated the previous warnings issued, set out in detail the "red flags" that solicitors should be aware of, particularised the relevant Principles which may be breached by involvement in such schemes, and set out in mandatory terms that "…Practitioners must not become involved in schemes that appear dubious or bear the hallmarks of fraud…"

27.9 Mr. Dunlop QC submitted that no solicitor acting with integrity would allow themselves to be involved in a dubious scheme and/or dubious transactions which bore the hallmarks of fraud and/or money laundering, as this would undermine public trust in solicitors and in the provision of legal services. It was submitted that the Respondent breached Principles 2 and 6 by virtue of his conduct in this regard. It was further averred that the Respondent's conduct compromised his independence which rendered him in breach of Principle 3.

The Respondent's Position

27.10 The Respondent denied that the transactions forming the basis of this allegation bore the hallmarks of fraud. The respondent averred that he was unaware of the warning notices issued by the Applicant in March and April 2009 and September 2013, as he was not a practising solicitor during that period. He accepted that the warnings were issued, but submitted that he was not aware of them personally, nor were they drawn to his attention by Sanders, and as such they "did not enter [his] mind" at the material time.

27.11 The Respondent denied that EDL and BCLC were used to "perpetrate and cover up" dishonest activities and payments. He maintained that Person A was in control, and that he was merely a nominee Director. The Respondent did not accept the allegation that an honest man would have refused to act as a nominee Director in these circumstances.

27.12 The Respondent asserted that he had been found guilty of a lack of integrity in the previous Tribunal proceedings, but denied having breached the same in respect of the current allegations, he denied that he had breached Principle 3 and further denied that he had breached Principle 6, given that he was not practising as a solicitor at the material time.

The Tribunal's Decision

27.13 The Tribunal, having found in Allegation 1.3 that this was a Ponzi scheme, was in no doubt that the Respondent involved himself in a dubious scheme, dubious transactions and/or allowed transactions which bore the hallmarks of fraud and/or money laundering. The Tribunal placed significant weight on the Agreements signed by the Respondent, the warning notices issued in 2013 by the Applicant to the profession, and the manner in which payments from EDL's account were made. The Tribunal had particular regard to the payments made by BCBC/BCLC to MSMA, and noted the lack of explanation from the Respondent as to why BCBC/BCLC was invoicing MSMA, in respect of which he was the sole Director and Person A the only shareholder, via EDL.

27.14 With regards Principle 2, the Tribunal found that a solicitor acting with integrity would have paid heed to the warning notices, and would have questioned the mode and veracity of transactions they were asked to effect. The Respondent did neither, despite the dubious nature and unusual features of the said transactions. The Tribunal concluded that the Respondent had therefore breached Principle 2.

27.15 The Tribunal further concluded that the impact of this conduct undeniably damaged public confidence in solicitors and in the provision of legal services, such that the Respondent breached Principle 6.

27.16 Principle 3 required the Respondent to ensure that his independence was not compromised. The investors were not "clients" in the conventional sense, and as such the Tribunal determined that Principle 3 did not extend to them. Breach of Principle 3 was therefore found not proved.

27.17 The Tribunal found Allegation 1.4 proved beyond reasonable doubt save for the alleged breach of Principle 3.

28. **Allegation 1.5 – From 15 January 2015 to date, he provided false information about:**

1.5.1 The amount he was paid, in daily consultancy fees, by EDL.

The Applicant's Case

28.1 The Respondent told the Tribunal in the previous proceedings, in October/November 2016, that he was paid a consultancy fee of £200 per day by EDL. This contradicted the signed statement he provided to EDL's creditors and liquidator dated 27 February 2015, in which he said that he was paid a consultancy fee of £500 per day by EDL. Mr. Dunlop QC submitted that the Respondent misrepresented the quantum of his daily fee either to the creditors/liquidator or to the Tribunal and as such he deliberately or recklessly provided false information.

28.2 Mr. Dunlop QC submitted that no solicitor acting with integrity would provide false information to either the creditors and liquidator of a company, or their own professional conduct tribunal. He submitted that, in light of the contradictory figures given by the Respondent, it naturally follows that he provided false information to one or the other, and as such he lacked integrity. It was further submitted that this departure from providing an accurate account diminished the trust that the public have in both solicitors and in the provision of legal services. The Respondent had therefore breached Principles 2 and 6.

The Respondent's Position

28.3 The Respondent asserted that the difference in figures advanced represented his different positions at the relevant times under enquiry. He submitted that he received a daily fee of £200 whilst a consultant for Sanders pre January 2012, and £500 thereafter.

28.4 The Respondent maintained that there had been no intent or actual misleading on his part to either the liquidators or the previous Tribunal as the figures provided to both were representative of his actual consultancy fee during the relevant period under enquiry.

28.5 The Respondent asserted that he had been found guilty of a lack of integrity in the previous Tribunal proceedings but denied having breached the same in respect of the current allegations. He further denied that he had breached Principle 6 because he was not practising as a solicitor at the material time.

The Tribunal's Decision

28.6 The Tribunal noted the Respondent's explanation that the different figures advanced represented the distinction between the nature of his retainer at the relevant time. The Tribunal had regard to the evidence adduced by the Applicant in support of this allegation, and could not be satisfied to the required standard that the Respondent provided false information. The Tribunal had residual doubt due to the differing time periods under scrutiny, and the different fee arrangement regarding the Respondent's consultant and non-consultant status.

28.7 The Tribunal therefore found Allegation 1.5.1 not proved.

29. **Allegation 1.5.2 - Whether he could access EDL's bank accounts before May 2014.**

The Applicant's Case

29.1 In the signed statement to EDL's creditors and liquidator dated 27 February 2015, the Respondent stated; "...I only became able to access the bank account, let alone any other financial information at the end of May/beginning of June 2014. Prior to that I was unable to access any financial information. The whole control of the company vested with [Person A] who dealt *(sic)* with all transactions and transfers prior to that date..."

29.2 Mr. Dunlop QC reminded the Tribunal that the Respondent had signed off EDL's annual return on 3 May 2013, thus must have had access to EDL's bank accounts and financial information in order to do so. Moreover, he was registered as a Director of EDL with Companies House from May 2012, which would have entitled him to go into a Lloyds branch and ask to see the bank statements for EDL.

29.3 Mr. Dunlop QC submitted that no solicitor acting with integrity would provide false information to either the creditors and liquidator. He submitted that the Respondent's motive for so doing was an attempt to distance himself from the operations of EDL. Mr Dunlop QC submitted that the Respondent's assertions demonstrably show a lack of integrity and breach of Principle 2. It was further submitted that this falsity and the self-serving reasons for it diminished the trust that the public have in both solicitors and in the provision of legal services. The Respondent had therefore breached Principles 2 and 6.

The Respondent's Position

29.4 The Respondent maintained his position that he was prevented from accessing EDL's bank account which was under the sole control of Person A. The Respondent squarely denied any allegation to the contrary. Consequently the Respondent denied breach of Principles 2, and 6.

The Tribunal's Decision

29.5 The Tribunal had regard to the Companies House record that the Respondent was appointed Director of EDL in May 2012. The Tribunal found it to be unlikely that the Respondent, having been so appointed, would not have had access to EDL's bank accounts, particularly in light of the significant and substantial transactions that he effected on behalf of EDL as well as the fact that he signed and filed the company's annual returns in 2013 and 2014.

29.6 However, the Tribunal had residual doubt in that the Respondent could, in complete dereliction of his duties as a Director, have signed returns and carried out transactions upon instruction from Person A, having elected not to interrogate EDL's bank account. Whilst the Tribunal determined that there was no legal barrier *per se* that prevented the Respondent from accessing EDL's bank accounts, there was insufficient evidence presented by the Applicant to demonstrate that he, as a matter of fact, had accessed them.

29.7 The Tribunal therefore found Allegation 1.5.2 not proved.

30. **Allegation 1.6 - Dishonesty**

The Applicant's Case

30.1 Mr Dunlop QC submitted that the test for dishonesty was set out in Ivey v Genting Casinos [2017] UKSC 67 ("Ivey") at [74]:

> "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."

30.2 With regards to Allegation 1.1.1 Mr Dunlop QC submitted that by signing the Agreements which stated that EDL owned land, the Respondent knew that he was making a false representation. Making a false representation was dishonest by the standards of the ordinary decent people, and as such satisfies the test for dishonesty promulgated in Ivey.

30.3 The remainder of the misrepresentations, Allegations 1.1.2 – 1.1.5 were made in EDL brochures and other marketing material. Mr Dunlop QC submitted that the Respondent must have been aware of those marketing materials and must have realised that they contained misrepresentations. It was submitted as implausible that the Respondent would have put his name to EDL without being aware of the nature of the business and the way in which it marketed itself. The Respondent was sole Director of EDL, received consultancy fees in respect of work undertaken for EDL, and was responsible for filing EDL's annual returns with Companies House. Mr. Dunlop QC submitted it was inconceivable that he would have performed all of those duties absent any knowledge as to EDL's activities which were objectively dishonest. It was therefore submitted that the Ivey test for dishonesty was met.

30.4 Mr. Dunlop QC submitted that, whether the Respondent's failure to maintain, preserve or deliver up accounting records (Allegation 1.2) was done with dishonest intent, rests entirely with "what was in his head" at the material time. If the Tribunal concluded that incompetence on the part of the Respondent was the reason for these failures then dishonesty should not be found. However, Mr. Dunlop QC submitted that the Respondent deliberately failed to maintain, preserve and deliver up the accounting records because he was cognisant of the gaps contained therein, and the lack of credible explanation for the same. It was submitted that these failures were motivated by the desire to obscure EDL's fraudulent activities. It was further submitted that this motivation would be considered by the ordinary man to be dishonest and therefore the Ivey test was met.

30.5 Mr. Dunlop QC submitted that if the Tribunal concluded that the Respondent knew that the EDL investment was a Ponzi scheme, yet misled the public to invest in the same (Allegation 1.3) it naturally followed that his conduct met the Ivey test for dishonesty.

30.6 Mr. Dunlop QC submitted that, further to the factors set out above which demonstrate that this was a "dubious scheme and/or dubious transactions" (Allegation 1.4) , the Respondent must have known this to be the case. The Respondent never asserted that he was "duped", having inherently trusted Person A. Conversely the Respondent advanced a positive excuse for the dubious way in which EDL's transactions occurred, namely the £100,000 ceiling imposed by Lloyds in respect of international transactions. This assertion was demonstrably false, in light of the large payments made to Person A and associated persons in excess of £100,000 absent any regard for the fee that they may have incurred. It was submitted that the Respondent must have known that the scheme was dubious, and must have known that transactions on the EDL account were dubious, yet remained involved in and facilitated the scheme nonetheless. Mr. Dunlop QC submitted that this conduct satisfied the Ivey test for dishonesty.

30.7 Mr. Dunlop QC submitted that the discrepancy regarding the Respondent's consultancy fee (Allegation 1.5.1) arose entirely through the contradictory figures he gave. He must have known what in fact he was remunerated. He must have recognised the importance of relaying accurate information to both EDL's liquidator and to the Tribunal in the previous proceedings, yet differing amounts were averred. It was submitted that this conflict could only be explained by the dishonest intent of the Respondent to mislead either EDL's liquidator or the Tribunal.

30.8 With regard to Allegation 1.5.2, Mr. Dunlop QC submitted that it was inconceivable that, (a) having been appointed sole Director of EDL on 28 May 2012; (b) having filed EDL's annual returns for the years ending 2012, 2013 and 2014 with Companies House, and (c) having conduct of the escrow accounts on behalf of investors in EDL, the Respondent did not have access to EDL's bank accounts until May 2014. It was submitted any assertion made by the Respondent in this regard was a deliberate lie and plainly met the Ivey test for dishonesty.

The Respondent's Position

30.9 The Respondent noted that the Ivey test for dishonesty and submitted that he had not been dishonest "even by the standards of ordinary decent people."

30.10 With regard to the misrepresentations alleged in Allegations 1.1 – 1.5, the Respondent averred that he signed the Agreements as "an Attorney on behalf of the company [EDL] it was not on behalf of the company [EDL] in relation to the contents contained therein." He reiterated that he was not responsible for the content of EDL's brochures or marketing material. With regards to EDL's annual returns the Respondent submitted that they were completed by EDL's accountants and he countersigned them upon the basis of their advice.

30.11 With regards to Allegation 1.2 the Respondent denied that he had any dishonest motive in relation to the maintenance, preservation or delivering up EDL's accounting records. He asserted that he had provided all of the records that he had maintained to the Department of Trade and the liquidators. The Respondent averred that, if the records were incomplete, it was not upon his direction, nor was it his responsibility. Maintenance of the records would have been evidenced on the EDL server, the whereabouts and contents of which were not known by him.

30.12 The Respondent denied dishonesty with regards to Allegation 1.3 and maintained that the EDL investments did not represent a Ponzi scheme.

30.13 The Respondent denied dishonesty with regard to the nature of EDL's transactions (Allegation 1.4) and reiterated that (a) the transfer of funds from EDL via BCBC/BCLC add credibility to the scheme, were all properly made (b) these transactions did not bear the hallmarks of fraud, (c) he was unaware of the warning notices issued by the Applicant in 2009 and 2013 as he was not practising at that time, (d) BCBC/BCLC was not used to perpetrate and cover up EDL's dishonest activities and payments, (e) Person A was in control of EDL at all times and he was simply a nominee Director.

30.14 With regard to Allegation 1.5, the Respondent denied dishonesty in relation to the information he provided in respect of his consultancy fee and lack of access to EDL's bank accounts.

The Tribunal's Decision

30.15 The Tribunal applied the test for dishonesty promulgated in Ivey in respect of each Allegation in turn. The Tribunal firstly considered what the Respondent's actual state of mind as to the facts was at the material time, then proceeded to consider whether the

conduct which followed, based upon the Respondents state of mind, was dishonest by the standards of the "ordinary and reasonable man."

30.16 With regard to Allegation 1.1, having found the Respondent was responsible for misrepresentations made, and his having signed an undertaking to that effect, the Tribunal revisited its findings on whether he had "caused" or "allowed the misrepresentations to be made. The Tribunal concluded that his culpability in this regard informed its decision as to the Respondent's knowledge or belief of the facts at the material time. It was plain to the Tribunal that a distinction had to be drawn between misrepresentations that the Respondent "caused" and those which he "allowed." The reasoned judgment of the Tribunal was that misrepresentations which the Respondent "allowed" could have been done so inadvertently, incompetently and/or by omission. The Tribunal determined that, in such circumstances, absent a clear motive or intention to mislead, the Ivey test was not met. The Tribunal therefore did not find the Respondent's conduct in relation to Allegations 1.1.2, 1.1.4 and 1.1.5 to be dishonest beyond reasonable doubt.

30.17 With regard to Allegation 1.1.1, ownership of land, the Tribunal concluded that the Respondent knew that EDL did not own any land in Brazil, not least because of his assertions in these proceedings that EBC owned the land and that entity was a subsidiary of EDL. The Tribunal had regard to the Agreements signed by the Respondent at the material time in which the preamble stated; (a) "...THIS RESERVATION AGREEMENT is made on ..... BETWEEN ECOHOUSE DEVELOPMENTS LTD.....[Hereinafter called the 'Vendor' ...." and under the recitals; (b) "...the Vendor owns land in Natal, North East Brazil...." The Tribunal concluded as a matter of fact that this was not true, and that the Respondent knew that it was not true. Additionally he accepted in his signed Undertaking the falsity of the misrepresentation that EDL owned land in Brazil. Having concluded that the Respondent was well aware that EDL did not own any land in Brazil, yet he caused and allowed misrepresentations to be made that it did, the Tribunal was satisfied beyond reasonable doubt that he did so dishonestly.

30.18 Dishonesty was therefore found proved in respect of Allegation 1.1.1.

30.19 With regard to Allegation 1.1.3, security of investors' funds, the Tribunal had regard to the transcript of YouTube videos in which the Respondent appeared, and in which he gave assurances to potential investors as to the security of their investments which were too good to be true. The Tribunal further had regard to the annual accounts filed by the Respondent in 2013 and 2014, which set out EDL's assets as "computer equipment" and "nil" respectively. The Tribunal found that the Respondent knew that investors funds were not secure, and knew that the promises he made in the YouTube videos could not be delivered on. The Tribunal concluded that a reasonable man would view the YouTube videos as a dishonest ploy to "dupe" the public into investing with promises of "guaranteed" returns. The Tribunal was satisfied beyond doubt that the Respondent's actions in this regard were dishonest.

30.20 Dishonesty was therefore found proved in respect of Allegation 1.1.3.

30.21 With regard to Allegation 1.2, failure to maintain, preserve or deliver up EDL's accounts, the Tribunal had rejected the Respondent's assertions pertaining to his limited access to, and custody and/or control of EDL's accounts. The Tribunal found that the Respondent could not provide a credible explanation as to his failures in relation to the accounts. The Tribunal found it implausible that the Respondent was merely incompetent in this regard, and concluded that the only plausible explanation was that he knew at the material time of the accounting deficiencies, and deliberately failed to keep adequate records so as to obfuscate the Ponzi scheme's true beneficiaries. The Tribunal found that this conduct was dishonest according to the Ivey test.

30.22 Dishonesty was therefore found proved in respect of Allegation 1.2.

30.23 With regard to Allegation 1.3, Ponzi scheme, and Allegation 1.4, dubious transactions, the Tribunal considered the state of knowledge of the Respondent at the material time as intrinsically linked. Having found that this was a Ponzi scheme, and that the Respondent was personally responsible for numerous dubious transactions, the Tribunal was satisfied to the criminal standard that the Respondent was fully aware of the same during his involvement with EDL. The Tribunal was satisfied on the basis of this knowledge that the Respondent's conduct was dishonest by the standards of the ordinary and reasonable man.

30.24 The Tribunal therefore found dishonesty proved in relation to Allegations 1.3 and 1.4 beyond reasonable doubt.

Previous Disciplinary Matters

31. On 31 October – 4 November 2016 the Tribunal found the following allegation against the Respondent, who was the Third Respondent, proved;

> "They acted or permitted Sanders & Co LLP (formerly Sanders & Co) ("the Firm") to act for Ecohouse Developments Limited ("Ecohouse") in relation to a complex overseas investment scheme and concurrently for some 849 individuals who invested in the scheme, in a situation where there was a conflict, or a significant risk of conflict between (1) the interests of Ecohouse; (2) the interests of each individual investor; and (3) the interests of the Firm or the individual interests of the Third Respondent."

32. The Respondent was sanctioned to 12 months suspension and Ordered to pay a contribution to the Applicant's costs of £10,000.00.

Mitigation

33. The Respondent did not advance in any of his written statements mitigation as to the factual matrix of the allegations he faced. However, he filed an unsigned Statement of Means dated 27 November 2018, to which he appended his previous Statement of Means provided to the Tribunal in the 2016 proceedings referred to above. The Respondent maintained that his financial position had not changed since 2016 save for the following:

- He currently resided in a one bedroom apartment above his offices, in respect of which he does not pay rent.
- He pays an increased rate of insurance to Phoenix Life.
- Copies of BCBC/BCLC's unaudited accounts for the year ending 31 March 2018 demonstrated that both had run at a loss for the preceding two years.
- The balance of his pension fund had diminished.
- An outstanding debt in the sum of £10,000 owed to MGH was evidenced.
- Credit card statements showed debts of approximately £6,143.
- Evidence of outgoings for standard utilities was produced.

34. The Respondent referred to a deterioration in his health as a consequence of the various proceedings he has faced with regards to his involvement with EDL. In summary the Respondent asserted that:

> "..it is clear to me that I will never be able practice *(sic)* as a solicitor again and indeed I have no wish to do so. Accordingly, I have applied to be removed from the Role, *(sic)* but have been refused because of these proceedings. Because of my financial position I will be unable to pay any costs Ordered against me, save a modest sum by way of monthly instalments or I will have to become bankrupt…"

Sanction

35. The Tribunal referred to its Guidance Note on Sanctions (5th Edition) when considering sanction. The Tribunal assessed the seriousness of the misconduct by considering the level of the Respondent's culpability and the harm caused, together with any aggravating or mitigating factors.

36. In assessing culpability, the Tribunal found that the motivation for the Respondent's conduct was financial, and that he voluntarily placed himself in a position of being involved in a "scam." His actions were planned, deliberate and were repeated over a protracted period of time, from May 2012 until November 2014. His purpose was to provide Person A and the EDL scheme with a veneer of legitimacy by virtue of his registration as a solicitor. The Respondent was therefore in a quasi-position of trust as both a solicitor admitted to the Roll in 1982, and in respect of his fiduciary duties pursuant to the Companies Acts as Director of EDL. The Tribunal found that he had misled the Applicant in respect of the replies, Answer and statements he had filed which were contradictory, found to be untrue and designed to obfuscate the truth. The Tribunal assessed the Respondent's culpability as high.

37. The Tribunal then turned to assess the harm caused by the misconduct. The Tribunal had found that the Respondent had dishonestly misrepresented to the public the legitimacy of EDL, when in fact he knew it to be a Ponzi scheme, which resulted in a loss of at least £21 million of investors' deposits. His actions were found to be a serious

departure from that which one would expect of a solicitor. The harm caused was highly foreseeable and intentional. The Tribunal assessed the level of harm caused by the Respondent's misconduct as high.

38. The misconduct found to be proved was aggravated by the fact that the allegations included dishonest conduct which was calculated, repeated and occurred over a period of 2.5 years. Significant efforts were made by the Respondent to conceal his wrongdoing to EDL creditors, the liquidator, the Department of Trade and Industry and to the Tribunal. The impact of the Respondent's misconduct was substantial, and exacerbated by the previous finding of the Tribunal regarding his involvement with EDL.

39. The Tribunal did not find any mitigating features present, but did have regard to the fact that the Respondent had engaged with the regulatory process.

40. The Tribunal had regard to the case of SRA v Sharma [2010] EWHC 2022 (HC), and the comment of Coulson J that, save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck of the Roll. The Tribunal was not invited to consider exceptional circumstances, but in any event was not persuaded that any exceptional factors were present, such that the normal penalty would not be appropriate.

41. Having found that the Respondent acted dishonestly, the Tribunal did not consider that a reprimand, fine or suspension were adequate sanctions. The Tribunal had regard to the observation of Sir Thomas Bingham MR in Bolton v Law Society [1994] 1 WLR 512 that the fundamental purpose of sanctions against solicitors was:

> "...to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth..."

42. The Tribunal determined that the findings against the Respondent, including dishonesty, were at the highest end of the spectrum regarding seriousness. The Tribunal concluded that the need to protect the public and the reputation of the profession required no lesser a sanction than an Order striking the Respondent off the Roll.

Costs

43. Mr. Dunlop QC applied for costs in the sum of £22,725 in respect of the investigation and prosecution of the Respondent. The Schedule of Costs filed and served in support provided a breakdown of how those costs had been incurred by the Applicant.

44. The Respondent, in his Statement of Means, appeared to accept that he would be liable to pay costs reasonably incurred, submitted that his limited means should be taken into consideration and averred that he would only be able to pay a "nominal amount."

The Tribunal's Decision

45. The Tribunal had regard to the extensive documentary evidence prepared by the Applicant in support of the allegations. The Tribunal considered this matter to be

complex and was satisfied that the time spent on the investigation, pre issue and post issue (totalling 302.3 hours) was properly spent for a case of this nature.

46. The Tribunal noted that the costs claimed were not in the traditional form of an hourly rate applicable to the hours spent but by way of a fixed fee of £18,500 plus VAT. The Tribunal was satisfied that the costs claimed of £22,725 were reasonably and proportionately incurred.

47. The Tribunal considered the unsigned Statement of Means filed by the Respondent and took into account all of the factors set out therein. The Tribunal noted that the Respondent's financial position had not altered significantly since the previous proceedings in 2016, save that no longer paid rent on his home. The Tribunal concluded that the Respondent had the means to pay the costs claimed in full and Ordered that he pay the sum of £22,725.

Statement of Full Order

48. The Tribunal Ordered that the Respondent, CHARLES VALENTINE FRASER-MACNAMARA, 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 £22,725.00.

Dated this 8th day of May 2019
On behalf of the Tribunal

L. N. Gilford
Chairman