SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11875-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

[FIRST RESPONDENT] First Respondent

JUSTINE LEANNE WARDLE Second Respondent

Before:

Mr E. Nally (in the chair)
Mrs C. Evans
Mr R. Slack

Date of Hearing: 29 April – 3 May 2019
and 22 May 2019

Appearances

Rory Mulchrone, barrister, of Capsticks Solicitors LLP of 1 St George`s Road, London, SW19 4DR, instructed by the Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant

Robert Forman, solicitor, of Murdochs Solicitors, 45 High Street, Wanstead, London, E11 2AA, for the First Respondent.

The Second Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The allegations against the First Respondent, Colin Peter Dixon (158738) were that, while in practice as a solicitor at, and a director of Dixon Law Limited (417448) ("the Firm") between a date unknown in early 2012 and approximately 10 September 2014:

Dubious investment scheme

1.1 He acted for the operators of a property investment scheme which was dubious and/or bore hallmarks of fraudulent financial arrangement ("the Scheme") and in doing so breached Principles 2 and/or 6 of the SRA Principles 2011 ("the Principles").

Conflict of interest

1.2 He also acted for investors in relation to the Scheme, thereby giving rise to conflicts between the interests of clients, or a significant risk of such conflicts in in doing so breached all or any of:

1.2.1 Outcome 3.5 of the SRA Code of Conduct 2011 ("the Code");
1.2.2 Principles 2, 3 and 6 of the Principles.

Inadequate advice

1.3 He failed to adequately advise investor clients, or cause them adequately to be advised of:

1.3.1 the risks arising from their proposed investments;
1.3.2 the level of security offered in respect of their proposed investments;

and in doing so failing breached Principles 2, 4 and 6 of the Principles or any of them.

Accounting Records

1.4 He failed to keep accounting records properly written up in respect of the Scheme, in that he failed always to maintain separate ledgers in respect of individual clients' investments, and in so failing breached Rule 29.2 of the SRA Accounts Rules 2011 ("the Accounts Rules").

Improper payments

1.5 He made one or more payments out of client account, or allowed such payments to be made, other than in accordance with the instructions of the clients on whose behalf such funds were held, and in doing so breached all or any of:

1.5.1 Rules 14.5 and 20 of the Accounts Rules;
1.5.2 Principles 2, 6 and 10 of the Principles.

Improper attempts to limit liability

1.6 He caused or allowed clauses to be inserted into client engagement letters, which purported to limit the Firm's liability to clients to a level below the minimum level of cover required by the SRA Indemnity Insurance Rules in force at the material time, and in so doing breached all or any of:

1.6.1 Outcome 1.8 of the Code;
1.6.2 Principles 5 and 6 of the Principles.

Dishonesty/Recklessness/Incompetence

1.7 By reason of the facts and matters set out at paragraphs 1.1, 1.2, 1.3 and 1.5 above or any of them he acted;

1.7.1 dishonestly;
1.7.2 recklessly;
1.7.3 with manifest incompetence;

but proof of dishonesty, recklessness or incompetence is not a necessary ingredient of a finding that those allegations or their particulars are proved.

2. The allegations against the Second Respondent, Justine Leanne Wardle, is that, while employed at the Firm, she was guilty of conduct of such a nature that, in the opinion of the SRA, it would be undesirable for her to be involved in a legal practice, in that she:

Dubious investment scheme

2.1 Acted or assisted the First Respondent to act for the operators of the Scheme and in doing so breached Principles 2 and/or 6 of the Principles.

Conflict of interest

2.2 Acted or assisted the First Respondent to act for investors in relation to the Scheme, thereby giving rise to conflicts between the interests of clients or a significant risk of conflicts and in doing so breached all or any of:

2.2.1 Outcome 3.5 of the Code.
2.2.2 Principles 2, 3 and 6 of the Principles.

Inadequate advice

2.3 Failed adequately to advise investor clients or cause them adequately to be advised of:

2.3.1 the risks arising from their proposed investments;
2.3.2 the level of security offered in respect of their proposed investments;

and in so doing breached Principles 2, 4 and 6 of the Principles or any of them.

Improper payments

2.4 Made one or more payments out of client account or allowed them to be made other than in accordance with the instructions of the clients on whose behalf such funds were held and in doing so breached all or any of;

2.4.1 Rules 14.5 and 20 of the Accounts Rules;
2.4.2 Principles 2, 6 and 10 of the Principles.

Dishonesty/Recklessness/Incompetence

2.5 By reason of the facts and matters set out at paragraphs 2.1, 2.2, 2.3 and 2.4 above or any of them she acted:

2.5.1 dishonestly;
2.5.2 recklessly;
2.5.3 with manifest incompetence;

but proof of dishonesty, recklessness or incompetence is not a necessary ingredient of a finding that those allegations or their particulars are proved.

Documents

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

Applicant

- Rule 5 Statement and Exhibit RTM/1 dated 28 September 2018.
- Reply to the First Respondent's Answer dated 6 December 2018.
- Statement of Costs dated 25 January 2019.

First Respondent

- Answer dated 19 November 2018.
- Witness statement dated 5 April 2018 *(sic)* and Exhibit CPD/1.
- Additional documents disclosed by the Applicant on 23 April 2019 (1-52 pages).
- Witness statement of Margaret Bridge.
- Character references 1 – 20.
- Statement of Means dated 21 March 2019.

Second Respondent

- Answer, by way of letter, dated 29 October 2018.
- Request for an Agreed Outcome dated 29 October 2018.
- Statement of Means by way of letter dated 29 October 2018.
- Further request for an Agreed Outcome dated 13 December 2018.

Preliminary Matters

4. Application to proceed in the absence of the Second Respondent

4.1 The Second Respondent was not in attendance and not represented. Mr Mulchrone applied for the matter to proceed in her absence. He referred the Tribunal to email communications between the Second Respondent, the Applicant and the First Respondent from 8 – 15 April 2019 in particular her initial email timed at 19:29 hours on 8 April 2019 to the Applicant in which she stated:

> "…as *(sic)* you are aware I have already agreed to the outcome sought [section 43 Order] and consider on reading the transcript of the sra *(sic)* meeting and letter both of which I was not party to or made aware of the contents that I acted recklessly and in *(sic)* incompetently but feel that had I been given the full facts of both the meeting and the letter the outcome may have been different.
>
> I am unable to afford a legal representative to provide advice or assistance and have provided an income and expenditure list.
>
> I am unable to travel to the hearing as I do not have funds to do so and I live over 3 hours on a train from London and cannot afford daily train journeys or hotels…"

4.2 Mr Mulchrone submitted that the Second Respondent requested of the Applicant that the without prejudice communications regarding an Agreed Outcome be placed before the Tribunal. He further averred that it was tolerably clear that she had chosen to absent herself from the proceedings.

4.3 Mr Mulchrone reminded the Tribunal of the need to proceed with care and caution when determining whether to proceed in the Second Respondent's absence. Mr Mulchrone further reminded the Tribunal of the overarching public interest in the expeditious disposal of cases and advised the Tribunal that had to be weighed in the balance with fairness to the Second Respondent. It was submitted that if the case were to proceed, as the Second Respondent's admissions appeared equivocal, the Applicant intended to present the case against her on the basis that the allegations had to be proved in the usual way.

4.4 Mr Forman, for the First Respondent, indicated that the matter should proceed in the Second Respondent's absence.

The Tribunal's Decision

4.5 The Tribunal retired to consider the Applicant's application to proceed in the Second Respondent's absence. It had regard to its statutory duty under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Second Respondent's right to a fair trial and to respect for her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Tribunal was satisfied that the Second Respondent had been served with notice of the hearing. Under Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR") the Tribunal had the power, if satisfied that service

had been effected in accordance with the Rules, to hear and determine the application in the Respondent's absence.

4.6 The Tribunal considered the factors set out in R v Hayward, Jones and Purvis [2001] QB, CA when deciding whether or not to accede to the application.

4.7 The Tribunal further considered the principles promulgated in GMC v Adeogba [2016] EWCA Civ 162, in which Leveson P noted that in respect of regulatory proceedings there was a need for fairness to the regulator as well as a Respondent. At [19] he held:

> "… 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 the practitioner had deliberately failed to engage with 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."

4.8 Leveson P went on to state at [23] that discretion must be exercised "having regard to all the circumstances of which the Panel is aware with fairness to the practitioner being a prime consideration but fairness to the GMC and the interest of the public also taken into account."

4.9 The Tribunal considered the position set out by the Second Respondent in her email dated 8 April 2019. The Tribunal had regard to fact that the First Respondent was in attendance, represented and ready to proceed. The Tribunal was satisfied that the Second Respondent had waived her right to attend and participate in the hearing. The Tribunal determined that she had voluntarily absented herself from the hearing and was unlikely to attend in the future should the matter be adjourned. The Tribunal concluded that the public interest and that of the First Respondent in respect of conduct alleged to have occurred between 2012 and 2014 weighed in favour of proceeding in the Second Respondent's absence.

4.10 The Tribunal agreed with Mr Mulchrone that the Second Respondent's 'admissions' were equivocal and therefore were not accepted by the Tribunal as having been properly made. The Applicant, in the Second Respondent's absence, bore the burden of proving the allegations against her beyond reasonable doubt.

Relevant Legal Framework

5. It was common ground between the parties that the legal tests and principles set out below were that which the Tribunal had to apply in consideration of Allegations 1.7 and 2.5 (dishonesty, recklessness and/or manifest incompetence) as well as the alleged breach of Principle 2 (lack of integrity) as averred in Allegations 1.1/2.1, 1.2/2.2, 1.3/2.3, 1.5 and 2.4.

Dishonesty

6. The test for considering the question of dishonesty was set out in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 at [74] namely:

> "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 and belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder 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."

7. The Tribunal applied the test in Ivey when considering the contentious issue of dishonesty, in that it adopted the following approach:

- Firstly the Tribunal established the actual state of the Respondents' knowledge or belief as to the facts at the material time. It had regard to the fact that the belief did not have to be reasonable, merely that it had to be genuinely held.

- Secondly, once that was established, the Tribunal then considered whether the conduct, based upon the Respondents' knowledge or belief as to the facts at the material time, was dishonest by the standards of ordinary decent people.

Recklessness

8. In Brett v SRA [2014] EWHC 2974 (Admin), Mr Justice Wilkie held that the settled criminal test for recklessness applied equally to professional regulatory matters namely:

> "…with respect to (i) a circumstance when he is aware of a risk that exists or will exist and (ii) a result when he is aware that a risk will occur and it is, in circumstances known to him, unreasonable for him to take the risk…"

Manifest Incompetence

9. In Iqbal v Solicitors Regulation Authority [2012] EWHC] 3251 the President of the Queen's Bench Division said:

> "…It seems to me that trustworthiness also extends to those standards which the public are entitled to expect from a solicitor, including competence. If a solicitor exhibits manifest incompetence as, in my judgment, the appellant did, then it is impossible to see how the public can have confidence in a person who has exhibited such incompetence. It is difficult to see how a profession such as the medical profession would countenance retaining as a doctor someone who had shown himself to be incompetent. It seems to me that the same must be true of the solicitors profession. If in a course of conduct a person manifests incompetence as, in my judgment, the appellant did, then he is not fit to be a solicitor. The only appropriate remedy is to remove him from the roll. It must be recalled that being a solicitor is not a right, but a privilege. The public is entitled not only to solicitors who behave with honesty and integrity, but solicitors in whom they can impose trust by reason of competence.

Integrity

10. When the Tribunal was required to consider whether the Respondent had lacked integrity it applied the test promulgated in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366 by Jackson LJ at [100] namely:

> "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."

Factual Background

11. The First Respondent was admitted to the Roll in April 1993. At all relevant times he was a director and partner of Dixon Law Limited ("the Firm") and the supervising solicitor in respect of the matters upon which the allegations were predicated. He held a practising certificate free from conditions and was practising as a commercial property consultant at Needle Partners, Leeds.

12. The Second Respondent was an unadmitted person who, at all material times, was employed as a paralegal at the Firm. She had day to day conduct of the matters upon which the allegations were predicated under the supervision of the First Respondent. She had previously been employed by Darling & Stephenson Solicitors from around June 1995 until December 2010 initially as a legal secretary and subsequently as a conveyancing executive.

13. The conduct upon which the allegations were predicated occurred in 2012 – 2014 and first came to the attention of the Applicant in August 2012. The First Respondent was interviewed by the Applicant on 14 November 2012 from which a report ("the FI Report") was produced by Forensic Investigator KB. In short the FI Report identified that the Firm had acted for Client N, a property development organisation, as well as their associates, Group H and Person K. In addition to acting for Client N, Group H and Person K, the Firm also acted for individual investors in the Scheme.

14. The Scheme involved the purchase of low value properties which generally required renovation before they were marketed for sale to first time buyers. The Scheme sought an investment of £20,000 from investors who could choose to exit the Scheme after week 10 at which stage they would have been reimbursed their initial £20,000 investment as well as an additional £5,000 early exit fee. Upon examination of the Scheme it transpired that the return of invested funds as well as the early exit fee to 'old' investors was being funded through 'new' investors who entered the scheme which was the classic trademark of a 'Ponzi' or dubious scheme.

Witnesses

15. The following witnesses provided oral evidence at the substantive hearing and were tested by way of cross examination. Their evidence and the Tribunal's overarching view of the witnesses is set out below.

For the Applicant

16. **MS**: Forensic Investigation Team Leader of the SRA

16.1 MS was KB's line manager at the material time. He confirmed the truth and accuracy of his witness statement and averred that he played a limited role in the investigation; he asserted that he was more of a 'bystander.' The Tribunal found him to be of limited assistance to the contentious issues due to the limited role that he played. However the Tribunal found that he was more than a 'bystander' in that he did contribute to the meeting between KB and the First Respondent on 14 December 2012 but did not escalate any concerns regarding the Scheme within the Applicant's internal processes.

17. **KB** (via telephone from Denver, Colorado): Forensic Investigation Officer of the SRA

17.1 KB inspected the Firms' books and accounts, conducted the investigation and drafted the FI report relied upon by the Applicant. The Tribunal was impressed by her evidence, found her to be a witness of truth with no axe to grind. The salient part of her evidence was her concession that any concerns she had regarding the Ponzi nature of the scheme would have fallen away if the £5,000 exit fee payments to new investors from old investors' monies-was removed. Under cross examination, KB stated that at the meeting with the First Respondent on 14 November 2012 at which she relayed her concerns that the Scheme bore the hallmarks of a Ponzi Scheme. She accepted that she did not put to him that the Scheme was fraudulent. She asked of him in interview what he thought of the Scheme, whether he considered it have Ponzi Scheme characteristics and she noted his comments in the transcript of interview that he did not. It was put to KB that the First Respondent was the only member of the Firm who was present in that interview which she confirmed. She further confirmed that MB was not present during the interview. When asked whether she relayed to the Firm as a whole that the Scheme was Ponzi in nature her response was that she "did not recall, could well have done [and that she] could not say for sure."

18. **BP**: an investor client of the Firm

18.1 The Tribunal did not find BP's evidence to be persuasive. He made so many concessions under cross examination and accepted that his written evidence was erroneous on the most salient and significant matters that his live evidence suffered greatly and was confused. BP accepted that there were numerous contradictions between the claims/complaints he had made to the Legal Ombudsman, SRA and Solicitors Compensation Fund. BP admitted that letters sent in his name were drafted by his previous solicitor, GC, and a non-qualified representative and none of them mentioned the fact that he had received an early exit fee from the Scheme as well as a transfer of his interest into alternative properties. Most telling was the fact that he sought redress from the Solicitors Compensation Fund in the sum of £80,000 to which he was not entitled. It was noted by the Tribunal that that it was only upon his complaint to the Applicant in or around October 2016, that allegations of lack of integrity and dishonesty were raised against the Respondents for the first time. It was clear to the Tribunal that the Applicant relied heavily on the evidence of BP to support the same.

For the First Respondent

19. **MB**: Accounts and Practice Manager of the Firm at the material time.

19.1 MB gave evidence as to her role in the Firm at the material time. She assisted with the book keeping and opening of ledgers on behalf of clients. She managed the client account upon the instruction and supervision of the First Respondent. Under cross examination she rejected the Applicant's assertion that KB told the wider staff at the Firm of her concerns that the Scheme was a Ponzi scheme. Whilst the Tribunal found MB to be a witness of truth it was concerned that her evidence had been tainted by virtue of the fact that (a) the First Respondent provided her with a copy of his statement to 'refresh her memory' and (b) the First Respondent reviewed and checked her statement prior to it being filed at the Tribunal and served on the Applicant. The Tribunal noted that there was at least one statement within her witness statement that appeared to be directly plagiarised from the statement of the First Respondent

20. First Respondent

20.1 The Tribunal found the First Respondent to be predominantly a man of truth but noted his overall demeanour to be cautious, defensive and that he was unable to accept the bald facts in respect of certain matters. He appeared, on occasion to resile from admissions made in his Answer to the Rule 5 Statement and subsequent witness statement. He maintained in his oral evidence that the Scheme was neither dubious nor bore the hallmarks of fraud but accepted that mistakes had been made and consequently Rules breached.

21. The written and/or oral 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

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

23. **Allegations 1.1. and 2.1.**
(dubious investment scheme)

The Applicant's Case

23.1 Mr Mulchrone submitted that the conduct complained of post-dated the Warning Notice disseminated to the profession in April 2009 in respect of fraudulent financial arrangements which stated:

"…You must ensure that you do not become involved in dubious financial arrangements or investment schemes. Failure to observe our warnings could lead to disciplinary action, criminal prosecution or both.

Schemes are formulated by fraudsters to prey upon the wealthy, greedy or vulnerable. They often sound "too good to be true" and almost always are…"

23.2 The warning notice set out warning signs to which the profession should be alert and further advised:

"Why involve you?

The fraudster wants to be associated with the legitimacy and respectability which, as a person or firm regulated by the SRA you provide by:

- endorsing the arrangements by acting as the fraudster's legal adviser or banker,
- providing correspondence to the fraudster's company or third parties,
- 'securing' the transaction with an undertaking from you,
- opening bank accounts, awaiting receipt of funds or using your client account,
- referring to your insurance or to the Compensation Fund.

If you do not understand the documents or a transaction in which you are involved, you must ask questions to satisfy yourself that it is proper for you to act. Why have you been approached? Do you have any expertise in this area of law? If you are not wholly satisfied as to the propriety of the transaction, you must refuse to act…."

23.3 Mr Mulchrone submitted that the warning was clear, unambiguous and gave direct guidance to the profession as to "unusual features" which should have been construed as "red flags" in relation to investment opportunities and their underlying transactions. It was averred that the Scheme which was facilitated by both Respondents' bore unusual features, as set out below, which should have alerted them to its dubious nature.

23.4 *Unrealistically high returns*

23.4.1 Client N was part of Group H, identified the Schedule. The welcome letter sent by Group H to an investor, dated 27 June 2012, contained information about the Scheme and stated that the property refurbishments "will take approx. 3 weeks". Upon sale of the property in question, Group H promised to transfer "50% of the net profit to [the investor] plus return of [the investor's] original £20,000.00". It further set out "There is also a 10 week early exit option. If you exercise this option you will receive a fixed return of £5,000 [sic] plus your original capital of £20,000".

23.4.2 Mr Mulchrone submitted that on any view, a fixed return of £5,000.00 on £20,000.00, i.e. 25%, within just 10 weeks, was wholly implausible commercially and plainly, in the words of the April 2009 Warning Notice cited

above, "too good to be true". This offer was a 'red flag' indicator that the Scheme was dubious.

23.4.3 A further document entitled "JV Opportunity" provided detailed financial information on the expected returns supposedly available to the investor and also a breakdown of anticipated costs in relation to the property which had already been purchased for £95,000.00 prior to the investors' investment. A "worst case scenario" figure far less than £20,000.00 was cited on the JV documents in the region of £12,000.00 absent any explanation as to where the balance of £8,000.00 would have been expended. This lacuna was not explained or justified in the JV document which in itself, it was submitted, was dubious.

23.4.4 The anticipated sale price, after a 5% discount to the purchaser, was £161,452.50, i.e. an unlikely increase of £66,452.50 (70%) on the purchase price, in circumstances where only £6,000.00 was to be spent on a "cosmetic refurbishment" taking only "approx. three weeks".

23.4.5 The total net profit was calculated at £54,480.25 but, contrary to the welcome letter only 25% of this (£13,620.00) was offered to the investor, not 50% (£27,240.13). Even so, this 25% represented a return of 68% on £20,000.00, in circumstances where only £6,000.00 of that capital was purportedly spent on renovations. This was wholly implausible commercially and plainly dubious.

23.4.6 Mr Mulchrone submitted that as KB, the FIO, had obtained these documents from inspection of the Firm's files, it naturally followed that they were available to the First and Second Respondents, who therefore must, and if not, ought to have been aware of their contents and should have been alerted to the "red flags" contained therein.

23.5 *Absence of commercial rationale*

23.5.1 Mr Mulchrone submitted that Client N was (or was said to be) a company with a large portfolio of residential property and was able to access mortgage finance at (historically low) market rates from established, institutional lenders. There was no credible commercial reason why it should have not used affordable finance for property development costs, in favour of offering far higher rates of return to individual investors.

23.5.2 In any event, if the "worst case scenario" costs of such renovations were, for example, £6,000.00 (or indeed anything less than £20,000.00), then there was no commercial basis upon which to require £20,000.00 from individual investors. The documents failure to explain what would happen to the balance of the investors' funds was objectively dubious.

23.5.3 Further, there was no credible commercial benefit to Client N/Group H in offering this 'opportunity' to investors. For example, even assuming it: (a) could secure net profits of £54,480.00 by spending £6,000.00 on a property worth only £95,000.00; and then (b) took 75% of those profits leaving 25% to the investor (plus return of their capital in the sum of £20,000.00), the better

approach commercially would plainly be for Client N/Group H to pay or borrow the redevelopment costs itself and keep 100% of the net profits.

23.5.4 Another 'red flag' indicator in this regard was the statement in the welcome letter that: "We will provide the first time buyer with 5% deposit paid from the open market valuation. This will ensure a speedy exit and quick resale so we can all enjoy the profits of our partnership" In the case of the property referred to in the "JV Opportunity" document, this meant that Client N/Group H proposed to gift a deposit worth £8,497.50 to a first time buyer upon resale. It was clear from the welcome letter that this was not a mere 'discount' on the purchase price but a cash advance with a view to the first time buyer then obtaining a 95% LTV mortgage in respect of the balance.

23.5.5 Mr Mulchrone stated that on the face of the documents available to the First and Second Respondents, the Scheme made no sense commercially which demonstrably showed that the Scheme was dubious.

23.6 *Dubious revisions*

23.6.1 The Scheme commenced in early 2012 and had been in operation by the time the FI investigation by KB commenced on 21 August 2012. However, when KB visited the Firm on 30 October 2012, the Second Respondent said that Client N no longer offered the £5,000.00 exit fee because investors had been "taking advantage of it". Instead, in exchange for their £20,000.00, Client N/Group H purported to offer the investor a 50% share of the property plus 50% of the net profits. Further letters from Group H to investors contained the following text:

- "…I [prospective investor] wish to enter into joint partnership with [Group H] in regards to the investment opportunity of [Property Address].
- For my investment of £20,000 in [Property Address] I will own 50% [sic] the above named property and I will receive 50% of the net profit plus [sic] return of my £20,000 capital when the property is sold.
- For your JV investment of £20,000 in [Property Address] we will pay you 50% of the net profit on resale of this property to a first time buyer…
- We will provide the first time buyer with 5% deposit paid from the open market valuation. This will ensure a speedy exit and quick resale so we can all enjoy the profits of our partnership…
- Once the property sale completes. [sic] We will transfer 50% of the net profit to you plus return of your original £20,000 capital…"

23.6.2 Mr Mulchrone submitted that a 50% equity share in a residential property valued at anything more than £40,000.00 in exchange for only £20,000.00 was an unrealistically high return which also made no commercial sense. Further, these letters were hopelessly inadequate for the purposes of creating a secure and enforceable 50% beneficial interest in the property itself, i.e. in land. That Client N/Group H/those controlling them purported to make such an offer to

individual investors was objectively dubious, as was the repeated suggestion that a 5% deposit would be gifted to a first time buyer before resale.

23.6.3 Mr Mulchrone reiterated that these documents were available to the First and Second Respondents who ought to and must have been put on notice of the claims made.

23.7 *Misleading information to investors about security*

23.7.1 The original welcome letter sent to investors included the following text:

> "…Once in receipt of your investment of £20,000 Dixon Law will write to you confirming security of charge has been registered against [Property Address] at HM Land Registry. A UN1 will also be registered against the property which effectively stops the property being sold without your permission…"

Later correspondence with investors stated:

- "…It is agreed that this investment shall be securitised against the property by fixed charge and UN1 at HM Land Registry by Dixon Law Solicitors.

- Dixon Law will write to you under separate cover confirming security of charge has been registered against [Property Address] at HM Land Registry.

- Once in receipt of your investment of £20,000 Dixon Law will write to you confirming security of charge has been registered against [different property address] at HM Land Registry. A UN1 will also be registered against the property which effectively stops the property being sold without your permission.

- Dixon Law will securitise your investment. They will require a copy of your ID and a Bank statement showing origin of funds…"

23.7.2 Mr Mulchrone submitted that these representations were misleading and therefore dubious for a number of reasons:

- No charges were registered against the properties in favour of individual investors, as opposed to institutional lenders.

- A UN1 (a unilateral notice) would not have stopped the property being sold without permission. It merely ensured that the beneficiary received notice of any disposition.

- A UN1 would not have securitised an interest in property (as was claimed) nor would it have established that such an interest existed.

- A proprietor could have applied for the unilateral notice to be cancelled, at which point the beneficiary would have had to prove his entitlement to it (i.e. that his interest existed and was valid). In the event of disagreement, the matter would have had to be referred to a Land Registry Adjudicator for resolution.

24.7.3 Mr Mulchrone accepted that the Firm's client care letter warned investors that their "monies were largely unsecured and in the event of insolvency of [Client N] you will be an unsecured creditor*"* but submitted that this did not alter the dubious nature of the Scheme itself, which was apparent from the misleading representations about security in Client N's/Group H's own correspondence.

24.7.4 Further, in corresponding with investors, the Second Respondent inaccurately referred to the UN1 as a device to "protect" their interests in the properties which was misleading given the very limited protection offered by a UN1.

24.8 *'Recycling' of investor funds to pay existing investors*

24.8.1 KB analysed how early exit payments to 'old' investors were funded, namely via 'new' investor deposits. This analysis revealed that in respect of payments totalling £652,172.00, around £400,000.00 was paid to 'early exit' investors. The balance represented the return of initial investment capital. Mr Mulchrone submitted that this feature was a classic feature of a typical "Ponzi" and therefore dubious investment scheme.

24.9 *Limited legal work done for the investors*

24.9.1 Mr Mulchrone submitted that although the investors were clients of the Firm, little if any legal work was done on their behalf. In particular, the First Respondent informed KB that the Firm did not give investor clients any advice on the investment documentation namely the joint venture agreement in that;

> "…We don't give advice on the joint venture [the client care letter] clearly says…
>
> … Our scope of work is not to include that and we don't, that's not what we've been asked to do. As a lawyer, you know, how far can you go with certain clients. You're making £250 here, if we were making £5,000 they'd get the Rolls-Royce treatment, sit them down, right, you know, it's not reality, we have to work in the real world here. Now for £250 we do what we do. We take the money, we try to do it the best we can, we make sure we don't nick it, we make sure no one doesn't get it and we make sure what we see on the tin is done which is the registration of their interest against the property and that is the end of our role until the property is sold and then we will make sure that they get back, you know, their investment plus what they're entitled to under the terms of that which is when this letter becomes more important because that's when we'll make sure we've got an agreement with the client they're getting what they thought they were getting and won't

pay them out until that's been sorted. If there's a conflict then we'll go into conflict mode and they can go elsewhere…"

24.9.2 It was evident, Mr Mulchrone stated, that the Firm's actions on behalf of its investor clients were specifically limited to the handling of the investment and did not extend to the resale of the property. In particular, the Firm did not undertake to recover investor funds from Client N in the event there were insufficient funds in the net proceeds of sale. In that scenario, the investor client would "need to claim these direct from [Client N]".

24.9.3 The tasks carried out by the Firm for its investor clients were limited to:

- Receipt of a bank statement showing origin of funds and conducting identity checks which lent a veneer of credibility to a plainly dubious scheme.

- Receipt of investors' funds and distribution thereof in particular payment of early exit fees to 'old' investors from 'new' investment. This was an activity which could have been done by Client N and was in any case an indicator of a dubious scheme.

- Registration of a UN1 on behalf of the investor which of itself provided very little protection, if any of the invested funds.

24.9.4 Mr Mulchrone submitted that it was plain that none of these activities necessitated the instruction of a solicitor nor did they involve the provision of legal advice. They were administrative in nature and absent an underlying legal transaction in relation to which the Firm had given advice or provided a regulated service, its handling of the investment monies was not legally required.

24.10 *Multiple investors per property*

24.10.1 The Scheme involved around 155 properties. Of these, 12 had more than one investor. For example there were three investors in a particular property (a flat in Liverpool), each of whom must have been expecting, on the basis of JV agreement and the client care letter:

- The return of their £20,000.00, supposedly 'securitised' against it by UN1.

- An early exit fee of £5,000.00 or at least 25% of the net profit.

Or

- Under the revised Scheme, a 50% equity share in the property *and* 50% of the net profits upon resale.

24.10.2 Mr Mulchrone submitted that such payments out were plainly unrealistic and unsustainable, not least in view of the low value nature of the properties in the scheme. It was impossible for three investors to each receive a 50% equity share in the property and 50% of the net profits upon resale. Further, there was

no evidence that investors were made aware of other investors in their particular property and the Second Respondent has confirmed that they were not so informed. The use of a single asset to solicit multiple investments, on the basis of purported benefits which were mathematically impossible, was indicative of the dubious nature of the Scheme.

24.11 *History of allegedly fraudulent activities by Client N's director*

24.11.1 One of Client N's and/or Group H's directors was Person K. During her research into Client N and Group H, KB noted that one of Person K's other businesses, Company B, was the subject of a segment on the BBC's *Watchdog Rogue Traders* programme broadcast in or around April 2012. This programme alleged that Person K's staff had fraudulently obtained and kept rental deposits from multiple, prospective tenants, each of whom was unaware of the other. Person K denied fraud and promised to provide refunds.

24.11.2 The First Respondent said he personally had not conducted any research on Person K or Group H but became aware of the BBC programme shortly after it was broadcast, i.e. while acting for Client N. He added that, having watched the programme on YouTube, his only comment was that Person K had defended himself "quite well" and that the matter related to one of his other businesses as opposed to the Scheme.

24.11.3 Nevertheless, it was submitted by Mr Mulchrone that involvement of Person K was a further 'red flag' indicator that the Scheme was dubious, particularly in view of the similarity between one aspect of the Scheme (multiple investors in individual properties) and the fraud alleged against Company B by the BBC (defrauding multiple investors of their deposits on the same property), which required further investigation.

Principle 2 (Integrity)

24.12. Mr Mulchrone submitted that by accepting instructions to act for those operating a dubious investment scheme and/or one which bore the hallmarks of fraudulent financial arrangements, the First and Second Respondents failed to act with integrity, i.e. with moral soundness, rectitude and steady adherence to an ethical code. It was submitted that the First and Second Respondents must have been cognisant of the red flags which indicated that the Scheme was dubious. Acting with integrity would have required the Respondents not to involve themselves in dubious schemes or transactions in respect of which:

- There was no legitimate reason for the involvement of a solicitor.
- Their involvement lent those transactions and/or the Scheme an undeserved veneer of credibility.
- Such credibility induced or was capable of inducing members of the public to take part in the Scheme.
- Client money was put at risk.

24.13 Mr Mulchrone submitted that the First and Second Respondents therefore breached Principle 2 by their continued involvement in and facilitation of the Scheme.

Principle 6 (maintaining trust)

24.14 Mr Mulchrone stated that the conduct alleged also amounted to a breach by each of the Respondents of the requirement to behave in a way which maintains the trust placed by the public in them and in the provision of legal services. The involvement of solicitors or their employees, and specifically the receipt by solicitors or their employees of payments into their client account, lent a veneer of credibility to investment schemes and caused investors to place confidence in them and in the safety of their invested funds. Public confidence in the Respondents, in solicitors and in the provision of legal services was likely to be undermined by participation in dubious investment schemes. It was therefore averred that both of the Respondents therefore breached Principle 6 of the Principles.

The First Respondent's Position

24.15 The First Respondent affirmed the content of his Answer to the Rule 5 Statement and subsequent witness statement signed and dated 5 April 2018 *(sic*) in which he admitted the factual matrix of Allegation 1.1 namely that he acted for the operators of a property scheme which was dubious and/or bore the hallmarks of fraud. Mr Forman averred that this admission was made with the benefit of hindsight and that the First Respondent further accepted that his conduct amounted to a breach of Principle 6 in that it undermined the trust the public held in solicitors and in the provision of legal services.

24.16 The First Respondent denied that his conduct was dishonest, reckless or demonstrated a lack of integrity in that at the material time he was unaware that the Scheme was dubious and/or bore the hallmarks of fraud.

24.17 In evidence the First Respondent averred that:

- His primary area of expertise was commercial property conveyancing transactions in respect of which he was very successful both in the United Kingdom and Budapest where he set up a property practice for his then employer.

- Upon his return to the United Kingdom in 2005 he set up the Firm which was an entirely new experience for him. He described setting up his own firm as "very new, very fresh, very scary and a lot to take on." His priority in setting up the Firm was to "keep clients happy" and "keep transactions ongoing."

- He began to accept instructions with regards to residential conveyancing, of which he had limited previous experience, in 2010. During ~~2010~~ that year the Second Respondent was recommended to him as a very experienced conveyancing executive. He was told that her significant experience meant that she would not need very much supervision.

- He employed the Second Respondent in December 2010 and she brought with her 6 - 7 clients. He found her to be "uncomplicated, hardworking, direct, on occasion

abrupt but very efficient." He noted that there were "gaps in her skills which needed correcting."

- He met a couple of the Second Respondent's clients in London and "one or two came to Leeds."

- He met with all staff, including the Second Respondent, every Monday to review "to-do lists, completions" and the like.

- He undertook a monthly check of "office balances regarding fee earners' clients and disbursements."

- He undertook a monthly review of fee earner files, usually 4 or 5 files, when he checked the engagement letter, compliance with money laundering procedures and ledgers. With regards to the Second Respondent's files he noted "no apparent issues."

24.18 The First Respondent first became aware of Client N and the Scheme in early 2012 via the Second Respondent. The First Respondent was told that Client N was looking to purchase run down properties, renovate them and sell them on. The Second Respondent stated that she would act on auction packs and undertake the conveyancing work for Client N. He was told that Client N was using investors' deposits to undertake the construction and renovation work and that those investors would be paid out of the profits of sale. The Second Respondent told him that Client N had been administering the Scheme to date but were struggling to cope with the volume which was why she had been approached. In short, the Firm was instructed to handle the administration of the Scheme, receive invested funds, put in place a "security" for the investors and pay out any returns due.

24.19 The First Respondent stated that this was his first involvement in a property investment scheme. He relayed that he "was happy to look at it" but had an initial concern regarding any conflict or potential conflict in acting for Client N and the investors alike. He therefore met with Person K and Person H (directors of Client N) in February/March 2012. They asked if the Firm could receive the investors' deposits and secure the same by registering a charge on the property in their favour. The First Respondent advised that this was not commercially sound and if the property purchased was via a mortgage then the lender would have a first charge on the property. He stated that the investor monies could be acknowledged by placing a notice on the property (a UN1) which in effect registered their interest and required them to be informed if the property was sold.

24.20 After his initial meeting with Person K and Person H, the First Respondent satisfied himself that they were "very professional, very experienced and successful in the 'new build' business." He was aware that the residential property market was slowing down and considered this to be a sound reason for Client N branching out in a new direction.

24.21 The Second Respondent stated that he "saw no red flags" from that meeting and his only concerns were:

- Lack of profit to Client N if too much money was spent on the property renovation.

- The unrealistic period of 10 weeks that Client N envisaged for the renovation to have been completed.

- Potential conflict in acting for the developer and the investor.

24.22 The Second Respondent agreed to act for Client N on the basis that the Firm provided no legal advice to the investors (who were advised to seek independent legal advice) and filing a UN1 Notice with Her Majesty's Land Registry to register the investors' interest in the property The investor would be asked to provide the Firm with a copy of the Joint Venture Agreement that they had signed with Client N prior to the Firm's instruction.

24.23 The Firm were instructed to act on the Scheme on this basis and the First Respondent described his involvement as follows:

- He did not have day to day conduct of the files.

- He conducted weekly "check ins" with the Second Respondent to discuss any issues and she didn't ask for anything further from him.

- He amended the engagement letters that the Second Respondent had drafted to reflect the potential conflict that may arise and what steps would be taken in that regard.

- The Firm would not provide legal advice to the investors who were advised to seek independent legal advice despite the fact that at that stage the JVA had already been entered into with Client N.

- A fixed fee of £200 was payable to the Firm once the UN1 had been registered with Her Majesty's Land Registry.

24.24 The First Respondent accepted that he had seen the "Rogue Traders" programme featuring Person K in or around April 2012. He met with him thereafter to express his concern about the programme but having done so was satisfied that the Scheme credible and that Client N's "rogue employees" that had led to the "Rogue Traders" investigation had been dismissed. He believed that the Scheme worked well without issue or complaint until the Applicant's unannounced visit in August 2012. During that visit he expressly asked KB what the issue was with regards to Client N and it was during this visit that she relayed to him that she was concerned it was a "Ponzi" scheme. He stated that this had shocked him; he struggled to understand why that concern had arisen, as in his opinion, the investors had an interest in a tangible property. He stated that he "could not see where the remark came from or where it was going."

24.25 When KB relayed that there was one ledger for all investors collectively, he responded by instructing the Second Respondent and MB to create separate ledgers for each client which they "worked tirelessly to do." KB was concerned at the £5,000 early exit fee offered to investors after week 10 which the Second Respondent accepted was "generous" but whilst Client N was asset rich they were cash poor and the banks were not lending to property developers freely at that time.

24.26 KB was further concerned at the "loose language" of the engagement letter which required improvement. Upon her return visit in September 2012 the First Respondent provided her with a new version which she remarked was "much better" and at that stage he was satisfied that there were no issues with continuing to act in the Scheme.

24.27 At the final visit in October 2012 the First Respondent relayed to KB that the £5,000 early exit payment had been abolished as investors had been "taking advantage of it." The First Respondent was left feeling that any issues that had been raised regarding the Scheme had been adequately addressed, that KB was "happy for us [the Firm] to continue acting and was happy with the new ledgers."

24.28 During his recorded interview with KB and MS in November 2012 the issue of whether this was a "Ponzi" scheme was raised again. The First Respondent maintained his position that he did not believe this to be the case for the same reasons previously stated. He was taken by surprise as he had thought that the "Ponzi" issue had fallen away once the engagement letter had been re-drafted, separate ledgers created and with the abolition of the £5,000 exit fee. He thought that the interview was to review the Applicant's findings from the previous three visits. After the interview he checked the transactions that had taken place on the Scheme with the Second Respondent and MB but still did not think it was dubious or a "Ponzi" scheme and/or bore the hallmarks of fraud.

24.29 The First Respondent stated that subsequent to the interview, the next communication he had from the Applicant was an "Explanation with Warning" letter in June 2013, ("EWW letter") which attached KB's Forensic Investigation Report. The letter "caught him by surprise" as seven months had elapsed since the interview. The matters which required an explanation from him related to (a) accounting records, (b) conflict of interests/acting in the client's best interests, (c) failing to act with integrity and (d) risk management.

24.30 At that time, June 2013, the Scheme had been running without issue or complaint from either Client N or any of the investors. There had been some frustration as the properties were not selling but he had put that down to a change in the requirements of mortgage lenders which required a six month window between the purchase and sale of a property. This rendered the 10 week turnaround time offered by Client N to investors as undeliverable. Approximately 20 properties had sold and 20 investors had been paid out in accordance with the JVA so at that time, to his mind this was a credible Scheme. However, whilst he did not think that the scheme was "dodgy" he acknowledged the issues raised by the Applicant which he had to address. It was at this time that he read the marketing material of Client N and the detail of the JVA in which he saw inaccuracies and misrepresentations. He advised Client N to seek independent legal advice to address his concerns which they did via their corporate lawyers Napthens. He worked with Napthens in that regard.

24.31 In or around September 2013 the First Respondent became aware that an agency (PA), used by Client N to source investors, had gone into administration. Investors were calling the Firm to query their position which caused him some concern as he was unaware of the contractual relationship between Client N and PA. Having investigated the same he discovered that there was a contractual relationship between investors and PA, as opposed to between investors and Client N, which concerned him as the returns

offered to investors were payable by Client N. As a consequence of these concerns the First Respondent wrote to the Applicant and called on four occasions to express the same. He advised the Applicant that PA had gone into administration and sought guidance as to how he should proceed. He did not receive a response. It was at this time, September 2013, that the First Respondent "got a bad feeling" about PA and relayed the same to Client N.

24.32 In February 2014 the Second Respondent advised him that a claim had been made by a mortgage lender (ME) against Client N. This resulted in ME calling in all loans and exercising their power of sale over the affected properties. Consequently, a number of investors lost the promised return from the proceeds of sale. The First Respondent made plain that no claims were issued against the Firm but as a consequence of the breakdown of the Scheme and the Applicant's ongoing investigation his public indemnity insurance premium was set so high that it was not commercially viable to continue with his practice. On 9 September 2014 the Firm shut down. In the preceding months four complaints were lodged against the Firm with the Legal Ombudsman, all of which were rejected.

24.33 The First Respondent relayed that he heard nothing from the Applicant in relation to their investigation between June 2013 and April 2015. In August 2015 he was notified by the Applicant of their application to the Tribunal. The First Respondent complained to the Applicant regarding the delay in this matter which he thought had been resolved. In November 2015 the Applicant acknowledged the poor service that had been provided. In February 2016, Client N went into liquidation pursuant to a winding up order. In November 2016 the First Respondent was notified by the Applicant of the complaint made by BP, from whom they were seeking further information. BP did not provide that information to the Applicant until February 2017. In July 2017 the First Respondent complained to the Applicant regarding the further delay and in October 2017 the Applicant sent the First Respondent an "Explanation of Conduct" letter which alleged dishonesty for the first time. The First Respondent's evidence on that point was that the dishonesty allegation was predicated on BP's complaint as it had never been raised as an issue previously.

<u>The Second Respondent's Position</u>

24.34 The Second Respondent stated in her written response to the Applicant's "Explanation of Conduct" letter in December 2017 that (a) the engagement letter for joint venture clients was approved by the First Respondent, (b) she was present at the initial meeting with Person H and Person K, (c) upon the Applicant's investigation in the Firm she queried with the First Respondent whether they should continue to act at that time as they only had 20 cases to which he replied "[we] had not been told not to continue and it would be ok to continue until we were it was *(sic)* not to proceed", (d) she opened new files sent out client care packs and prepared the charge (by this she meant the UN1 Notice), (e) each investment was 'secured' against the property that they had the joint venture in, (f) the Firm were not providing legal advice to investors but merely registering their interest and providing confirmation, (g) the First Respondent and other Partner in the Firm did consider whether this was a "Ponzi" scheme but concluded that it was not, (h) investors were repaid on sales but the Firm was not party to the JVA's which had been entered into prior to the Firm's instruction and (i) at the time of

administering the Scheme neither she nor the First Respondent or his partner considered that the scheme was any type of fraud.

24.35 In her Answer to the Rule 5 Statement dated 29 October 2018 the Second Respondent averred that, (a) she was not aware of unrealistically high returns being offered to Client N, (b) specific details of the joint venture agreements were not provided by Client N at the initial meeting, (c) the Scheme was revised, namely the abolition of the early exit fee, by Client N but she was not privy to any of the letters in that regard at the material time, (d) the client care letter was drafted by the partners of the Firm and she had no input in that regard, (e) she was advised by the First Respondent to lodge a UN1 Notice on behalf of the investors in the property that they had invested in; she had no previous experience of UN1 Notices prior to this, (f) the partners authorised all payments made pursuant to the Scheme, (g) she had never seen nor had she been shown the Applicant's Warning Notice thus did not know of the signs to look out for, (h) the limited work undertaken by the Firm and lack of legal advice given did not undermine public trust in the Firm or the provision of legal services and (i) she was not aware of the Rules or Principles at the material time and they were never explained to her.

24.36 In October 2018 the Second Respondent made a written request to the Applicant, which she asked to be placed before the Tribunal, for an agreed outcome. In that letter she stated *inter alia*:

> "I note that you are applying for a Section 43 Notice against me and I am happy to accept this. I admit that my actions were both reckless and incompetent due to the fact that I had not been provided with material information relating to the concerns of the SRA in their initial meeting at Dixons Law offices or the practice leaflet in relation to Possible Fraudulent Investment Schemes. I do not admit that my actions were dishonest."

The Tribunal's Decision

The First Respondent

24.37 The Tribunal considered the admissions of the First Respondent with regards to the factual matrix of Allegation 1.1 and Principle 6 were properly made and therefore found them proved beyond reasonable doubt.

24.38 When considering whether his actions amounted to a breach of Principle 2 (integrity) the Tribunal concluded that the Warning Notice 2009 issued by the Applicant was not equivalent to the investment opportunity scheme presented by Client N. The Tribunal was satisfied that when the First Respondent had concerns regarding the Scheme he addressed them in the following ways : (a) initially meeting with Person H and Person K to express the same, (b) his advice that investors could not secure a charge on the property, (c) his advice that their interest should be registered by way of a UN1, (d) amendments made to the administration of the Scheme following the Applicant's investigation into the Firm and (e) clarification in the engagement letter particularly with regards to investors obtaining independent legal advice.

24.39 *Integrity*

24.39.1 The Tribunal determined that the First Respondent did not present as a solicitor with a tendency towards non-compliance He appeared to have been trying his best to 'get it right' as evidenced by his engagement with the Applicant on each visit and notification to them when PA went into administration. It appeared to the Tribunal that his, albeit erroneous, motivation between June 2013 and February 2014 was to benefit the investors in the Scheme and warn Client N of the shortcomings in their marketing material/JVA. The Tribunal considered whether that position changed once PA had entered into administration but found that it had not predominantly due to the fact that he notified the Applicant of the same and the length of time it took the Applicant to respond. The Tribunal was mindful of the time it took the Applicant to raise issues about the First Respondent regarding a lack of integrity which was not mentioned in KB's investigation report. The Tribunal looked for evidence of the First Respondent's activity once ME issued their claim against Client N in February 2014 and the subsequent complaints made by four investors to the Legal Ombudsman and found it to be limited. The Tribunal had regard to the fact that the Firm shut down shortly thereafter and that the Legal Ombudsman rejected all of the complaints made.

24.39.2 The Tribunal could not be satisfied so that it was sure that the First Respondent appreciated at any time during 2012 – 2014 that the Scheme was dubious and therefore found Principle 2 not proved.

The Second Respondent

24.40 The Tribunal found that the Second Respondent had day to day conduct of the files and relayed information to the First Respondent regarding any issues that arose. She was found to have been proactive in the administration of the Scheme, being primarily responsible for filing the UN1 Notices, and thus well aware of multiple investors having an interest in the same property and 'old' investors being paid dividends from 'new' investor deposits. The Tribunal had regard to her, albeit equivocal, admissions in her request for an Agreed Outcome. The Tribunal determined that in hindsight she accepted that the Scheme was dubious and bore the hallmarks of fraud.

24.41 The Tribunal therefore found the factual matrix of Allegation 2.1 proved beyond reasonable doubt.

24.42 *Principle 6*

24.42.1 Having found the factual matrix proved to the requisite standard the Tribunal concluded that such conduct undermined the trust placed by the public in solicitors and in the provision of legal services (Principle 6). Whilst the Tribunal accepted that the Second Respondent was not a solicitor, she had significant experience as a conveyancing executive and paralegal and could not have been unfamiliar with the standards expected of her.

24.42.2 The Tribunal concluded that Principle 6 had been proved beyond reasonable doubt.

24.43. *Integrity*

24.43.1 The Tribunal placed significant weight on the fact that the Second Respondent was a non-admitted fee earner who was supervised by the First Respondent. Whilst the Tribunal concluded that the Second Respondent had significant conveyancing experience it bore in mind that ultimate responsibility for the manner in which the Scheme operated fell to the First Respondent.

24.43.2 The Tribunal therefore concluded that Principle 2 had not been proved beyond reasonable doubt in respect of the Second Respondent.

25. **Allegations 1.2 and 2.2 (conflict of interest)**

The Applicant's Case

25.1 Mr Mulchrone submitted that solicitors (and by extension their employees in the course of their employment) owe fiduciary duties to act with *"single-minded loyalty"* to their clients. In particular, they must act in good faith and must not place themselves in a position where their duties and their interests may conflict. A solicitor who acts for two clients with potentially conflicting interests, without the informed consent of both, is in breach of the obligation of undivided loyalty.

25.2 He further submitted that a solicitor must not allow the performance of his obligations to one client to be influenced by his relationship with another. He must serve each as faithfully and loyally as if he were his only client. In short, the solicitor must not be inhibited by the existence of one client from serving the interests of another as faithfully and effectively as if he were the only client.

25.3 Additionally, it was submitted, a solicitor must take care not to find himself in a position where there is an actual conflict of duty so that he cannot fulfil his obligations to one client without failing in his obligations to the other. If he does, he may have no alternative but to cease to act for at least one and preferably both. The fact that he cannot fulfil his obligations to one client without being in breach of his obligations to the other will not absolve him.

25.4 Mr Mulchrone submitted that the Respondents, by acting both for Client N / Group H *and* the investor clients, placed themselves in a situation where they were acting for both sides of commercial transactions, namely loans in the guise of investments. The investors were not institutional mortgage lenders such as banks or building societies but, rather, individual members of the public. Their interests were directly in conflict with those of Client N/Group H (and indeed with each other's), as demonstrated by:

- The Respondents' failure to alert investors where there was more than one investor per property.

- The fact that payments to investors leaving the Scheme were funded by the capital of new investors.

- The Respondents' failure to advise that the Scheme was dubious and/or high risk.

- The fact that Client N's/Group H's interests lay in maximising the income stream from multiple investors, whereas the investors' lay in protecting their own capital and securing optimum, lawful profits.

Outcome 3.5 (conflict of interest)

25.5 Mr Mulchrone submitted that the Respondents, having accepted instructions from Client N, Group H and person K as well as investors, placed themselves in a position which gave rise to a conflict between the interests of clients, or the significant risk of one, the Respondents breached Outcome 3.5 of the SRA Code of Conduct 2011 namely;

> "…you do not act if there is a client conflict, or a significant risk of a client conflict, unless the circumstances set out in Outcomes 3.6 or 3.7 apply…"

25.6 Mr Mulchrone submitted that none of the circumstances set out in Outcomes 3.6 or 3.7 applied.

Principle 2 (Integrity)

25.7 Mr Mulchrone submitted that the conduct alleged rendered the Respondents' in breach of Principle 2. Acting with integrity required the Respondents, as a matter of basic professional ethics, not to act in circumstances giving rise to a conflict between the interests of clients or the significant risk of one (or accept fees for doing so, however modest). It further required them to encourage the investors to seek independent legal advice with regards to the Scheme. The Respondents failed in both regards and as such, it was submitted, they demonstrated a lack of integrity.

Principle 3 (Independence)

25.8 Mr Mulchrone submitted that by acting in circumstances which gave rise to a conflict between the interests of clients or the serious risk of one, the Respondents allowed their independence to be compromised. In view of the dubious and high risk nature of the Scheme, the Respondents could not give proper advice to their investor clients without potentially compromising the interests of Client N/Group H, which lay in investors continuing to make payments into the Scheme. It was submitted that the Respondents failed to give such advice thus demonstrably preferred the interests of Client N/Group H over those of the investors. It was submitted that having accepted instructions from Client N and the investors simultaneously, the Respondents permitted the Firm to be used as little more than a vehicle for the smooth operation of the Scheme. Their conduct, it was averred, lent the Scheme an undeserved veneer of credibility and rendered the Respondents in breach of Principle 3.

Principle 6 (Trust)

25.9 Mr Mulchrone submitted that the Respondents conduct further breached the requirement placed on them to behave in a way which maintained the trust placed by the public in them and in the provision of legal services. The public have a reasonable expectation that solicitors and/or their employees have adequate systems in place for the identification and prevention of conflicts of interests. Where, as in the present matter, such conflicts are obvious, the expectation was that solicitors decline

instructions to act for one or both parties. The Respondents failed to do so and therefore breached Principle 6.

The First Respondent's Position

25.10 The First Respondent admitted the factual matrix of Allegation 1.2, failure to achieve Outcome 3.5, and breach of Principles 3 and 6.

Integrity

25.11 The First Respondent denied that his conduct lacked integrity and averred that at the material time he was not aware of a conflict or serious risk of a conflict.

The Second Respondent's Position

25.12 The Second Respondent submitted in her Answer that as the partners in the Firm considered there to have been no conflict of interest, she had no cause for concern. Investors were regarded as lenders and she perceived no difficulty or conflict in acting for lenders and clients. She undertook checks with Client N in the cases where there were more than one investor per property to ensure that there was sufficient equity in the property to pay out dividends due upon re-sale.

Integrity

25.13 The Second Respondent stated in her Answer that she "[did] not consider that [she] acted without integrity as [she] followed the guidelines set out to [her] and relied on the Partners to consider whether there was a conflict or whether advice was needed or not as they were qualified solicitors."

The Tribunal's Decision

The First Respondent

25.14 The Tribunal considered the admissions of the First Respondent in respect of the factual matrix of Allegation 1.2, failure to achieve Outcome 3.5, and breach of Principles 3 and 6. The Tribunal concluded that the admissions were properly made and therefore proved beyond reasonable doubt.

25.15 *Integrity*

25.15.1 The Tribunal determined that the First Respondent addressed his mind to the risk of a conflict arising and addressed the same with Client N, by advising investors to seek independent legal advice, by amending the engagement letter upon KB's suggestion and by making it plain to investors that if a conflict arose the Firm would cease to act. Whilst these measures did not obviate the fact that a conflict and / or significant risk of a conflict existed, between investors themselves as well as with Client N, the Tribunal was satisfied that he had regard to the same and endeavoured to find a solution in that regard predominantly by way of the limited retainer.

25.15.2 Weighing all attendant circumstances in the balance the Tribunal found Principle 2 not proved beyond reasonable doubt.

The Second Respondent

25.16 The Tribunal accepted that the Second Respondent was led by the First Respondent and other partner in the Firm with regards to the administration of the scheme but that she had day to day conduct of the files and thus would have been well aware of multiple investors having an interest in the same property as well as 'old' investors being paid out of 'new' investor deposits. The Tribunal had regard to the fact that she positively encouraged investors to invest in Scheme which she described as having "no problems at the time of this email [January 2013] and all joint ventures are progressing with no complaints." The Tribunal therefore found the factual matrix of Allegation 2.2 proved beyond reasonable doubt.

25.17 *Principles 3 and 6*

25.17.1 The Tribunal found that this conduct resulted in a failure to achieve Outcome 3.5 and a breach of Principle 3 (you must not allow your independence to be compromised) and Principle 6 (you must behave in a way that maintains the trust the public places in you and in the provision of legal services).

25.17.2 The Tribunal therefore found that Principles 3 and 6 were proved beyond reasonable doubt.

25.18 *Integrity*

25.18.1 The Tribunal found a breach of Principle 2 not proved beyond reasonable doubt for the same reasons set out in respect of Allegation 2.1 above.at paragraph 24.43

26. **Allegations 1.3 and 2.3**
(inadequate advice)

The Applicant's Case

26.1 Mr Mulchrone submitted that it was evident that the Scheme was not only dubious but also high risk, not least because:

- The repayment of capital and/or profits were wholly or partly dependent upon the ongoing entry of new investors into the Scheme;

- Contrary to Client N's/Group H's marketing materials, investor deposits were not *"securitised"* or protected, adequately or at all.

- The Respondents, quite deliberately, gave no advice in respect of the obvious risks of the Scheme, on the basis that this was outside the terms of their retainer. In particular, they failed to advise on (a) the underlying documentation, including the joint venture agreement, which, in many cases, they failed even to obtain; and (b)

the fact that payments to existing investors were funded from the capital of new investors.

26.2 Mr Mulchrone stated that it was very serious misconduct for a solicitor and/or his employee to have facilitated objectively dubious, high risk transactions, and to have accepted fees for doing so (however modest), without at least alerting the client to the dubious and high risk nature of such transactions. It was accepted that the Respondents' client care letter contained some caveats to the effect that the investments were *"largely unsecured"* but the Respondents were on notice that Client N/Group H was making misleading representations to another investors, as to the level of security offered by a unilateral notice. The Respondents were under a duty to correct such misleading impressions and to provide proper advice as to the nature and limited effect of a UN1.

26.3 Mr Mulchrone further submitted that the Respondents were aware that Client N/Group H was purporting to offer investors a 50% equity share in a tangible property in return for a £20,000 investment absent any or adequate documentation to evidence the creation of a valid, enforceable, 50% beneficial interest in the land, such as a deed of trust. It was submitted that the Respondents plainly owed a duty to advise the investors of:

- The dubious and high risk nature of such an offer;
- The fact that it made no commercial sense;
- The steps actually required to obtain a 50% equity share in such property.

26.4 It was submitted that the Respondents failed in all respects.

Principle 2 (Integrity)

26.5 By failing to advise their investor clients, adequately or at all, in relation to the risks of their proposed investments, and/or the level of security on offer, the Respondents failed to act with integrity. Acting with integrity required the Respondents to have:

- Advised that the Scheme was dubious and/or high risk.
- Advised new investors that their money may be used to pay out existing investors.
- Advised in terms that a UN1 did not offer the level of protection suggested by Client N/Group H.
- Declined to act for investor clients altogether and encouraged them to seek independent legal advice.

26.6 Mr Mulchrone submitted that the Respondents failed to do any of these things and therefore breached Principle 2 of the SRA Principles 2011.

Principle 4 (acting in best interests of clients)

26.7 Mr Mulchrone submitted that the conduct alleged amounted to a failure to act in the best interests of each client. Had they acted in the best interests of their clients the Respondents would have advised their investor clients that; (a) the Scheme was dubious and/or high risk, (b) that their money may be used to pay out existing investors and as to the real nature and (c) limited effect of a UN1. The Respondents did none of these things but, on the First Respondent's own account, simply handled the transactions and

entered the UN1 at HMLR (an administrative task which did not require the involvement of a solicitor but did provide an undeserved veneer of credibility to a plainly dubious scheme).

26.8 The Respondents were aware or at least on notice of all of the facts and matters which indicated that the scheme was dubious but they nevertheless accepted investor monies and passed them to Client N/Group H and/or to other investors, thereby putting those monies at risk. The Respondents charged the investor clients fees for this activity, notwithstanding that it involved little or no legal work by them. Mr Mulchrone submitted that the Respondents therefore breached Principle 4 of the Principles.

Principle 6 (Trust)

26.9 Mr Mulchrone submitted that the Respondents' conduct amounted to a breach of the requirement placed on them to behave in a way which maintained the trust placed by the public in them and in the provision of legal services. Investors in the Scheme expected the Respondents, whom they instructed and to whom they paid professional fees, to have warned them if the Scheme was objectively dubious or high risk. They also expected to be informed if it was proposed that their money may be used for purposes other than those agreed, namely for the renovation of properties.

26.10 It was further submitted that investors would have expected to be properly advised about the security of their investment, particularly in circumstances where the Respondents were on notice that Client N/Group H had made misleading representations about that. Public confidence in the Respondents, in solicitors and in the provision of legal services was likely to be undermined by their accepting fees for the collection and disbursement of monies rather than for the benefit of advice or some other regulated legal service.

26.11 Mr Mulchrone submitted that the Respondents therefore breached Principle 6 of the SRA Principles 2011.

The First Respondent's Position

26.12 The First Respondent admitted the factual matrix of Allegation 1.3, and also having breached Principles 4 and 6.

Integrity

26.13 The First Respondent denied that he acted without integrity as he was neither aware, nor did he perceive there to have been inadequate advice given at the material time.

The Second Respondent's Position

26.14 The Second Respondent maintained that she administered the Scheme under the supervision of the First Respondent and his partner and that she had no input in the drafting of client care letters or standard letters sent to investors.

Integrity

26.15 The Second Respondent submitted that she was "advised that advice would not be given to either party [Client N or investors] and that I was just to administer the Scheme using the standard letters. I would refer any investor asking advice to see an independent solicitor or speak to the Client *(sic)* company as Dixon Law could not offer advice."

The Tribunal's Decision

The First Respondent

26.16 The Tribunal considered the admissions of the First Respondent in respect of the factual matrix of Allegation 1.3 and breach of Principles 4 and 6. The Tribunal concluded that the admissions were properly made and therefore proved beyond reasonable doubt.

26.17 *Integrity*

26.17.1 The Tribunal found that investors were inadequately advised as to the status of a UN1 Notice and the fact that 'old' investors were being paid out of 'new' investor deposits. Efforts were made by the First Respondent to limit the Firms' retainer but that was not sufficient to protect investors who were exposed to risk. However, the Tribunal also had regard to the fact that investors had already entered into the JVA at the point which the Firm were instructed and that that they were advised to seek independent legal advice. The Tribunal could not be satisfied so that it was sure that the First Respondent's conduct lacked integrity as some effort was made to advise investors regarding risk and the limited protection afforded by the UN1 albeit those efforts were inadequate. The Tribunal concluded that a breach of Principle 2 was not proved beyond reasonable doubt.

The Second Respondent

26.18 The Tribunal concluded that whilst the Second Respondent was not legally qualified she was the main contact for investors. Investors sought reassurance from her as to the credibility of the Scheme. In particular she liaised with BP and provided reassurance to him when PA went into administration. The Tribunal found no evidence that investors were made aware of multiple interests being filed in respect of one property or 'old' investors being paid out of 'new' investor deposits. The Tribunal was satisfied beyond reasonable doubt that the factual matrix of Allegation 2.3 was proved. The Tribunal further found that these facts amounted to a breach of Principle 4 (you must act in the best interests of the client) and Principle 6 (you must maintain the trust the public places in you and in the provision of legal services) both of which were found proved beyond reasonable doubt.

26.19 *Integrity*

26.19.1 The Tribunal found a breach of Principle 2 not proved beyond reasonable doubt for the same reasons set out in respect of Allegation 2.1 at paragraph 24.43 above.

27. **Allegation 1.4**
(accounting records)

The Applicant's Case

27.1 Mr Mulchrone submitted that the First Respondent was duty bound, as a solicitor and principal of the Firm, to have complied with the prevailing Accounts Rules.

27.2 In respect of Rule 29.2 the First Respondent was obliged to comply with the following:

> "…All dealings with client money must be appropriately recorded:
>
> (a) in a client cash account or in a record of sums transferred from one client ledger account to another; and
>
> (b) on the client side of a separate client ledger account for each client (or other person, or trust).
>
> No other entries may be made in these records…"

27.3 The investors' money was client money, paid over to the Firm for a specific purpose. The First Respondent did not record all his dealings with client money appropriately in that he did not maintain separate client ledger accounts for each investor client until this was raised with him by the FIO.

27.4 Mr Mulchrone therefore submitted that the First Respondent breached Rule 29.2 of the Accounts Rules.

The First Respondent's Position

27.5 The First Respondent admitted Allegation 1.4 in its entirety.

The Tribunal's Decision

27.6 The Tribunal found that the admissions were properly made and Allegation 1.4 proved beyond reasonable doubt.

28. **Allegations 1.5 and 2.4**
(improper payments out of client account)

The Applicant's Case

28.1 Mr Mulchrone submitted that the Respondents were both obliged to comply with Rule 14.5 of the Accounts Rules namely that they:

> "…must not provide banking facilities through a client account. Payments into, and transfers or withdrawals from, a client account must be in respect of instructions relating to an underlying transaction (and the funds arising therefrom) or to a service forming part of your normal regulated activities…"

28.2 Mr Mulchrone referred the Tribunal to the authority of Patel v SRA [2012] EWHC 3373 (Admin), in which Cranston J considered this rule and interpreted it thus:

> "[18] …movements on a client account must be in respect of instructions relating to an underlying transaction which is part of the accepted professional services of solicitors. In shorthand the instructions must relate to an underlying legal transaction… movements on a client account must be in respect of instructions related to a service forming part of the normal regulated activities of solicitors."

28.3 Mr Mulchrone submitted that none of the movements on the Firm's client account were predicated on client instructions in respect of an underlying legal transaction. Movements therefore fell outwith the accepted professional services of solicitors. Nor were any of the movements on client account in respect of instructions which related to a service forming part of the normal regulated activities of solicitors. On the contrary, the Respondents had specifically purported to exclude from their retainer any duty to advise the investor clients in respect of the Scheme and any services provided were of a purely administrative nature which did not require the involvement of solicitors.

28.4 Mr Mulchrone stated that having received and disbursed investor monies without an underlying legal transaction for which the Respondents were providing legal advice or a service within their normal regulated activities, the Respondents effectively provided a banking facility. Mr Mulchrone averred that none of the exceptions provided for in Rule 20 applied and as such, the Respondents breached Rule 14.5 of the Accounts Rules.

Principle 2 (integrity)

28.5 Mr Mulchrone submitted that having caused and/or allowed payments out of the client account other than in accordance with client instructions, the Respondents demonstrated a lack of integrity.

28.6 Acting with integrity required the Respondents, as a matter of basic professional ethics, to safeguard all client money entrusted to them and not to disburse it save in accordance with client instructions or as exceptionally permitted by the Accounts Rules. Conversely, the Respondents (a) permitted their client account to be used as a banking facility and (b) caused or allowed the deployment of 'new' investor monies, without their consent, to pay out 'old' investors early exit payment and/or initial investment.

28.7 Mr Mulchrone submitted that the Respondents failed to safeguard the money entrusted to them and disbursed it other than in accordance with instructions or as exceptionally permitted by the Accounts Rules. The Respondents therefore breached Principle 2.

Principle 6 (maintaining trust)

28.8 Mr Mulchrone submitted that the improper provision of a banking facility through the client account:

- Was objectionable in itself (solicitors are qualified and regulated in relation to their activities as solicitors, not as bankers);

- Carried the risk that the account may be used unscrupulously by the client for money laundering purposes.

- Inappropriately allowed an insolvent client continued access to a bank account (a commercial service which would otherwise be withdrawn).

- Carried a risk, in the event of client insolvency, of disaffection and opprobrium which is involved in favouring one creditor over another.

- Carried a risk of section 127 of the Insolvency Act 1986 being triggered which would have required creditors to reimburse payments from the client account in the event of the any liquidation proceedings.

28.9 Mr Mulchrone submitted that the Respondents breached Principle 6.

Principle 10 (protecting client money)

28.10 Mr Mulchrone asserted that the Respondents' conduct amounted to a failure to protect investor' clients' money which vitiated the purpose of the Accounts Rules namely to safeguard client money.

28.11 It was submitted that non-compliance with the Accounts Rules was likely to put client money at risk and the failures of the Respondents to comply with the same rendered them in breach of Principle 10.

The First Respondent's Position

28.12 The First Respondent admitted the factual matrix of Allegation 1.5, and having breached Rules 14.5 and 20 of the Accounts Rules and Principles 6 and 10.

Integrity

28.13 The First Respondent asserted that his failures with respect to this allegation were inadvertent and incompetent but did not demonstrate a lack of integrity. He stated that at the material time he was not aware that the Firm was making payments unpermitted by the Solicitors Accounts Rules and that his conduct was not a flagrant disregard for the same.

The Second Respondent's Position

28.14 The Second Respondent denied the entirety of Allegation 2.4 in her Answer to the Rule 5 Statement. She averred that she was not a part of the accounts department and had no knowledge of the Solicitors Accounts Rules. She maintained that she was not a qualified solicitor, relied upon instructions from the First Respondent and his partner, understood that the UN1 provided protection for investors and had no reason to believe at the material time that Client N would experience solvency issues.

Integrity

28.15 The Second Respondent reiterated in her Answer to the Rule 5 Statement that she believed that the UN1 protected the investors' interest and as she filed the same she denied having lacked integrity.

The Tribunal's Decision

The First Respondent

28.16 The Tribunal found that the admissions were properly made. The factual matrix of Allegation 1.5, breach of Rules 14.5 and 20 of the Accounts Rules, breach of Principle 6 (public trust) and breach of Principle 10 (you must protect client money and assets) proved beyond reasonable doubt.

28.17 *Integrity*

28.17.1 The Tribunal considered that the First Respondent relied far too heavily on MB and the Second Respondent producing 'chits' which he signed off in order to approve payments made out of the client account. The entire system of making payments was woefully inadequate. The most egregious examples of this was his approval of transactions in which 'old' investors were paid out of 'new' investor deposits. However, the Tribunal could not be satisfied that the First Respondent was aware at the material time that this was the reality of the situation. It appeared to the Tribunal that the First Respondent only interrogated the terms of the JVA, the manner in which payments were made and the remit of the engagement letter upon the Applicant's investigation into the Firm. Thereafter he sought to remedy, albeit inadequately, the deficiencies found. Having considered all attendant circumstances, the Tribunal found the breach of Principle 2 not proved beyond reasonable doubt.

The Second Respondent

28.18 Having found that the Second Respondent had day to day conduct of the files, the Tribunal concluded that she was well aware of the payments being made in and out of the client account. She could not authorise payment without the First Respondent's approval. The Tribunal did not accept the assertion that as she was not in the accounts department nor was she a solicitor that this absolved her from allowing payments to be made absent client instructions. The Tribunal therefore found the factual matrix of Allegation 2.4, breach of Rules 14.5 and 20 of the Accounts Rules, breach of Principle 6 and Principle 10 proved beyond reasonable doubt.

28.19 *Integrity*

28.19.1 The Tribunal found a breach of Principle 2 not proved beyond reasonable doubt for the same reasons set out in respect of Allegation 2.1 above at paragraph 24.43.

29. **Allegation 1.6.**
(improper attempts to limit liability)

The Applicant's Case

29.1 Mr Mulchrone referred the Tribunal to the client care letter sent to investor clients which stated *inter alia:*

> "…Our liability to you is limited to losses, damages, costs and expenses ("losses") caused by our negligence of [sic] wilful default. We will not be liable if such losses are due to the acts or omissions of any other person or due to the provision to us of incomplete, misleading or false information. The aggregate liability, whether to you or any third party and whether in contract, tort or otherwise of this firm, its partners, employees and agents for any losses in any way connected with any of the services provided to you under the terms of this Letter of Engagement (and including interest) shall not exceed £20,000.00…"

29.2 The Insurance Rules which were in force at the material time provided that the minimum level of cover was at least £2,000,000.00.

29.3 KB queried with the First Respondent whether this passage could give investors the impression they could recoup their investment from the Firm in the event of problems and he responded that it was a standard paragraph suggested by the Firm's insurers.

Outcome 1.8 of the Code

29.4 This outcome mandates that clients have the benefit of solicitors' compulsory professional indemnity insurance prohibits solicitors from excluding or attempting to exclude liability below the minimum level of cover required by the SRA Indemnity Insurance Rules. Mr Mulchrone submitted that having attempted to limit the Firm's liability to investor clients to £20,000.00, the First Respondent failed to achieve Outcome 1.8 of the Code.

Principle 5

29.5 Mr Mulchrone submitted that the conduct alleged further amounted to a failure by the First Respondent to provide a proper standard of service to his investor clients. Providing a proper standard of service to such clients required the First Respondent to ensure that they had the benefit of the Firm's professional indemnity insurance. Clients should not have been misled by the Firm in its attempted exclusion of liability below the minimum level of cover.

29.6 It was submitted that the First Respondent failed to ensure his investor clients had the benefit of the Firm's professional indemnity insurance and also misled them by attempting to exclude liability below the minimum level allowed under the rules. The First Respondent therefore breached Principle 5 of the Principles.

Principle 6

29.7 Mr Mulchrone submitted that the First Respondent's conduct in this regard undermined the trust the public placed in him and/or the provision of legal services. Members of the public expect solicitors to maintain professional indemnity insurance at the minimum

level required by their regulatory body. They do not expect solicitors to mislead their clients by purporting to exclude liability below that level.

29.8 Mr Mulchrone submitted that the First Respondent did purport to do so and therefore breached Principle 6 of the Principles.

The First Respondent's Position

29.9 The First Respondent admitted the factual matrix of Allegation 1.6, admitted having failed to achieve Outcome 1.8 and having breached Principles 5 and 6.

The Tribunal's Decision

29.10 The Tribunal found that the admissions were properly made and Allegation 1.6 proved beyond reasonable doubt.

30. **Allegation 1.7.1 and 2.5.1: Dishonesty**

The Applicant's Case

30.1 Mr Mulchrone submitted that the Respondents' conduct was dishonest according to the Ivey test in that:

- They must have known, or at least suspected, that the Scheme was dubious or bore hallmarks of fraudulent financial arrangements but they nevertheless acted for those operating it.

- They continued to act for those operating the Scheme even after KB drew attention to its resemblance to a Ponzi scheme.

- They must have known, or at least suspected, that they could not properly act for investors in the Scheme as well as for its operators but nevertheless did act for them.

- They must have known, or at least suspected, that they were duty bound to advise investor clients that the Scheme was dubious and/or high risk but they deliberately gave no advice in this regard.

- They must have known, or at least suspected that their payments out of client account were improper and in breach of the Accounts Rules for all or any of the reasons set out above but they nevertheless caused or allowed such payments to be made.

The First Respondent's Position

30.2 The First Respondent denied that his conduct was dishonest. He averred that at the material time he genuinely held the belief that the Scheme was credible, that investors' held an interest in a tangible asset and that there were no complaints until the Applicant's investigation in the Firm. He stated that when matters caused him concern he raised them with Client N, amended the client care letter, sought guidance from the Applicant and limited the remit of the investor retainer.

30.3 The First Respondent asserted that the main concern from KB was with regards to the £5,000 early exit fee offered to investors which was resolved. He stated that after the investigation meeting with KB and MS in November 2012 he understood there to be no issues, from the Applicant's perspective, in continuing to act in the Scheme. This belief was enforced in the following seven months in which he heard nothing from the Applicant regarding their investigation. When he was provided with a copy of KB's investigation report, no concern was raised with regards to his honesty or otherwise. It seemed to the First Respondent that dishonesty only became an issue upon receipt of BP's report to the Applicant, the basis of which weakened considerably when BP was cross examined on oath.

30.4 The First Respondent referred the Tribunal to the 20 character references submitted on his behalf from fellow professionals, clients and from personal referees all of which attested to his exemplary good character spanning 30 years. He further relied upon his unblemished professional career to date.

The Second Respondent's Position

30.5 The Second Respondent in her Answer to the Rule 5 Statement and in her request for an Agreed Outcome in October 2018 denied that her conduct had been dishonest.

The Tribunal's Decision

The First Respondent

30.6 The Tribunal carefully considered the documentary evidence before it and that which it had heard. The Tribunal had regard to the fact that the First Respondent had submitted himself for lengthy cross examination under oath. The Tribunal considered the references submitted on his behalf to be glowing and they emanated from his professional brethren, clients, friends as well as family. The Tribunal found the reference from Needles Solicitors, his current employer, to be of particular significance and carried significant weight.

30.7 In applying the first limb of the Ivey test, namely the First Respondent' state of knowledge as to the facts at the material time, the Tribunal considered the various stages in the timeline presented and found the following:

- In early 2012 the Second Respondent appraised him of the potential instructions from Client N. At this point in time the Second Respondent was a conveyancing executive of considerable experience having joined the Firm with her own following of clients. The First Respondent reasonably relied upon her professional credentials and recommendation.

- In February/March 2012 the initial meeting with Person H and Person K took place. The Respondent expressed his concerns regarding certain aspects of the Scheme, made plain the limited basis upon which the Firm could act for Client N and investors at the same time, and advised that the only potential security that could be offered to investors was by way of a UN1 Notice. The Tribunal found that that he was offering solutions to secure the interests of investors and Client N.

- In April 2012 the "Rogue Traders" television programme was aired the First Respondent met with Person K to discuss his concerns. Having done so he acted upon Person K's assurances that the employees responsible for the conduct that led to the criticisms identified in the programme had been dismissed and this was no longer an issue. The First Respondent had satisfied himself that no future issues would arise in that regard.

- From August – November 2012 the Applicant investigated the Firm, the First Respondent took on board all concerns raised and sought to address them. No issue was raised as to his honesty or otherwise during this period and he cooperated fully with KB.

- A combination of the abolition of the early exit fee and having not heard any further from the Applicant between November 2012 and June 2013 led the First Respondent to believe that there were no issues regarding the credibility of the Scheme. This was further affirmed by the fact that some 20 properties had sold, and that apparently investors were happy as was Client N.

- When he became aware that PA had gone into administration he notified the Applicant of the same in September 2013 and sought guidance in respect of the same. He also liaised with Napthens and provided input as to how the JVA they were drafting required improvement.

- In February 2014 ME began to exercise their power of sale over the properties due to Client N breaching the banking terms of their lending.

30.8 The Tribunal concluded that at the material times the First Respondent's knowledge as to the facts was that the Scheme did not bear the characteristics of a "Ponzi" scheme nor did it bear the hallmarks of fraudulent transaction. The Tribunal did not need to consider whether his belief was reasonable rather whether it was genuinely held and it found that it was. It further found that the First Respondent genuinely believed that he had adequately addressed the potential for any conflict arising by limiting the Firm's retainer. The Tribunal also found that the First Respondent genuinely believed that the Scheme was credible by virtue of the fact that investors' interest in a tangible property was registered by way of the UN1 Notice. Again, the Tribunal was not concerned with whether that was reasonable or not when considering dishonesty. The Tribunal determined that in relation to payments to investors and others out of clients account he relied upon the 'chits' given to him for approval by the Second Respondent and MB and whilst he did not interrogate them further at the material time, he approved them in good faith.

30.9 The Tribunal had regard to the fact that the Applicant, upon the initial investigation at the Firm, did not express any concerns regarding dishonesty. Allegations of dishonesty arose in 2017 and appeared to have been based on BP's report but his evidence unravelled under cross examination. The allegations of dishonesty arose five years after KB's visits to the Firm, four years after the Firm ceasing to act for Client N and investors, and three years after closure of the Firm.

30.10 The Tribunal concluded that the First Respondent's knowledge as to the facts at the material time, which appeared to have been shared by the Applicant, was genuinely held. Based upon those facts the Tribunal determined that, objectively, his conduct was not dishonest.

30.11 Allegation 1.7.1 was therefore found not proved beyond reasonable doubt.

The Second Respondent

30.12 Having made findings of fact that the Second Respondent, who was a non-admitted fee earner, relied upon the First Respondent for supervision and instructions, the Tribunal considered her knowledge of the facts at the material time. The Tribunal concluded that she was entitled to rely upon the First Respondent's instructions and be led by his assurances that they could properly continue to act. The Tribunal found that she genuinely held the belief at the material time that there was no "Ponzi" element to the Scheme nor that it bore the hallmarks of fraudulent activity. Based upon those facts the Tribunal determined that, objectively, her conduct was not dishonest.

30.13 Allegation 2.5.1 was therefore found not proved beyond reasonable doubt.

31. **Allegation 1.7.2 and 2.5.2: Recklessness**

The Applicant's Case

31.1 Mr Mulchrone submitted that the Respondents were reckless as defined in Brett with regards to:

- Whether the Scheme was dubious or bore hallmarks of fraudulent financial arrangements.
- Whether they could properly act for investors in the Scheme as well as for those operating it.
- Whether they were advising their investor clients, adequately or at all, in respect of:
- The risks arising from their proposed investments.
- The level of security offered in respect of their proposed investments.
- Whether their payments out of client account were proper or in accordance with the Accounts Rules.

The First Respondent's Position

31.2 The First Respondent denied that his conduct in acting in the Scheme was reckless. He averred that at the material time he did not appreciate that there was any risk that the Scheme was dubious. He formed this view in light of the fact that there were tangible properties against which investors interests were registered. When KB raised the possibility that the Scheme was "Ponzi" in nature and/or dubious at her first visit he believed that he had met those concerns sufficiently by (a) amendments to the client care letter, (b) learning of the abolition of the £5,000 early exit fee and (c) the creation of separate ledgers.

31.3 His evidence was that, at the material time, he was never concerned that the Scheme may have been dubious, he believed it to have been properly run by experienced property developers and that the limited remit of the Firm meant there was no significant and/or perceived risk.

The Second Respondent's Position

31.4 In her Answer to the Rule 5 Statement dated 29 October 2019 the Second Respondent stated;

> "…I do admit that not being included in the meeting with the SRA or being party to the letter from the SRA resulted in my actions being reckless and incompetent as I was not in possession of the concerns raised by the SRA and warnings given…"

31.5 In an email dated 13 April 2019 the Second Respondent stated;

> "…After seeing the letter from the SRA that I had not previously seen and the transcript of the meeting that I was not involved in is *(sic)* that in hindsight it is now I consider the work carried out was reckless and incompetent…"

The Tribunal's Decision

The First Respondent

31.6 The Tribunal applied the test set out in Brett to the facts found proved. In respect of the first limb, namely was the First Respondent aware of a risk, the Tribunal reached the following conclusions based upon the chronology of events as they unfolded.

31.7 Firstly, up until June 2013 any risks posed by the Scheme were met by the First Respondent in that he addressed all of the concerns raised by KB in respect of deficiencies in the client care letter and creation of separate ledgers. The Tribunal found that the delay by the Applicant in issuing the EWW letter to the First Respondent supported his belief that as the £5,000 early exit fee had been abolished, to his mind, and the other concerns raised by KB having been resolved, that the query as to whether the Scheme was a "Ponzi" scheme had fallen away.

31.8 However, upon receipt of the EWW letter on June 2013, it was made abundantly clear to the First Respondent that the Applicant remained concerned as to the nature of the Scheme. Furthermore, the EWW letter expressly stated that the Firm should not have been collecting fees from clients without an invoice having been raised. The Tribunal therefore concluded that as at June 2013 the First Respondent was aware of the risks, yet proceeded to act nonetheless.

31.9 The Tribunal found that the action taken by the First Respondent, namely an email dated 1 July of 2013 to the Second Respondent, did not adequately address the risk posed by the Scheme. The Tribunal determined that this email essentially set out technical adjustments to the Scheme, and whilst the First Respondent may have thought that it had solved the issues raised, it did not militate against the risk nor did it go remotely far enough to do so.

31.10 The Tribunal accepted that the First Respondent notified the Applicant in September 2013 that PA had entered into administration and that he had sought guidance in that regard. However, having not received a response from the Applicant the First Respondent continued to act. This was despite the fact that, on his own admission, he "started to get a bad feeling about [PA]" on 24 September 2014. In February 2014 the Second Respondent advised him that ME had exercised their power of sale in respect of properties as a consequence of Client N's alleged breach of banking terms. Notwithstanding the same the Firm continued to act.

31.11 The Tribunal concluded that from at least 1 July 2013 the First Respondent was well aware of the risks posed by the Scheme yet continued to act without sufficient safeguards to reduce or protect against those risks. As time progressed, there were numerous checkpoints at which the First Respondent could have ceased to act but failed to do so. The Tribunal found that his conduct in that regard was reckless.

31.12 The Tribunal therefore found Allegation 1.7.2 proved beyond reasonable doubt.

The Second Respondent

31.13 The Tribunal considered the Second Respondent's "admissions" in relation to Allegation 2.5.2 to be ambiguous and equivocal and therefore considered the evidence against her on that basis. Having found that she had day to day conduct of the files and liaised with investor queries directly, the Tribunal determined that she was fully familiar with the workings of the Scheme. She was responsible for raising "chits" for the First Respondent's approval. She managed, along with MB, client deposits and payments. She would have been well aware that "old" investors were being paid dividends from "new" investor deposits. She filed the UN1 Notices and would have appreciated that multiple investors held an interest in the same property.

31.14 Most telling for the Tribunal was the fact that having received the email from the First Respondent on 1 July 2013 which set out the "red flags" concerning the Scheme, she continued to administer the same without regard to the amendments instructed. An example of this was the fact that she sent BP a copy of the old, unrevised client care letter despite having been made aware of the new version. The Tribunal found that on her own admission in her Answer to the Rule 5 Statement, she was aware of the risks posed by the Scheme in that she averred "…I did mention to [the First Respondent] after the initial SRA visit that maybe we should not continue…" The Tribunal found that she was aware of the risks yet continued to act on the front line despite this.

31.15 The Tribunal therefore found Allegation 2.5.2 proved beyond reasonable doubt.

32. **Allegation 1.7.3 and 2.5.3: Manifest incompetence**

The Applicant's Case

32.1 Mr Mulchrone further submitted that the Respondents' conduct demonstrated manifest incompetence as defined in Iqbal.

The First Respondent's Position

32.2 The First Respondent accepted that he had not demonstrated competence with regards to the Scheme but denied that he was a manifestly incompetent solicitor. He relied upon his extensive career history and previous unblemished record in that regard.

The Second Respondent's Position

32.3 The Second Respondent appeared to accept, with the benefit of hindsight, that her administration of the Scheme demonstrated manifest incompetence.

The Tribunal's Decision

The First Respondent

32.4 The Tribunal had regard to the definition of manifest incompetence discussed in Iqbal in consideration of the facts. The Tribunal acknowledged that the First Respondent had been a successful commercial conveyancing solicitor over a number of years prior to his involvement in the Scheme. However, that did not detract from the manner in which he acted for Client N and investors, nor did it detract from the responsibility that fell to him in the administration of the Scheme. The Tribunal found that the First Respondent entered into the new field of residential conveyancing somewhat naively and having placed too much reliance on the abilities of the Second Respondent who was not a solicitor. He failed to interrogate the underlying documentation, namely the JVA, client care letter, "chits" and ledgers at the material time.

32.5 The Tribunal found that his lack of due diligence allowed the recycling of funds between "new" and "old" investors, mismanagement of client monies and failure to take heed of the "Rogue Traders" programme all contributed to the incompetent manner in which he continued to act in the Scheme. The Tribunal did not accept, and indeed found unsatisfactory his assertions that he was not required to undertake any further enquiry of the Scheme due to the limited retainer between the Firm and the clients. The Tribunal was not persuaded that the efforts made to address concerns raised, and risks to which he was alerted were enough to demonstrate competence.

32.6 The First Respondent continued to act in the Scheme between 2012 and 2014 despite numerous signposts along the way which should have served as warning signs. Regard was not had by him to those signposts and the Tribunal found that the First Respondent's approach amounted to an attempt to find technical and sometimes narrowly focussed solutions to the issues raised as opposed to viewing the Scheme as a whole and reaching a justified conclusion as to its legitimacy.

32.7 In light of all attendant circumstances the Tribunal concluded that the First Respondent's conduct with regards to the Scheme was manifestly incompetent and as such found Allegation 2.7.3 proved beyond reasonable doubt.

The Second Respondent

32.8 Whilst the Tribunal found that the Second Respondent possessed significant experience with regards to residential conveyancing, it paid due regard to the fact that she was not

a solicitor and that the Scheme was outwith the ordinary conveyancing transaction that she would have been familiar with. She sourced Client N, brought the Scheme to the Firm, dealt with the majority of the transactions pertaining to the Scheme and was proactive in KB's visit in 2012.

32.9 In January 2013 the Second Respondent personally vouched for the Scheme when responding to a potential investor in which she positively endorsed Client N. This was an example of her acting beyond the scope of her expertise, failing to refer such enquiries to the First Respondent and failing to take heed of the concerns raised by KB. The Tribunal found that she demonstrated manifest incompetence.

32.10 The Tribunal found Allegation 2.5.3 proved beyond reasonable doubt.

Previous Disciplinary Matters

33. None against either Respondent.

Mitigation

34. The First Respondent

34.1 Mr Forman commended the Guidance Note on Sanctions (December 2018) to the Tribunal and accepted that, on the findings made, No Order and a Reprimand were not appropriate. With regards to culpability Mr Forman urged the Tribunal to consider what the First Respondent knew at the material time and balance that with what he ought to have known. Mr Forman submitted that the First Respondent's motivation throughout was to protect the investors interests which he believed to have been met by way of the advice to seek independent legal advice and the filing of a UN1 Notice against the particular property concerned.

34.2 Mr Forman submitted that there was no tangible evidence of direct harm having been caused, no compensation claim, other than the discredited claim of BP, had been made by any investor and no claim had been brought against the Firm.

34.3 With regards to aggravating features Mr Forman implored the Tribunal to determine the period of time which it had found the First Respondent's conduct to have been reckless. He further urged the Tribunal to bear in mind the possibility that the First Respondent himself was duped by a third party, namely Client N.

34.4 With regards to mitigating features Mr Forman submitted that the First Respondent had demonstrated insight, by way of the admissions made and the loss that he had sustained namely the loss of his Firm and his family home.

34.5 Mr Forman submitted that the delay on the part of the Applicant in bringing these allegations before the Tribunal was such that it should be reflected in the sanction imposed and relied upon the authority of Nursing and Midwifery Council v Ogbonna [2010] EWCA Civ 1216 in that regard. He reminded the Tribunal that it had been seven years since the Applicant's investigation into the Firm and six months had elapsed since the Tribunal had certified that there was a case to answer. Mr Forman submitted that the First Respondent has had this matter hanging over him for an unreasonable period

of time and that the Applicant had apologised, in response to complaints made by him, for the delay in this matter.

34.6 Mr Forman invited the Tribunal to reduce any sanction that it would have ordinarily imposed to reflect the impact of delay on the First Respondent's health and circumstances.

34.7 Mr Forman submitted that whilst the decision in Iqbal provided authority for the proposition that when manifest incompetence was found a striking off Order should follow, this was not mandatory in effect. He averred that each case was fact sensitive and dependent upon the degree of incompetence. Mr Forman reminded the Tribunal of its overriding discretion with regards to ensuring that the sanction imposed fitted the conduct complained of. He further submitted that in respect of the First Respondent, the imposition of a restriction order adequately reflected the risk he posed to the public and would provide sufficient protection in that regard. Mr Forman averred that a restriction that the First Respondent only undertake commercial conveyancing was the appropriate sanction in this matter.

35. The Second Respondent

35.1 The Second Respondent stated in a letter dated 29 October 2018 that since leaving the Firm, two of her properties had been repossessed and her marriage broke down as a consequence of the Applicant's investigation/proceedings. She remained unemployed for a period of time but held an administrative role outside of a legal practice as at 29 October 2018.

Sanction

36. The Tribunal referred itself to the guidance set out in the Guidance Note on Sanctions (December 2018).

37. The First Respondent

37.1 The Tribunal considered the First Respondent's motivation for becoming involved in and continuing to act in the Scheme in order to assess his culpability. The Tribunal found that under the terms of the retainer, specifically limited to effecting transactions and filing a UN1 Notice, necessitated a relatively modest input for a £200 fee. His involvement was not spontaneous, to the contrary, the First Respondent persisted to keep the Scheme going when faced with issues and concerns. He had absolute responsibility as the partner dealing with the Scheme and the supervision of a non-admitted fee earner. Whilst he did not appear to have day to day conduct of the files, he had direct oversight of them. His drafting skills influenced the content of the client care letter, standard letters and the like. Whilst the Tribunal found that he did not deliberately mislead, the Tribunal noted that he was admitted to the Roll in 1993 and was an accomplished lawyer with some international experience with major law firms. The Scheme was the first of its kind that he had encountered and whilst he applied his technical conveyancing knowledge to perpetuate it this had limited impact in avoiding the breaches the Tribunal had found proved and did not detract from his significant failures, recklessness and manifest incompetence in that regard. The Tribunal concluded that he was highly culpable.

37.2 The Tribunal went on to consider what harm, if any, was caused by the First Respondent's conduct. The Scheme essentially fell apart when the property portfolio of Client N was repossessed by ME in February 2014. The UN1 Notice filed on behalf of investors would in that context be ineffective in that they did not protect the investors investments as the ME charge over the property concerned took precedence. Whilst there was no evidence of direct loss attributed to any specific individual it naturally followed that loss would have been sustained by the investors who would very likely have had to take legal advice and seek redress. The recklessness of the First Respondent significantly undermined the reputation of the legal profession and public confidence in the provision of legal services. The Tribunal found that the First Respondent foresaw the risk from at least June 2013 yet continued to act and thereby caused significant harm.

37.3 The Tribunal considered that the conduct of the First Respondent was deliberate, calculated and repeated over a protracted period of time. From KB's investigation report it was clear that from March – October 2012 circa £3 million was invested in the Scheme of which circa £652,000 was repaid to investors. Additionally the First Respondent was found to have acted recklessly and with manifest incompetence. All of these matters were considered by the Tribunal to have been aggravating features.

37.4 With regards to mitigating features the Tribunal concluded that the technical amendments suggested by the First Respondent to the Scheme were a genuine attempt on his part to address the concerns raised. However these suggestions were technical in their nature, inadequate, and they failed to appreciate the impact of the Scheme as a whole. He did however engage with this process from investigation by the Applicant into the Firm. Due regard was had for his unblemished record and the significant testimonials filed on his behalf.

37.5 The Tribunal was not persuaded that the First Respondent had demonstrated insight. The admissions made were properly made but limited in their scope and the Accounts Rules breaches were strict liability.

37.6 Overall the Tribunal found that misconduct was significantly serious. It had regard to Iqbal which suggested that the starting point for a finding of manifest incompetence should be an Order striking the solicitor from the Roll. The Tribunal concluded that the particular facts of this case were such that it could be distinguished namely:

- The finding of manifest incompetence appeared to have been isolated to the First Respondent's involvement in the Scheme as opposed to across his general practice.

- His unblemished practice before these matters and also his practising since this referral as a consultant for Needles Solicitors.

- The significant delay on the part of the Applicant in bringing these proceedings.

37.7 The Tribunal was still concerned at the lack of sufficient insight demonstrated by the First Respondent in that he, in his oral evidence, appeared to resile from his witness statement with regards to the dubious nature of the Scheme even with the benefit of hindsight.

37.8 Weighing all of these factors into the balance the Tribunal concluded that the appropriate sanction in respect of the First Respondent was an Order suspending him from practice for a period of six months in conjunction with an indefinite Restriction Order upon his return to practice in the terms set out in full below.

38. The Second Respondent

38.1 The Tribunal considered that in all the circumstances for the protection of the public and the reputation of the profession and those that worked within it that it would be appropriate to make a section 43 order in respect of the Second Respondent. The Tribunal had regard to the fact that the Second Respondent had requested an agreed outcome in the form of a section 43 Order to reflect the misconduct alleged. The Tribunal concluded that she had the day to day conduct of files and was the first point of contact for investors/enquiries into the Scheme. She had, on at least one occasion, positively endorsed the Scheme to potential investors which the Tribunal found to have been beyond her remit as a non-admitted fee earner. Any queries of this nature should, in the Tribunal's view, have been directed to the First Respondent. The Tribunal took into account the admissions, albeit equivocal, made.

Costs

The Applicant's Application

39. Mr Mulchrone submitted a schedule of costs relating to the investigation, preparation and presentation of the case in the sum of £62,984.90. Mr Mulchrone directed the Tribunal to the fixed fee element, namely £34,500.00 plus VAT, of the costs claimed in respect of all work undertaken by Capsticks LLP which was supported by a breakdown of the work undertaken in terms of time spent. Mr Mulchrone reminded the Tribunal that it had a wide and unfettered discretion in relation to costs and as an experienced Tribunal was well equipped summarily to assess the same. Mr Mulchrone accepted that the allegations of dishonesty had been found not proved but that they were properly brought. He further submitted that the Tribunal's determination in respect of BP's evidence could not have been foreseen on the face of the papers. He averred that it was not for the Applicant to determine the credibility of the witness as that was the domain of the Tribunal. He further averred that the admissions of the First Respondent were made were very late in the day, namely March 2019, and as such the case had been prepared on the basis that it was a fully contested hearing.

40. Mr Mulchrone commended the approach taken in Gale v Solicitors Regulation Authority [2019] EWHC 222 (Admin) to the Tribunal, namely to consider the hours claimed from which a notional hourly rate could be deduced, both of which could be assessed in terms of reasonableness. He further averred that all of the time claimed was properly spent without any duplication as he was instructed to settle the Rule 5 Statement, prepare the case for hearing and present the same.

41. In respect of the Second Respondent, Mr Mulchrone submitted that her "admissions" were equivocal, dishonesty was properly alleged but always denied and thus the Applicant was required to prove the entire case against her.

The First Respondent

42. No issue was taken with regards to the Applicant's costs claimed in respect of the Applicant's investigation. Issue was taken with regards the costs claimed by Capsticks LLP in respect of the preparation and presentation of the case.

43. Mr Forman submitted that the costs claimed should be reduced to reflect the fact that dishonesty and lack of integrity had been found not proved. He further submitted that extensive redactions were required of KB's report as it related to extraneous matter and as such the 175 hours claimed in respect of Capsticks fees were disproportionate and unreasonable. Mr Forman advanced 125 hours as a reasonable and proportionate amount of time expended.

44. Mr Forman submitted that in respect of costs, a 'several Order' against each Respondent should be imposed so as to reflect the separate means of each of them filed at the Tribunal. He submitted that the First Respondent had attended the hearing, co-operated with the process and was hampered by the Second Respondent's non-attendance which should be reflected in any Order for costs imposed.

45. Mr Forman remarked that a significant part of a day was lost by the Applicant's inability to secure the attendance of BP at the required time to give oral evidence and that this should be reflected in any Order for costs imposed. Moreover, when BP was tested under cross examination, his evidence was so incredible and so unreliable that the Applicant should have tested the same before relying upon it. The time spent in taking BP's statement and securing his attendance at the substantive hearing should, in his submission, reduce the costs claimed by two days.

The Second Respondent

46. The Second Respondent submitted a letter entitled "Income and Expenditure" dated 29 October 2018 which set out her respective income and outgoings.

The Tribunal's Decision

47. The Tribunal considered the overarching principles of reasonableness of the costs claimed and whether they were properly incurred. The Tribunal carefully considered the personal financial statement and documentary evidence in support filed by the First Respondent in which a proposal was made to meet any liability for costs in the sum of £100 per month. The Tribunal noted that the First Respondent disclosed an average monthly deficit in the sum of £391 but had included in his monthly outgoings "Holiday Expenses" at a rate of £600. The Tribunal noted that his gross income from 1 April 2018 – 21 March 2019 was just under £85,000. The Tribunal carefully considered the Second Respondent's letter setting out her financial position, which disclosed a disposable income of £330.31 per month, but noted there was no supporting documentary evidence.

48. The Tribunal considered the costs claimed in two parts namely the Applicant's costs of the investigation then the costs claimed by Capsticks LLP in respect of the preparation and presentation of the hearing.

49. With regards to the former, the Tribunal noted that KB's hourly rate was £94 which it considered to be reasonable and proportionate. 80 hours was claimed with regards to her three visits to the Firm. This was found to be reasonable and in line with the evidence of MB and the First Respondent as to KB's presence. 43.75 hours was claimed in respect of drafting the Investigation report which ran to 19 pages with 150 pages of exhibits. Notwithstanding the amount of redaction that was required of the report for the present purposes, the Tribunal concluded that the time spent in that regard was reasonable and proportionate. The extraneous items claimed, for example preparation for the visit, attendance on others, travel etc, were found to have been properly incurred. In addition the Applicant supervised the investigation and claimed for 25 hours in that regard at an hourly rate of £75. The investigation spanned in excess of four years and the Tribunal was satisfied that the time claimed was properly spent.

50. With regards to Capsticks' fees the Tribunal adopted the approach advanced in Gale and ascertained that a notional hourly rate of £197.37 applied. This was the fixed fee amount (£34,500) divided by the number of hours claimed (174.8). The Tribunal concluded that the hourly rate was reasonable and proportionate. The Tribunal then considered the time spent over the 14 month period that Capsticks LLP had conduct of the matter. During this period 127.3 hours was spent pre-issue, namely drafting the Rule 5 Statement (33 pages), collating the exhibit bundle (378 pages) and the statement of BP with exhibits (225 pages). The Tribunal found that this time was properly spent and the costs were reasonably incurred.

51. The Tribunal accepted Mr Mulchrone's submissions with regards to lack of duplication as he had conduct of this case throughout. The 47.5 hours claimed in respect of preparation for, travel to and attendance at the hearing was found to have been reasonably incurred.

52. The Tribunal had due regard to the fact that it had found allegations of dishonesty and lack of integrity not proved but concluded that they had been properly brought and as such no deduction in the costs claimed should be made. These allegations were not borne out of bad faith a case to answer had been found in respect of them on the face of the papers and the live evidence received at the hearing was a major factor that caused doubt in the Tribunal's mind alongside and taking into account all the other evidence the Tribunal considered such that they were found not proved beyond reasonable doubt.

53. The Tribunal rejected Mr Forman's submissions that time was wasted by the Applicant in pursuing BP's evidence in light of the deficiencies, that became apparent in his oral evidence, should be reflected in any Order for costs. The Tribunal concluded that BP's evidence unravelled under cross examination which could have only occurred in his provision of oral evidence. It was not for the Applicant to assess credibility on the face of the papers and it was entitled to accept signed witness statements as true. The Tribunal did, however, accede to Mr Forman's submission that a deduction should be made for the delay in securing BP's attendance at the hearing and reduced the costs claimed by £1,500 to reflect the same.

54. In summarily assessing costs on the terms set out above, the Tribunal concluded that an Order be made in the sum of £61,184.90.

55. The Tribunal next considered apportionment of costs between the Respondents. It acceded to Mr Forman's submission that a several Order would be appropriate. The First Respondent was the most culpable for the Firm's involvement in the Scheme as he was the partner with conduct and was a solicitor of considerable experience. The Second Respondent was a non-admitted fee earner who followed the instructions of the First Respondent and who played no role in the drafting of standard letters to clients. The Second Respondent endeavoured to make admissions to the allegations she faced, albeit not dishonesty which was not admitted, and sought an agreed outcome with the Applicant in that regard. The Tribunal concluded that she should not bear the cost of a five day hearing. The Tribunal rejected the assertion that the First Respondent was hampered by her non-attendance. Even if she had attended, he did not have the absolute right to cross examine her as she could have elected not to subject herself to the same.

56. The Tribunal concluded that the First Respondent do pay costs in the sum of £58,684.90 and the Second Respondent do pay costs in the sum of £2,500.

Statement of Full Order

57. <u>First Respondent</u>

1. The Tribunal Ordered that the First Respondent, solicitor, be suspended from practice as a solicitor for the period of 6 months to commence on the 22nd day of May 2019 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £58,684.90.

2. Upon the expiry of the fixed term of suspension referred to above, the Respondent shall be subject to conditions imposed indefinitely by the Tribunal as follows:

2.1 The Respondent may not:

2.1.1 Practise as a sole practitioner or sole manager or sole owner of an authorised or recognised body;

2.1.2 Be a Compliance Officer for Legal Practice or a Compliance Officer for Finance and Administration;

3. There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 2 above.

58. <u>Second Respondent</u>

The Tribunal Ordered that as from 22nd May 2019 except in accordance with Law Society permission:-

(i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor JUSTINE LEANNE WARDLE;
(ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Justine Leanne Wardle;
(iii) no recognised body shall employ or remunerate the said Justine Leanne Wardle;

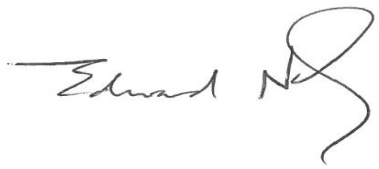
(iv) no manager or employee of a recognised body shall employ or remunerate the said Justine Leanne Wardle in connection with the business of that body;

(v) no recognised body or manager or employee of such a body shall permit the said Justine Leanne Wardle to be a manager of the body;

(vi) no recognised body or manager or employee of such a body shall permit the said Justine Leanne Wardle to have an interest in the body;

And the Tribunal further Ordered that the said Justine Leanne Wardle do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,500.00.

Dated this 17th day of July 2019
On behalf of the Tribunal



E. Nally
Chairman