SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12009-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

TIMOTHY PETER ACKREL Respondent

Before:

Mr G. Sydenham (in the chair)
Mrs J. Martineau
Mr M. R. Hallam

Date of Hearing: 11-12 February 2020

Appearances

Benjamin Tankel, barrister of 39 Essex Chambers, 81 Chancery Lane, London WC2A 1DD, instructed by Capsticks LLP for the Applicant.

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent were that, while in practice as an in-house solicitor at Company E, Company A and/or Company D:

1.1. Between November 2013 and June 2016 while acting on behalf of Company E, Company A and/or Company D, in real estate development schemes, he:

1.1.1. Facilitated payments of investor funds to third parties without apparent justification and, in so doing, he acted in breach of Principles 2, 3 and/or 6 of the SRA Principles 2011.

1.1.2. Continued to act in circumstances where he knew or ought to have known that, as a result of said payments, the schemes were unsustainable and that further incoming investments were thereby at risk and, in doing so, he acted in breach of Principles 2, 3 and 6 of the SRA Principles 2011.

1.1.3. Drafted, executed and/or registered legal charges against development sites in circumstances where he could not have had any reasonable belief in the validity of the liabilities said by the charges to have been outstanding and, in doing so, he acted in breach of Principles 2, 3 and/or 6 of the SRA Principles 2011.

1.1.4. Facilitated improper money movements with indicators of potential money laundering and, in doing so, he acted in breach of Principles 2, 3, 6 and/or 7 of the SRA Principles 2011 and/or Outcome 7.5 of the SRA Code of Conduct 2011.

1.1.5. In all the circumstances acted in schemes which bore the hallmarks of dubious transactions and, in doing so, he acted in breach of Principles 2, 3 and 6 of the SRA Principles 2011.

2. It was further alleged against the Respondent that by reason of the facts and matters set out in all or any of the allegations above he acted:

2.1. Dishonestly;

2.2. Recklessly;

but proof of dishonesty or recklessness was not a necessary ingredient of a finding that all or any of the Allegations set out above were proved.

The Applicant confirmed that Allegation 2.2 (recklessness) was an alternative to Allegation 2.1 (dishonesty).

The case proceeded under the Solicitors (Disciplinary Proceedings) Rules 2007.

2. The relevant Principles and Outcome referred to above were as follows:-

SRA Principles 2011

- Principle 2: You must act with integrity
- Principle 3: You must not allow your independence to be compromised
- Principle 6: You must behave in a way that maintains the trust the public places in you and in the provision of legal services
- Principle 7: You must comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner.

SRA Code of Conduct 2011

Outcome 7.5: You must comply with legislation applicable to your business, including anti-money laundering and data protection legislation.

Preliminary Matters

Application to proceed in absence

3. Mr Tankel applied to proceed in the absence of the Respondent. He submitted the Respondent had voluntarily absented himself and there was no prospect of him attending an adjourned hearing. The Respondent had been put on notice that the Tribunal might proceed in his absence if he did not attend.

4. The Respondent had not admitted any of the Allegations but at the same time they were not vigorously denied. The Respondent had not served an Answer or a witness statement but he had indicated that he wished to come off the roll. There was therefore limited prejudice to the matter going ahead in his absence, although Mr Tankel assured the Tribunal that he would draw to its attention anything that the Respondent might have raised in his defence.

5. The Respondent had been provided with notice of the hearing dates by letter sent by the Applicant on 30 October 2019 and by way of Memorandum of Case Management Hearing dated 21 November 2019. The Respondent had not attended that hearing.

6. The Respondent had written to the Tribunal on 8 November 2019 in the following terms:

> "I am in receipt of the Proceedings Information Pack. Throughout the time I have been dealing with John Quentin at the Solicitors Regulation Authority I have been clear in my desire to be removed from the Roll and made an application to be removed in November 2017. I was also made bankrupt in August of this year which I have also been open about with Mr Quentin and which has been acknowledged in the Proceedings Information Pack which would preclude me from remaining on the Roll in any event. As a result of the Bankruptcy I am also not in a position to afford legal representation nor would I be able to satisfy any Order for costs made by the Tribunal against me. With

all respect to the Tribunal and Members in light of these constraints I am unable to respond to the Proceeding Information Pack.

Kind regards
Timothy Ackrel"

7. Other than that, the Respondent had only been in contact to address the question of his finances.

8. Mr Tankel submitted that there was a public interest in proceeding with these matters and invited the Tribunal to do so in the Respondent's absence. He referred the Tribunal to the cases of in R v Hayward, Jones and Purvis [2001] QB 862 and GMC v Adeogba [2016] EWCA Civ 162 in support of his submissions.

The Tribunal's Decision

9. The Tribunal considered the representations made by the Applicant and the correspondence from the Respondent. The Respondent was aware of the date of the hearing and SDPR Rule 16(2) was therefore engaged. The Tribunal had regard to the Solicitors Disciplinary Tribunal Policy/Practice Note on Adjournments (4 October 2002) and the criteria for exercising the discretion to proceed in absence as set out in Hayward by Rose LJ at paragraph 22 (5) which states:-

> "In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:
>
> (i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;
> (ii) …;
> (iii) the likely length of such an adjournment;
> (iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;
> (v) …;
> (vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;
> (vii) …;
> (viii) …;
> (ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;
> (x) the effect of delay on the memories of witnesses;
> (xi) …;"

10. In Adeogba, 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 stated:

> "…It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage 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".

11. 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 interests of the public also taken into account".

12. The Respondent was aware of the hearing date and had made clear his intention not to respond to the proceedings pack or defend the Allegations. Although he had not specifically stated in terms that he would not be attending, his non-attendance was consistent with his email of 8 November 2019.

13. The Respondent had barely engaged in the proceedings at all. He had failed to comply with any directions and had not sought an adjournment of the hearing. The Tribunal was entirely satisfied that he had voluntarily absented himself in the expectation that the matter would proceed without him.

14. The Allegations were serious and there was a public interest in resolving them without undue delay. If the matter were to be adjourned there was no prospect that he would attend any future hearing. In all the circumstances the Tribunal was satisfied that it was in the interests of justice to proceed with the matter in the Respondent's absence. It therefore granted Mr Tankel's application.

Factual Background

15. The Respondent was admitted to the Roll in March 2004 and held a practising certificate continuously from the date of admission until October 2017, after which he did not apply for renewal.

16. Prior to the matters under consideration, the Respondent practised as a solicitor at a law firm authorised by the Applicant until he was made redundant in or about November 2013 after which commenced employment with Company E. Between 2013 and 2016 the Respondent's title within Company E was "Head of Legal." Initially he was paid by either or both of Company E and Company A. From July 2014 he was paid by an associated entity, Company D. In mid-2014 he was appointed as "Head of Legal" at Company A. He also worked as an in-house solicitor at Company D.

17. The Respondent was paid a total of £5,000.00 per month, by one or other of Company E, Company A and Company D. The Respondent's employment with Company E, Company A and Company D ended in October 2015 although he continued to do some ad hoc work for them until approximately May 2016.

18. The Respondent did not appear to be working in legal services as at the date of the hearing. He had been declared bankrupt, upon his own application, in August 2019.

19. In or around February 2017, the Applicant received information about the Respondent's involvement with Company E, Company A and Company D. These companies had been involved in three developments marketed respectively as Development 1, Development 2 and Development 3, none of which had been completed. The net proceeds of sale of units in these schemes was approximately £16,259,379.00. This was therefore the approximate total amount of investor funds which was placed at risk as a result of these schemes.

20. Company A went into liquidation on 12 April 2016 and a liquidator was appointed ("the Liquidator"). Company A had a number of creditors. Amongst the purported creditors was Company D, which sought to submit proof of debt of over £68 million, representing what was said to have been the value of the charges it held over the various properties owned by Company A. The Liquidator had concerns about the validity of Company D's alleged debt. She therefore carried out an investigation and obtained a freezing injunction on 9 October 2017 against a number of parties, including the Respondent, in order to prevent against the possible dissipation of assets.

The Companies

Company E

21. Company E was incorporated on 2 February 2011. The nature of its business was listed at Companies House as "Buying and Selling of own Real Estate." The Annual Return dated 22 February 2015 confirmed that the shareholders, at the outset of the Tribunal proceedings, were Person AP, with a 90% shareholding and Person CC, holding the remaining 10". Person AP was a cousin of Person CC and resided outside of the United Kingdom.

Company A

22. Company A was incorporated on 7 November 2013 and was placed into compulsory liquidation on 12 April 2016. The purported financial structure of Company A involved the construction of the apartments being funded by deposits paid by the "off plan" buyers of the apartments. The Respondent was instructed to act on behalf of Company A in respect of the "off plan" sale of apartments to buyers. The scope of his work included drafting the contractual agreements including Agreements for Sale.

23. The Annual Return filed on 6 April 2016 stated that Person DH also held 100% of the shares of Company A. The previous shareholder was Person CYL but his shares were transferred to Person DM on 1 February 2016.

Company D

24. Company D was incorporated on 17 July 2014. As from 17 July 2014 to 1 December 2014 and from 1 March 2015 until 13 October 2015, the Respondent was the sole director of Company D and the only person with access to Company D's bank accounts during that period. The nature of its business was listed at Companies House

as "Other Business Support Services not elsewhere classified." The Respondent was an officer of Company on two separate occasions, despite the overlap in appointment, as he was registered once with his middle name and once without.

The Development Schemes

25. The schemes involved the development or purported development of several large, multi-occupancy, apartment blocks around the North West of England. The schemes were marketed to investors in Asia who were invited to purchase individual residential units "off plan" as buy to let investment opportunities. Money raised from investors was supposed to be used to finance the development in question and the named property developer was Company A.

26. From mid-2014 onwards, the Respondent, in his capacity as "Head of Legal" at Company A and in-house solicitor at Company D, acted on behalf of Company A on the conveyance of the leasehold interests in residential units to individual investors.

27. Although the Respondent was the sole director of Company D, he confirmed that he received instructions from both AC and CC.

28. The three schemes were advertised in marketing materials as:

- Being sold by Company A. no other entities were named in the marketing materials;
- Being "title ready";
- Offering a guaranteed return at rates varying from 8% – 10% for periods of up to 5 years;
- Having the protection of a solicitor in that "the reservation fee and the subsequent balance payment would all be transferred to the layer's account and kept in their client account until exchange & completion".

29. The sale and purchase agreements in respect of Development 1 and Development 3 were drafted by Firm O on the instruction of the Respondent working in-house at Company A. The sale and purchase agreement in respect of Development 2 was drafted by the Respondent.

30. The payment structure provided that:

- The investor would pay a reservation fee of approximately £2,000.00 in order to secure the investment opportunity.
- On or before the date of exchange, the investor would pay a deposit of 10% of the price, inclusive of the reservation fee.
- At or around the same time, the investor would pay a "Completion Payment" to take the total amount paid to 50% of the price, inclusive of the deposit and reservation fee.

- The transaction would complete upon payment of the Completion Payment i.e. at or around the same time as the exchange of contracts. In many cases, and possibly all, the apartments had not yet been constructed.

- Upon practical completion, the investor would make a "Deferred Payment" of the remaining 50% of the price.

31. In practice, therefore the payment structure involved a 50% upfront payment. The traditional 10% deposit was subsumed within that 50% upfront payment and completion would happen almost immediately. Rider 2 of the Sale and Purchase Agreements provided:

> "[34] The Seller warrants the Buyer that the Completion Payment and the Reservation Deposit shall only be used for the following purposes:
>
> (a) The purchase of the Building to include the refund of the deposit, the balance of purchase money, the professional fees incidental to the purchase, together with all payments and expenses incidental thereto including stamp duty tax, searches, and Land Registry fees;
>
> (b) The carrying out and completion of the Works in accordance with the provisions of this Agreement;
>
> (c) Reasonable professional fees and agents' commissions incurred in relation to the sale of the apartments contained in the Building, and the carrying out of the Works."

32. The sale and purchase agreement also made provision for a guaranteed rental income of between 8%-10% for between 3-5 years.

Witnesses

33. There were no live witnesses.

Findings of Fact and Law

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

35. The Tribunal considered carefully all the documents and witness statements presented in evidence, summarised below.

36. **Allegation 1.1.1**

Applicant's Submissions

36.1 Mr Tankel submitted that the overwhelming majority of the funds were used:

- To purchase further development sites. Units in those sites were then sold to investors in Asia to raise more funds, which were in turn used to purchase further development sites and so the cycle continued exponentially.

- To fund the luxurious lifestyles of AC and CC.

- To funnel significant sums of money to companies associated with AC and CC.

36.2 Mr Tankel told the Tribunal that AC received net payments of approximately £839,879.00 from Company D. CC received net payments of approximately £501,350.00 from Company D. Mr Tankel submitted that the Respondent was aware of those transactions by virtue of the fact that he had personally executed them. Mr Tankel submitted that the Respondent was aware that there was no legitimate justification for those payments to have been made. He referred the Tribunal to the Respondent's interview with the Liquidator, including the following passage:-

[Liquidator] "Q did some of the money go off somewhere?
[Respondent] A yeah
Q where did it go?
A to [AC and CC]
Q have you got any idea of the amounts that went to them?
A hundreds and thousands
Q did they receive set amounts every month?
A no
Q were you the only person that had access to the bank account at that point?
A at that point, yeah
Q how did that happen? How did they receive money?
A through telegraphic transfer
Q that they would tell you to do?
A yeah
…
Q in what, sort of lump sums was it?
A I mean, the one that comes to mind, there was one in, I believe it was October 2014, which was for £700,000.00 to [AC] and £200,000.00 and something to [CC]
…
Q where did you see the money going out to for [Company D] accounts?
A so the – they were – they were buying other properties and also money was going out to – a specific example, there was a Rolls Royce [worth approximately £250,000.00] that was bought for [AC]
…
Q [Company D] paid rent for [Person AC]
A yeah, paid 12 months' rent up front
Q how much would that have been roughly?
A About £120,000.00, £130,000.00
Q that's some sort of property
A oh yeah, it's owned by […] who's a footballer"

36.3 Mr Tankel further submitted that the Respondent assisted in concealing those payments on behalf of AC and CC by mis-describing them or knowingly allowing them to be mis-described. The payments were accounted for as repayment of director's loans at a time when the Respondent was the only named person on the bank mandate. The Respondent was also aware that neither AC nor CC were directors of Company D and that neither of them had made loans to Company D.

36.4 Mr Tankel referred the Tribunal to the Forensic Accountant's Report which stated that Company D also made net payments of approximately £5,312,383.00 to companies that the Respondent knew to be linked to AC and CC. Those payments included £689,243.00 paid to Company P, a video games designer, and it must have appeared that such payments were being funnelled to AC and CC.

36.5 Company D also made a net payment of approximately £1,704,322.00 to Company U, a construction company, which, it transpired, appeared to be linked to AC and CC. The Respondent, during the interview with the Liquidator, stated that he was not aware of the link at the material time in that:

> "Q so do you think they were getting money from those construction companies as well – with the exception of [Company U], which you said is separate. So if you know it's a company called [Company EM]
> A yeah
> Q so would [AC] have been getting money from that, which was coming from – he would have been?
> A yeah…"

36.6 In his interview the Respondent had been asked if he had made the payments because AC had threatened him and he feared for his physical safety. The Respondent agreed. Mr Tankel noted that this suggestion came from the Liquidator and not the Respondent initially. He submitted that little weight should be attached to the suggestion and further submitted that it would not be a defence in any event.

36.7 Mr Tankel submitted that the Respondent had lacked integrity and referred the Tribunal to Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366, in which it was said that "integrity connotes adherence to the ethical standards of one's own profession." Mr Tankel submitted that the Respondent had displayed a lack of regard for other people's property. The Respondent knew that the funds had been provided by investors in the expectation that they would be used to finance the constructions of a development. Despite this he had allowed the funds to be used for other purposes, placing at risk the viability of the developments and the investors' funds. Mr Tankel further submitted that the Respondent knew, or ought to have known, that the payments were suspicious and that there was a risk of the funds being dissipated.

36.8 Mr Tankel submitted that the Respondent allowed himself to be "under the thumb" of AC and CC ahead of all other considerations and had therefore lacked independence.

36.9 Mr Tankel submitted that the public would be alarmed by the involvement of a solicitor in a scheme which placed very large sums of investor funds at risk without legitimate justification.

36.10 Mr Tankel invited the Tribunal to draw an adverse inference in respect of the Respondent's failure to file and serve an Answer pursuant to paragraph 8 of Practice Direction 6 to the SDPR 2007.

The Respondent's Position

36.11 In his letter to the SRA dated 20 June 2018, the Respondent stated the following:

> "In response to the allegations I say as follows:
>
> 1. The offer of rental guarantees lasting 5 years with a guaranteed rent of approximately 10 per cent per annum were standard within the market place within the areas that those properties were being sold.
>
> 2. The pre-sale of properties within the areas that the properties were being sold was common place at that time and the sales agents in those markets agreed the sales process and way of selling and construction and I had no reason to believe that this was a "ponzi scheme" or dishonest.
>
> 3. The basis of the contractual and legal documentation was on precedent from a previous transaction and at the time of drafting those documents I had no belief that the transaction was a "ponzi scheme" or that the purposes was dishonest and at the time believed that such payments were to be made in accordance with the legal structure of the documentation.
>
> 4. The process for the exchange of contracts for the individual properties were agreed with the various law firms who acted for the purchasers and at the time I had no reason to believe that this was a "ponzi scheme" or that the purposes were dishonest.
>
> 5. The explanation I was given by AC and CC to act as company directors was as a result of the issues surrounding the development at [TP] and the negative media etc that both AC and CC had received which would have had a negative impact on the ability to sell and build any further properties. In hindsight my perception of this perhaps should have been different and as AC and CC were in the process of instigating legal proceedings against a law firm who had acted in these transactions there was a genuine belief that this was the case."

36.12 The Respondent had stated that he broadly agreed with the summary of facts as set out in the letter to which he was replying.

36.13 In his letter dated 30 June 2018 the Respondent stated the following:

> "Further to our telephone conversation I respond further as follows in respect of the specific regulatory breaches:
>
> 1. Three breaches of Principles 2 of the SRA Principles 2011; At all times I felt that I was acting with integrity and met and dealt with the various stakeholders and other legal firms who were to be involved in the transactions. Construction was being undertaken on various properties and at the time I did not believe that

the transactions were to be dubious, would take unfair advantage of buyers or I facilitated improper money movements (particularly as the law firms acting for the Buyers agreed that the transfer of the money was right in accordance with the contractual documentation). However, as stated in the interview with the Liquidator with hindsight, my actions in the transactions fell short of what was expected of me.

2. Three breaches of Principle 6; in hindsight I acknowledge that my involvement in the transactions fell short of the behaviour that is expected to maintain the trust the public places in me and the provision of the services.

3. A failure to achieve Outcome 7.5 of the SRA Code of Conduct 2011; I believe that in the transactions I did consider the legislation, in particular anti-money laundering as I had a genuine belief that the funds that were received were to be used for the construction of the properties at the time of entering transactions for the sale and purchase of the properties. As stated above I dealt with the legal firms that acted on behalf of the purchasers who had the opportunity to request and agreed to safeguards in the contracts such as sign off on the construction by a suitably qualified individual. I did not believe that they were dubious transactions or that they bore the hallmarks of fraud and I had a genuine belief that the money passed through to Company D was for the purposes of construction of the properties in accordance with the contractual documentation that had been put in place. As detailed within your letter money was transferred by [PW] between various companies which I did not have access to and was under the belief that the transfers were for the purpose of furthering the developments. I accept that I should have pressed on the transfer of this money and that my actions fell short of what is expected of me, albeit that I hold the belief that those transfers would have occurred in any event.

4. A failure to achieve Outcome 11.1 of the SRA Code of Conduct 2011; I do not believe that I took unfair advantage of third parties in either my professional or personal capacity as I had a genuine belief that the properties would be constructed and that matters would proceed to completion. Further those third parties were represented by various different legal firms who were, I assume, acting in the best interests of their clients.

5. Three allegations of dishonesty: I do not agree that I acted dishonestly and this response should be read in conjunction with responses 1 to 5 in my letter dated 20 June 2018. I had a genuine belief that the developments and construction of the same would proceed to completion. I also did not gain any benefit from any of the money received."

36.14 In his letter to the SRA of 17 September 2018 the Respondent had stated the following:

"Further to your letter dated 3 September 2018 and our subsequent telephone conversation I respond as follows:

1. Breaches of Principles 2 and 6 of the SRA Principles 2011 Whilst I cannot remember explicitly making the payments referred to in your letter as another person had access to the bank account, [PW], (but similarly cannot recall when

> he was added to the banking mandate) I accept that if those payments were made by me that my conduct fell short of what was expected of me under Principles 2 and 6 of the SRA Principles 2011.
>
> 2. Allegation of dishonesty I do not agree that I acted dishonestly and I refer to my response in my letter dated 20 June 2018. If the payments were made by myself there was no intent in the use of the description to hide the payments or their reason. As previously stated I had a genuine belief at this time that the developments and construction would proceed to completion as at that time builders were on site undertaking works."

36.15 The comments made by the Respondent were not specifically limited to Allegation 1.1.1. However, because they were made before the proceedings were commenced they did not correspond directly to the order in which the Allegations appeared in the Rule 5 statement. The totality of the Respondent's submissions are set out here for the sake of completeness. They are not repeated below, but where a submission was relevant to one of the following Allegations, the Tribunal took full account of what the Respondent had stated in these three letters.

The Tribunal's Findings

General approach to the evidence

36.16 The Tribunal approached the evidence on the basis that the findings and opinions of the Liquidator were not proof of the Allegations. The conclusions reached did not fall within Rule 15 of the SDPR as they were not findings by a Tribunal exercising a professional disciplinary jurisdiction or a Court. The Tribunal disregarded the findings of the Liquidator and formed its own conclusions based on the evidence before it in these proceedings.

36.17 There were significant parts of that evidence included documents accumulated during the course of the Liquidator's investigation. This included, but was not limited to, the transcript of the interview of the Respondent by the Liquidator. These documents had been exhibited to the Rule 5 statement and to the witness statement of John Quentin of the SRA. The Respondent had not challenged either of these statements, which he could have done pursuant to the standard directions.

36.18 The Tribunal considered whether to draw an adverse inference in respect of the Respondent's failure to serve an Answer. The Tribunal noted that it was entitled to draw such an inference under paragraph 8 of Practice Direction 6 as the Respondent had not served an Answer. However, the Tribunal considered that there was sufficient contemporaneous documentary evidence before it to enable it to determine the matter without needing to draw an adverse inference. The Tribunal took account of the fact that the Respondent's responses were limited to the letters he had written to the SRA before proceedings began but did not consider it necessary to go beyond that and draw a specific adverse inference.

Allegation 1.1.1

36.19 The Tribunal found that the Respondent had actually made many of the payments to the third parties. The examples given by Mr Tankel were all supported by the documentary evidence placed before the Tribunal. The Tribunal also relied on the Respondent's comments in his interview with the Liquidator. This interview had been entirely voluntary and took place and there was no reason not to rely on the answers he had provided. The Tribunal also noted that the Respondent's letters to the SRA did not raise any significant challenge to the factual basis of the background to this Allegation.

36.20 The Tribunal then considered whether there was any apparent justification for the payments. The Respondent had responded to a question in his interview about possible duress by indicating that this had been a factor. He had not raised it at any other point and had not provided any further details. The suggestion had been raised by the Liquidator in the first place. The Tribunal noted that there was no specific test for duress in professional disciplinary cases and so it adopted the test used in the criminal courts insofar as it could sensibly be applied. The Tribunal noted that for duress to be established there would have to be evidence of an immediate threat of death or serious bodily injury. There would also have to be evidence of a causal link between that immediate threat and the action that was the subject of the Allegation. Further, there would need to be evidence that there was no reasonable alternative open to the Respondent other than to make the transfers, such as alerting the authorities.

36.21 In this case there was no evidence of any threat whatsoever. Even if there had been, there was no evidence that the immediacy continued over a period of almost three years. There would have been ample opportunity for the Respondent to alert the authorities and to remove himself from the threatening situation. Insofar as the Respondent had raised duress as a potential defence, the Tribunal entirely rejected it.

36.22 There was no other justification for the payments. There was nothing that could justify the Respondent's apparent position in his correspondence to the SRA that the payments appeared to be for construction costs. It was obvious from the nature of the transactions that this could not be the case and this suggestion was contradicted by the Respondent's answers in his interview.

36.23 The Tribunal was satisfied beyond reasonable doubt that the payments to third parties were vehicles to extract monies for AC and CC, in breach of the basis on which the investors had paid in the funds. The Tribunal found the factual basis of Allegation 1.1.1 proved beyond reasonable doubt.

36.24 *Principle 2*

36.24.1 In considering whether the Respondent had lacked integrity, the Tribunal applied the test for integrity set out in Wingate. At [100] Jackson LJ had stated:

> "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 arbitrator 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".

36.24.2 Wingate and Evans and Malins had continued a line of authorities that included SRA v Chan [2015] EWHC 2659, Scott v SRA [2016] EWHC 1256 (Admin), Newell-Austin v SRA [2017] EWHC 411 (Admin) and Williams v SRA [2017] EWHC 1478 (Admin).

36.24.3 The Tribunal found that the Respondent had been wholly lacking in integrity. The Respondent knew the terms of sale and purchase agreements, which were the basis on which investors had invested. He had completely disregarded those agreements in the way he allowed the funds to be used. On his own admission the Respondent had done what he was told by AC and CC. There were large sums of money involved and the use of the funds was not remotely justified. The Tribunal found the breach of Principle 2 proved beyond reasonable doubt.

36.25 *Principle 3*

36.25.1 The Tribunal found that the Respondent had allowed his independence to be compromised in that he had acted at the behest of AC and without regard to rights of investors and knowing that the funds were being improperly used. The Tribunal found the breach of Principle 3 proved beyond reasonable doubt.

36.26 *Principle 6*

36.26.1 It followed, as a matter of logic from the Tribunal's earlier findings, that the trust the public placed in the provision of legal services would be diminished in circumstances where a solicitor, over a three year period, misused investor funds. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

37. **Allegation 1.1.2**

Applicant's Submissions

37.1 Mr Tankel submitted that the Respondent was involved in at least three such schemes, each one marketed to substantial numbers of investors who collectively invested several million pounds. The Respondent acted in the conveyance of units in Development 1 on behalf of the seller, Company A, he instructed Firm O in respect of Development 3. With regards to Development 2, the Respondent acted in his own right as in-house solicitor. Mr Tankel submitted that in relation to all Developments, conveyances to buyers were transacted either in the Respondent's own right or alternatively upon his instruction. Additionally, the Respondent provided day-to-day legal services to Company A and Company D to facilitate the operation of its various development schemes.

37.2 In his interview with the Liquidator, the Respondent admitted that he was aware that the way in which the schemes were operated out of the developments, placed the investors' fund, at risk:

> "Q when you were working there and you saw that you were obviously making these payments, the large payments [to AC and CC], did you think at the time 'there isn't sufficient funds left to complete the works that need to be done on these properties?'
>
> A well, there was
>
> Q oh, was there?
>
> A yeah but then he'd [AC] go out and buy another property
>
> …
>
> Q the problem you had is that if this money's being taken out and given to [AC and CC], there's going to come a point somewhere along the line when there's not going to be enough money in the pot to construct certain developments
>
> A absolutely, yeah
>
> Q so when they're taking their money out, at that time there was enough in the pot to construct certain development but almost like a Ponzi scheme, it's forever going to be funding by continuing to acquire more –
>
> A yeah, absolutely…"

37.3 The Respondent had further commented on the process as a whole:

> "Q what is now your thoughts about the whole process, the whole structure, the whole set up. Do you think it was – what's your opinion of the whole?
>
> A that, I think the question I would ask now is, was there ever any intention of completing any of the properties? And as an outsider looking in, on the basis of what's gone on before, I think the answer to that is no…"

37.4 Mr Tankel submitted that the Respondent had continued to participate in a scheme that he knew or ought to have known was attracting investors to an investment which, at best, was more risky than they could reasonably have known or ascertained, and, at worst, was a sham. Mr Tankel submitted that this demonstrated a lack of integrity. In placing his own interests and the interests of AC and CC above his duties as a solicitor and his responsibilities to the investors, he breached Principle 3. Mr Tankel further submitted that the public did not have confidence in professionals who allow their position to be used to take advantage of third parties.

Respondent's Submissions

37.5 The Respondent's position is set out under Allegation 1.1.1 as explained above.

The Tribunal's Findings

37.6 The Tribunal found that the Respondent had allowed his involvement in the schemes to continue despite knowing they were at risk. In making this finding the Tribunal relied on his comments in his interview with the Liquidator. During the material period the Respondent was aware that the schemes were attracting new investors despite him knowing that it was, at the very least, increasingly risky. The reality was that the schemes were a sham and monies were being used for the wrong purposes. The Respondent knew Company D was not providing any real services. Despite all of this the Respondent had continued to act over a number of years. The Tribunal found the factual basis of Allegation 1.1.2 proved beyond reasonable doubt.

37.7 *Principle 2*

37.7.1 The Respondent had been entirely complicit in allowing the scheme to continue in the circumstances set out above. There was a duty on him to cease his involvement when it became obvious that investors' money is being used for entirely the wrong thing, something he would have known about straight away given his direct involvement in the transfers. In continuing to act the Respondent gave the schemes a veneer of respectability. The Tribunal found that by continuing to act the Respondent had lacked integrity and it therefore found the breach of Principle 2 proved beyond reasonable doubt.

37.8 *Principle 3*

37.8.1 The Tribunal found that by continuing to act in the circumstances that he did, the Respondent had continued to demonstrate a lack of independence in the same way that he had in Allegation 1.1.1. The Tribunal found the breach of Principle 3 proved beyond reasonable doubt.

37.9 *Principle 6*

37.9.1 The Tribunal found the breach of Principle 6 proved beyond reasonable doubt for the same reasons that it had done so in relation to Allegation 1.1.1

38. **Allegation 1.1.3**

Applicant's Submissions

38.1 Mr Tankel took the Tribunal to the Respondent's interview with the Liquidator in which he had stated that AC had been adjudged bankrupt such that he could not act as a director and that a previous scheme involving AC and CC had failed, damaging their reputation. He had stated that overseas investors had more trust in a company led by someone local and that AC and CC would not have personal liabilities to company directors.

38.2 Mr Tankel submitted that it was plain that Company A did not own the properties at the time that it sold them. Instead, immediately upon sale by Company A to individual investors, the contract between Company A and Company E completed and title passed from Company E to Company A then Company A to the individual investor.

38.3 Mr Tankel told the Tribunal that the legal position was that Company A owned the development site, but neither AC nor CC had any legal control over it. On 17 July 2014, they therefore caused a company known as Company D to be incorporated. The Respondent had explained in his interview with the Liquidator that Company D was to "protect the interests" of AC and CC. Mr Tankel's case was that the Respondent sought to reflect the perceived ownership of the development sites using a highly unorthodox and invalid system of charges. The charges to Company D appeared to have been a means of replicating the split whereby Company A was responsible for selling the properties as an "agent" for 15% commission when Company D was the "true" owner who retained the other 85%.

38.4 The charges were drafted, executed and registered by the Respondent. Each specified that the liabilities secured by the charge were:

> "…Secured liabilities: means all present and future monies, obligations and liabilities owed by [Company A] to [Company D], whether actual or contingent and whether owned jointly or severally, as principal or surety and/or in any other capacity whatsoever, under or in connection with the Agreement for Services or this Charge together with all interest (including, without limitation, default interest) accruing in respect of such monies or liabilities which shall be a minimum of £6,189,200.00…"

38.5 "Agreement for Services" was defined as the agreement for services between Company A and Company D dated on or about the date of the Charge. The Respondent had explained in his interview with the Liquidator that the sum charged was 85% of the anticipated gross development value of the site. The gross development value was identified by AC.

38.6 The Respondent drafted, executed and/or registered the deeds of charge on favour of Company D over, at least, the following properties:

Date	**Property**	**Minimum Amount**
22 September 2014	Development 2	£6,189,200.00
22 September 2014	Development 2	£18,000,000.00
27 October 2014	Development 3	£7,000,000.00

38.7 Mr Tankel referred the Tribunal to the following section of the Respondent's interview with the Liquidator:

"Q [Company A] grants a charge in favour of [Company D]. That's what it gives to [Company D]. What does [Company D] give to [Company A]?
A nothing, really, at that point
Q at that point?
A yeah
Q what is it proposed to give…did you provide the purchase monies?
A no, they were…the purchase monies came from pre-sales on market
…
Q did any money come from [Company D] save that which came from pre sales?
A no
Q when you were a director of [Company D], did it ever have any cash of its own? Did it ever have any income of its own?
A no, no. only – the income was from the developments and selling the properties which was then like a revolving door…"

38.8 Mr Tankel submitted that there was no justification for the creation of charges worth a total of £68 million and that the Respondent could not have had any belief in the validity of the liabilities expressed in the charges to be owed by Company A to Company D. The minimum liabilities stated in the charges were bogus and the Respondent must have known that.

38.9 Mr Tankel told the Tribunal that the charges, which were executed as deeds and which were matters of public record via Companies House and the Land Registry, did not reflect the true position. This could have misled investors and creditors to believe that there were large sums of money outstanding to Company D. Mr Tankel submitted that no solicitor acting with integrity would have created and relied upon misleading documents.

38.10 Mr Tankel further submitted that the Respondent acted, apparently unquestioningly, on the instructions of AC and CC and appeared to have paid no heed to the rights of other potential creditors and had accordingly lacked independence in breach of Principle 3. He also submitted that the Respondent had breached Principle 6.

Respondent's Submissions

38.11 The Respondent's position is set out under Allegation 1.l.1 as explained above.

The Tribunal's Findings

38.12 The Tribunal noted that the matters of the charges had been covered in some detail in the Respondent's interview with the Liquidator. The Tribunal was satisfied that the charges in favour of Company D far outweighed any money that was actually involved. There was clearly no justification of charges worth £68m. The Tribunal found the factual basis of Allegation 1.1.3 proved beyond reasonable doubt.

38.13 *Principle 2*

38.13.1 The drafting, executing and registering of legal charges in these circumstances clearly lacked integrity. This was obvious from the context in which this took place, which was a scheme in which the Respondent had acted in the manner described in relating to Allegation 1.1.1 and 1.1.2. In any event, the Respondent had a duty to be scrupulously accurate in his dealings, and these charges were clearly not so. The Tribunal found beyond reasonable doubt that the Respondent had lacked integrity and breached Principle 2.

38.14 *Principles 3 and 6*

38.14.1 The Respondent's conduct in relation to Allegation 1.1.3 was in the same context as Allegations 1.1.1 and 1.1.3. The Tribunal therefore found the breaches of Principles 3 and 6 proved beyond reasonable doubt for the same reasons as set out above.

39. **Allegation 1.1.4**

Applicant's Submissions

39.1 Mr Tankel submitted that the transactions alluded to above bore the indicators of potential money laundering. He relied in the following submissions in support of this Allegation:-

- The schemes as a whole bore the hallmarks of a fraudulent sham;
- Individual transfers to third parties bore the hallmarks of dishonest misappropriation;
- The funds involved in the transactions may therefore have been the proceeds of fraud;
- There was unnecessary routing of the funds through third party accounts, in particular between Company A and Company D absent any underlying contractual justification;
- The scheme involved convoluted and opaque legal structures, including the use of many different interconnected corporate entities which was unnecessary and/or disproportionate to typical property development enterprises.

39.2 Mr Tankel submitted that AC and CC had sought to conceal their involvement in the scheme by using a series of 'puppet directors' including the Respondent and a convoluted network of corporate entities. Mr Tankel submitted that a solicitor of integrity would not have involved himself in a scheme that involved potential money laundering 'red flags' without questioning it or reporting it. He further submitted that the Respondent placed his own interests ahead of the vital need to avoid money laundering and ahead of his own obligations under the anti-money laundering legislation. Mr Tankel again submitted that this would diminish the public's trust.

39.3 In respect of Principle 7, Mr Tankel told the Tribunal that the Applicant's case was based on the failure to be alert to the possibility of money laundering.

Respondent's Submissions

39.4 The Respondent's position is set out under Allegation 1.l.1 as explained above.

The Tribunal's Findings

39.5 The Tribunal found that the schemes clearly had indications of potential money laundering based on the characteristics outlined by Mr Tankel, all of which appeared in these matters. There was clearly no contractual justification for the movements of the monies and the schemes themselves were convoluted and opaque. AC and CC had both sought to conceal their involvement and so it was right to describe the Respondent as a "puppet director". Although Mr Tankel had referred to the 2018 guidance on money laundering, the Tribunal was aware that an earlier version of the guidance would have existed in the 2013-16 period. In any event, the indictors of potential money laundering were so obvious that the Tribunal found the factual basis of Allegation 1.1.4 proved beyond reasonable doubt.

39.6 *Principle 2*

39.6.1 Again, the context of this was highly relevant in that the Respondent was closely involved with the movements of the monies and in the operation of the scheme. The Tribunal was satisfied that moving monies in circumstances where there were indicators of potential money laundering was a serious matter and demonstrated a clear lack of integrity. The Tribunal found the breach of Principle 2 proved beyond reasonable doubt.

39.7 *Principle 3 and 6*

39.7.1 The Tribunal was satisfied beyond reasonable doubt that the breaches of these Principles were proved beyond reasonable doubt for the same reasons as set out above.

39.8 *Principle 7 and Outcome 7.5*

39.8.1 These breaches followed as a matter of logic from the Tribunal's factual findings and were proved beyond reasonable doubt.

40. **Allegation 1.1.5**

Applicant's Submissions

40.1 Mr Tankel submitted that the schemes were plainly objectively dubious or bore the hallmarks of fraud. He relied in the following submissions in support of this Allegation:

- Off-plan development schemes were inherently high risk;
- Company A was newly incorporated and had no trading history;

- AC had been adjudged bankrupt and could not act as a director. AC and CC had a poor track record of completing developments. They both sought to conceal their involvement in the scheme;

- The scheme offered unrealistically high rates of return on investment, including unrealistic rental income guarantees;

- The rental income guarantees were triggered upon practical completion. There was therefore little financial incentive for the developers to complete the development;

- The scheme involved the payment of large upfront payments that represented 50% of the unit purchase price;

- Profit from unit sales were used to purchase further development sites which were in turn marketed to Asian investors. That was done approximately ten times within a very short space of time, an unrealistic rate at which to work a new property development concern.

- The overwhelming majority of the funds were dispersed to AC and CC or to companies associated with them.

- The scheme involved the creation of very large charges granted by Company A to Company D with no apparent justification.

- The scheme was extremely convoluted and opaque, with many interconnected persons and corporate entities.

- The scheme was the subject of concerted overseas marketing efforts to overseas investors who were unlikely to have been familiar with the normal terms and course of property transactions in England.

- Company D's accounts claimed that it had £100 million of working capital. The Respondent admitted in his interview with the Liquidator that he knew that neither Company D, AC nor CC had that amount of working capital.

- The nature of the scheme left investors with no clear idea whom they were buying their property from which prevented them from forming an informed view as to the risks attached to their investment.

40.2 Mr Tankel submitted that a solicitor of integrity would not have become involved in a scheme with so many warning signs. It was potentially fraudulent and it placed other peoples' money at risk. He further submitted that the Respondent had placed his own interests and those of his client ahead of anything else.

40.3 Mr Tankel submitted that the public expected solicitors to help to protect them from risky and dubious transactions. The involvement of solicitors was commonly used to lend suspicious schemes a veneer of respectability. There was reference to the protection afforded by the Respondent's involvement in the marketing materials for the investors. Mr Tankel submitted that the public would not trust nor have confidence in

a profession which permitted its members to facilitate such dubious and suspicious schemes.

Respondent's Submissions

40.4 The Respondent's position is set out under Allegation 1.l.1 as explained above.

The Tribunal's Findings

40.5 The Tribunal found that the schemes, and the transactions within them, had the hallmarks of being dubious for all the reasons set out in this Judgment. The Tribunal found that the Respondent had lacked integrity and independence by reason of his involvement in them. He had also diminished the trust the public placed in the profession. The Tribunal found Allegation 1.1.5 proved beyond reasonable doubt including the breaches of Principles 2, 3 and 6.

41. **Allegation 2.1**

Applicant's Submissions

41.1 Mr Tankel submitted that the Respondent had acted dishonestly, applying the test in Ivey v Genting Casinos [2017] UKSC 67. Mr Tankel submitted that the Respondent was aware of the following matters at the material time:

- AC had been adjudged bankrupt and had a poor track record of completing property developments.

- AC put forward several other individuals, not least the Respondent, as directors and shareholders in order to conceal his own involvement.

- Investors had invested around £16 million in the expectation, and with the contractual right, that those funds would be used to finance the named developments in which they had invested. The investors advanced those funds on the basis of the documents the Respondent had drafted and the marketing materials of which he was aware.

- Proceeds from unit sales were used to finance the purchase of other development sites, fund the luxurious lifestyles of AC and CC, and were paid to companies associated with them both. Those payments were all made without any apparent justification, in breach of contract and contrary to what had been stated in the marketing materials.

- Some of those payments were disguised. For example, some of them were referred to as "directors loan repayments." Other payments were made via Company P, a computer games develop that could have had nothing to do with the development in question.

- Some of the payments were knowingly mis-described. For example, the payments described as "director loan repayments" in the accounts and banking transactions could not have been as described, because neither AC nor CC was a director and neither one of them had loaned significant sums of money to Company D.

- The scheme had the flavour of a Ponzi scheme, in which investor funds were used to buy a large number of other development sites at a rapid rate. Those sites were then used to attract further investors.

- The scheme offered unrealistically high rates of return that were said to be guaranteed.

- The transfers to third parties risked putting the viability of the development schemes at risk by making them potentially financially unsustainable.

- The scheme involved the creation of bogus charges.

- The charges were, in any event, to the disproportionate value of £68 million.

- AC and CC sought to conceal the true nature of the scheme from investors and other stake holders.

41.2 Mr Tankel submitted that ordinary and decent people would objectively regard the Respondent's conduct as dishonest.

Respondent's Submissions

41.3 The Respondent's position is set out under Allegation 1.l.1 as explained above.

The Tribunal's Findings

41.4 The test for considering the question of dishonesty was that set out in Ivey at [74] as follows:

> "the test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: ….. 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 knowledgeable 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."

41.5 The Tribunal applied the test in Ivey and in doing so, when considering the issue of dishonesty adopted the following approach:

- Firstly, the Tribunal established the actual state of the Respondent's knowledge or belief as to the facts, noting 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 that conduct was honest or dishonest by the standards of ordinary decent people.

41.6 The Tribunal went through the matters that Mr Tankel had submitted were within the Respondent's knowledge at the material time. The Tribunal had already found when considering Allegations 1.1.1-1.1.5 that the Respondent was not only aware of those matters but had been closely involved in them. The Respondent knew why investors had invested the money, and he knew that the transfers were not envisaged by them. The basis of this finding was that the Respondent had drafted the agreements. He was obviously aware of the movements of money and the creation of the legal charges because he had executed them himself. This was clear from the contemporaneous documents and from his interview with the Liquidator.

41.7 The Respondent had denied knowing that the scheme operated like a Ponzi scheme and had stated that he believed that the schemes would proceed to completion. The Tribunal rejected the Respondent's defence on the basis of the documents that he would have had before him when operating the schemes. It was not credible to maintain that he believed that the schemes were genuine and operating ethically. The schemes had been designed to avoid AC's past record being a deterrent to potential investors.

41.8 The Tribunal found beyond reasonable doubt that the Respondent's actions, as proved for the reasons set out in Allegations 1.1.1-1.1.5, would be considered dishonest by the standards of ordinary decent people. The Tribunal therefore found Allegation 2.1 proved beyond reasonable doubt.

41.9 As a result of this finding, the Tribunal was not required to consider the question of recklessness as alleged in Allegation 2.2.

Previous Disciplinary Matters

42. There was no record of any previous disciplinary findings by the Tribunal.

Mitigation

43. The Respondent did not put forward any specific mitigation, but the Tribunal noted the contents of his letter to the Tribunal of 8 November 2019, quoted earlier in this Judgment.

Sanction

44. The Tribunal had regard to the Guidance Note on Sanctions (November 2019). The Tribunal assessed the seriousness of the misconduct by considering the Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.

45. In assessing culpability, the Tribunal identified the following factors:

- The Respondent's motivation was at least partly financial gain. He had believed that by continuing to act this would lead to further work for him;
- The misconduct continued over a period of almost three years;
- The misconduct was planned;
- There had been a breach of a position of trust in that he knew the purpose of the monies being invested, having written the contracts;
- The Respondent was very experienced, having been more than 10 years qualified at the start of the material period.

46. In its assessment of the harm caused, the Tribunal found that there had been very significant harm. The schemes had resulted in financial losses worth millions of pounds. The creation of meritless legal charges had required the intervention of the Liquidator. It was very damaging to the reputation of the profession for a solicitor to be creating false charges and to be disregarding the terms of agreements he had drafted.

47. The misconduct was aggravated by the following factors:

- The finding of dishonesty; Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:

  > "34. there is harm to the public every time a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be "trusted to the ends of the earth"."

- The misconduct had been deliberate, calculated and repeated;
- The set-up of the schemes had been designed to encourage people to invest despite AC's past record;
- The Respondent knew he was in material breach of his obligations.

48. The misconduct was mitigated by the Respondent's co-operation with the Liquidator. The Tribunal was unable to identify any other mitigating factors in this case, though it recognised that the Respondent had no previous findings at the Tribunal.

49. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the Respondent. The misconduct was at the highest level and the only appropriate sanction was a strike-off. The protection of the public and of the reputation of the profession demanded nothing less. The misconduct had involved repeated acts of dishonesty and examples of lack of integrity. It had involved the misleading of investors, the creation of false documents and the disregard of anti-money laundering legislation. Over a three year period the Respondent had misappropriated monies and sought to mislead.

50. The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. The Tribunal found there to be nothing that came close to justifying a lesser sanction. The only appropriate and proportionate sanction was that the Respondent be struck-off the Roll.

Costs

51. Mr Tankel applied for costs in the sum of £44,325. The case had been prepared on the basis that it was anticipated to be a three day contested hearing. Although it had only taken a day and a half, Mr Tankel invited the Tribunal not to reduce the costs claimed. The fixed fee was the right one to apply to this case and the costs remained reasonable and proportionate. The costs had been properly incurred well in advance of the hearing. If the total number of hours spent (approximately 120) was divided by the fixed fee then this worked out at a notional hourly rate of approximately £175.

52. Mr Tankel reminded the Tribunal that the Respondent had never stated in terms that he was not going to attend. Had he done so then the costs could have been reduced.

53. Mr Tankel noted that the Respondent had been declared bankrupt. That was an issue which went to enforcement and not the principle of making a costs order or quantum.

The Tribunal's Decision

54. The Tribunal reviewed the costs schedule and the fees claimed. The Tribunal did consider it appropriate to reduce the costs to reflect the shorter hearing. Counsel and those instructing him would not need to attend for a third day and it was right that this was reflected. The appropriate reduction was £3,000 having regard to Counsel's refresher and Capsticks' attendance.

55. The Respondent had not served a statement of means, despite a direction that he do so 28 days before the hearing if he wanted them taken into account. He had provided no details about the bankruptcy. The Tribunal was not minded to restrict the Applicant's ability to recover costs if possible. The Tribunal therefore made no further reduction for means.

56. The Tribunal therefore ordered that the Respondent pay the costs fixed in the sum of £41,325.00.

Statement of Full Order

57. The Tribunal Ordered that the Respondent, TIMOTHY PETER ACKREL, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £41,325.00.

Dated this 9th day of March 2020
On behalf of the Tribunal

G. Sydenham
Chair