SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12072-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

DAVID HAYHURST Respondent

Miss H. Dobson (in the chair)
Ms. A Horne
Mrs C. Valentine

Date of Hearing: 19 May 2020

Appearances

There were no appearances as the matter was dealt with on the papers.

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations against the Respondent made by the Applicant were that whilst in practice at 174 Solicitors Ltd between about November 2014 and November 2016, he failed to advise adequately his clients investing in four property development schemes about the high risks inherent in the schemes and, in so failing, breached Principles 4, 5 and 6 of the SRA Principles 2011, and failed to achieve Outcome 1.5 of the SRA Code of Conduct 2011.

Documents

2. The Tribunal had before it an electronic bundle containing the following documents:

- Application and Rule 12 Statement dated 2 and 1 April 2020 respectively
- The documents exhibited to the Rule 12 Statement
- Schedule of costs at issue dated 1 April 2020
- Respondent's personal financial statement dated 14 April 2020 and appendix
- Statement of Agreed Facts and Outcome dated 4 May 2020

Factual Background

3. The Respondent was admitted to the Roll on 16 June 1980. His firm started trading on 1 July 2004 and ceased trading on 20 December 2019. At all material times, the Respondent was the senior partner responsible for the transactions giving rise to the allegation.

4. The Respondent was an experienced solicitor who specialised in residential and commercial property law, including property developments. He had generally acted for developer clients, but also for buyers in off-plan schemes. The allegations involved his role when acting for buyers in relation to four "fractional" property development schemes. The Statement of Agreed Facts and Outcome appended to this Judgment provides information about "fractional" property development schemes generally, as well as the specific ones giving rise to the allegation and admission and the Respondent's experience of them.

Application for the matter to be resolved by way of Agreed Outcome

5. The parties invited the Tribunal to deal with the Allegations against the Respondent in accordance with the Statement of Agreed Facts and Outcome annexed to this Judgment. The parties submitted that the outcome proposed was consistent with the Tribunal's Guidance Note on Sanctions.

Findings of Fact and Law

6. The Applicant was required to prove the allegations to the standard applicable in civil proceedings (the balance of probabilities). 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.

7. The Tribunal reviewed all the material before it and was satisfied to the requisite standard that the Respondent's admissions were properly made.

8. The Tribunal considered the Guidance Note on Sanction (November 2019). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. The Respondent had now accepted that he had not provided adequate advice to his clients but the Tribunal noted that at the time he considered he had complied with his obligations. Nevertheless, whilst not intended, the harm was foreseeable given the Respondent's level of experience. The Respondent had a lengthy previously unblemished disciplinary record and had made admissions to the matters raised.

9. The Tribunal considered that the appropriate sanction in this matter was a financial penalty falling within Level 3 of its Indicative Fine Bands (suitable for conduct assessed as "more serious"). The parties proposed a fine in the sum of £10,000. The Tribunal, having determined that the proposed sanction was appropriate and proportionate, granted the application for matters to be resolved by way of the Agreed Outcome.

Costs

10. The parties agreed that the Respondent should pay the Applicant's costs of these proceedings fixed in the sum of £15,000. The Tribunal considered the costs application to be appropriate and proportionate, and ordered that the Respondent pay the costs in the agreed amount.

Statement of Full Order

11. The Tribunal ORDERED that the Respondent, DAVID HAYHURST, solicitor, do pay a fine of £10,000, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £15,000.

Dated this 16th day of June 2020.
On behalf of the Tribunal

H. Dobson
Chair

Case No: 12072-2020

IN THE SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)

AND IN THE MATTER OF:

SOLICITORS REGULATION AUTHORITY

Applicant

- and -

DAVID HAYHURST

(117976)

Respondent

STATEMENT OF AGREED FACTS AND OUTCOME

Introduction

1. By a statement made by Mark Lloyd Rogers on behalf of the Solicitors Regulation Authority ("the SRA") pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 dated 1 April 2020, the SRA brought proceedings before the Tribunal making allegations of professional misconduct against the Respondent. The Tribunal made standard directions on 6 April 2020. There is a substantive hearing listed for 2 days in the period 29-30 July 2020.

2. The Respondent is prepared to make admissions to the Allegation in the Rule 12 Statement, as set out in this document.

Admission

3. The Respondent admits that, while in practice at 174 Solicitors Ltd ("the Firm") between about November 2014 and November 2016, he failed to advise adequately his clients investing in four property development schemes about the high risks inherent in the schemes and, in so failing, breached Principles 4, 5 and 6 of the SRA Principles 2011, and failed to achieve Outcome 1.5 of the SRA Code of Conduct 2011.

4. The SRA is satisfied that the admission and outcome satisfy the public interest having regard to the gravity of the matters alleged.

Agreed Facts

Fractional Property Development Schemes – wider context

5. The case involves the Respondent's role when acting for buyers in relation to three "fractional" property development schemes. The typical features of such schemes were that:

   a. The schemes were large new-build or redevelopment projects, of residential properties comprising a large number of individual residential units.
   b. The main source of funding was not institutional lenders, but rather deposits generated from advance, off-plan and sales of individual units to individual purchasers. In other words, purchasers step into the shoes of the lender.
   c. As such, the deposits were between 40-80% of the purchase price, rather than the usual 10% seen in residential conveyancing.
   d. By definition, the individual units were unbuilt at the time they were purchased. Sometimes there was already a building shell (where a pre-existing building was being renovated), sometimes not.
   e. Purchasers were usually overseas buy-to-let investors, often based in East Asia.

6. The SRA does not regard such schemes as inherently dubious, but it does regard them as being inherently risky. For example, in the schemes in question in these proceedings:

   a. There was minimal contractual control over and protections of funds, either at all or by comparison with traditional institutional lending for construction projects. For example, on the part of purchasers there was no equivalent of (amongst other things) budgeted costs or development appraisal for the purchasers to consider or to measure progress against; no project monitor[1]; no cost overrun guarantee[2], no project control group, no project reports, limited provision for access and inspection. For the avoidance of doubt, the SRA does not allege that these protections ought to have been in place in these fractional development schemes. But the fact that they would typically be in place in an ordinary construction project of this size, to enable a lender to exert control over expenditure, provides an indication as to how limited the legal protections were here. The consequence of limited legal protection meant that there was an inherently high risk that funds would be mis-spent or even misappropriated. Whilst it is open to

[1] Lender's quantity surveyor

[2] In development finance, because the borrower/developer is typically an SPV with little or no assets of its own, the lender will often want to have a separate guarantee, usually from a parent company or sponsor, which guarantees that any cost overruns will be met by that guarantor.

purchasers to take such legal risks, they must be fully informed of them when they do so.

b. The investment was effectively worthless unless the development is brought to completion. Thus not only was the level of risk inherently high, but the risk if it materialised was of the total loss of each investors' funds.

c. In practice, invested capital is difficult to recover if the development stalls, even having regard to the limited protections that were in place. The insolvencies of the development companies are complex and enforcing buyers' limited protections is thus not a straightforward exercise.

The schemes in the instant case

7. The Firm acted in the purchase of units in various developments as set out in the table below. The Respondent was the lead partner in respect of this work:

Development	Developer	Number of Units	Total deposits
Property 1	Developer A	69	£2,337,913.27
Property 2	Developer B	14	At least £254,242.60
Property 3	Developer B	4	£77,809.90
Property 4	Developer B	31	£211,004.90
Total		118	At least £2,880,970.67

8. Developer A was wound up by order dated 12 April 2016. It has subsequently come to the SRA's knowledge that the Property 1 project may have been part of a fraud. However, there is no evidence that the Respondent was or could have been aware of this at the time that he acted for buyers. It is nevertheless an example of the type of risk that was inherent in such schemes.

9. Development B entered into a Company Voluntary Agreement on 7 September 2017.

10. In consequence, none of the four developments listed above has been brought to successful completion. Purchasers' funds are therefore at risk of being lost partially or completely.

11. The SRA is not aware of how much, if any, of these funds the purchasers have been able to recover, for example by way of civil actions or insurance claims.

Purchase Agreements

12. In all cases, the main document governing the legal relationship between the scheme promoter and individual purchasers was the purchase agreement.

Developer A

13. The key provisions in the development involving Developer A were that:

    a. There would be simultaneous exchange and completion.

    b. Investors were required to pay 50% of the purchase price of the property upon exchange of contracts, which was made up of a reservation fee, a 10% deposit, with the remainder being completion monies.

    c. The purchaser would acquire a leasehold over their unit at the date of exchange (which as just observed was also the date of completion). However they would not be able to go into immediate occupation of the unit, as it was as yet unbuilt.

    d. The purchaser would pay the balance of 50%, referred to in the contract as a "deferred payment", upon practical completion of the development. At that time, the purchaser could go into occupation.

    e. The sale and purchase agreement was accompanied by a suite of documents the effect of which was that upon practical completion the promoter or its assignee would let out the individual unit on behalf of the purchaser.

    f. Under the terms of the sale and purchase agreement, the seller warranted to the buyer that the 50% upfront payment would only be used to pay the costs of and associated with the purchase of the site; clearing the title of any charges; completing works at the site; and reasonable professional fees and agents' commissions.

    g. With the exception of this warranty, and the immediate leasehold interest that the purchaser took in the (as yet unrenovated) individual unit, there was no protection over buyers' funds.

Developer B developments

14. The purchase agreements across all Developer B developments were materially identical. The key provisions were that:

    a. Purchasers would pay 50% of the price upfront, by way of deposit. Completion would occur in the ordinary way upon payment of the balance, which fell due only after practical completion.

b. The developer granted the buyers a first legal charge over the development site. The charge was held by a security trustee known in each case as the "Buyers' Company".

c. The funds from unit sales would be held by the seller's solicitor as stakeholder "to the order of the [Buyer's] Company". The developer could only draw down funds from the seller's solicitor's stakeholder account upon presentation to the seller's solicitor of an architect's certificate certifying that the relevant costs had been incurred.

d. With the exception of the legal charge over the development site, and the requirement that funds be drawn down only upon presentation of an architect's certificate, there was no protection over buyers' funds.

Summary on purchase agreements

15. It emerges from the above that there was a high level of legal risk inherent in the schemes.

Scope of the Respondent's retainer

16. The Firm's client care letter read:

> "We thank you for your kind instructions to deal with the legal work on your behalf in the above matter [purchase of a unit in relevant development] and will do our best to see that everything proceeds as smoothly as possible. Our aim is to keep you fully advised as matters progress and let you know immediately if any problems arise. We also liaise with other interested parties (solicitors, agents etc) to ensure as far as possible a trouble free purchase."

17. The Firm's terms of business provided that the Firm would:

> "REPRESENT your interests....
> EXPLAIN to you the legal work which may be required and the prospects of a successful outcome.
> MAKE SURE that you understand the likely degree of financial risk which you will be taking on
> ...."

18. The letter and terms of business referred to the conveyance generally and did not seek to limit the retainer in any way.[3]

[3] With the exception of tax advice, in respect of which the Firm's terms of business stated "We will ADVISE you on tax matters, but only if specifically requested to do so."

Advice as to risk

19. The title/contract report, which in the sample cases attached to the FI report post-dated the corresponding client care letters and the dates on which the corresponding sale and purchase agreement were executed, stated (with minor variations which are not for these purposes material):

> **"Risk and our retainer**
> There are risks to any off plan property investment regarding value, progress/completion of the works and projected returns. Our retainer with you is to advise on acquisition of good and marketable leasehold title to the property. It does not extend to providing investment advice on the purchase generally; including in particular advice relating to the capital value of the property, the mortgage suitability, the projected level of income return, the value strength or sustainability of the rental guarantees or the ability of the management structure to maintain the assured rental payments. **174 Law Solicitors** cannot, and will not, accept any liability incidental to any such matters; we refer you to our *Terms and Conditions of Business Applicable to [relevant development]* retainer document attached to this contract report, and to the consultancy suggestions it contains.
>
> **In conclusion**
>
> It is most important that you completely understand the matters set out in the purchase documents, and the nature and effect of the speculative investment property acquisition that they reflect..."

20. The Terms and Conditions for each development, which accompanied the title report but post-dated the client care letter and dates of exchange, included the following disclaimer:

> **"The extent of our retainer**
> It is important that we make clear the extent of our role when you have retained us to act for you. Our retainer with you is expressly limited to advising only on the legal provision of the purchase documentation and to complete a leasehold interest in the property (one of the flats comprised in the [...] Scheme) in your favour on terms that, reasonably construed, constitute good and marketable leasehold title to the property. Our retainer DOES NOT extend to advice regarding:
>
> (1) The viability of the overall business plan for [development], specifically it is not part of our retainer to advise you regarding the financial sustainability of the overall development scheme, particularly in relation to the cost of completing the necessary works of refurbishment and conversion to residential use.

(2) The investment value of the property, for example in relation to the level of income return.
(3) The mortgage suitability of the leasehold title.
(4) The value strength or sustainability of the Rental Guarantee offered by [scheme promoter]
(5) The ability of the management structure to maintain assured rental payments in the future.

If you have any concerns or enquiries in relation to the above we strongly recommend that you consult an accountant, surveyor, mortgage broker, or other specialist consultant (as appropriate) depending on the nature of your concern or enquiry. [Development] is an "off plan" development scheme. Accordingly the development is speculative in its nature (pending final satisfactory completion of all refurbishment and conversion works). It is important that you fully understand that there are risks associated with any "off plan" speculative developments scheme and that you are comfortable with those risks".

21. The Firm also produced an FAQ sheet which stated amongst other things as follows:

Risk and independent advice

You should be satisfied that the purchase price you are paying is the market price. You should also consider whether you require any advice prior to exchange in relation to current market conditions as regards the purchase price and projected rental letting return.

You may consider you require appropriate advice from independent property agents or you may be prepared to rely upon the advice of the representatives from the Selling Agents. You are purchasing in advance of construction and thereby speculating that prices and rental levels will not fall.

You should also consider taking independent advice as to the financial strength and expertise of the Developer to perform the contractual obligations.

22. At interview, the Respondent explained:

"Q: Are you comfortable that you have advised on all areas that you feel were to be advised upon?
A: Yes
Q: And you don't consider it part of your retainer to advise on the appropriateness or validity of the scheme for each of the clients?
A: I think it's my duty to advise them that there are other professionals that can assist in that regard.

Q: And had you been asked to advise what would you have said?
A: We, we would have made an introduction to an accountant or other suitable professional."

23. It is notable that when acting on the other side of identical transactions, i.e. for developers, the Respondent's terms and conditions of business provided that the firm would "MAKE SURE that you understand the likely degree of financial risk which you will be taking on". Those terms and business did not include any similar disclaimer as to the alleged scope of the retainer.

24. The SRA alleges, and the Respondent now accepts, that:

    a. Notwithstanding his representations to the contrary, the Respondent's retainer with the clients naturally included provision of advice as to obvious risks of the type referred to at paragraph 6 above. The types of risk referred to above at 6 are well within the remit and expertise of a solicitor acting for a buyer in relation to a property development scheme. Indeed, the solicitor is the most appropriate if not the only professional qualified to provide advice as to that category of risk.
    b. Further or alternatively, the Respondent's representations set out above did not have the effect of successfully limiting his retainer;
    c. Even if advice as to risks was outside the scope of his retainer, the Respondent still had a duty to advise as to obvious risks which came or ought to have come to his attention whilst carrying out his retainer;
    d. Alternatively, to the extent that the Respondent's representations set out above did have the effect of successfully limiting his retainer, that is in itself a regulatory issue given the obvious risks about which he ought to have advised his clients.

25. In response to the SRA's investigation, the Respondent has pointed to the fact that clients had already incurred reservation fees of up to £5,000 prior to his involvement, which meant he had added responsibility to ensure the transactions was completed. However:

    a. The fact that clients had already spent £5,000 was not a reason not to provide adequate advice as to the risks of investing yet further sums.
    b. Payment of the reservation fee did not mean that clients were contractually obliged to complete the transaction (as one is, for example, obliged upon exchange to complete). Providing adequate advice would not have been to encourage a breach of contract, or to cause any additional losses to be incurred.
    c. The requirement to pay a £5,000 reservation fee was transparently part of the commercial pressure applied by the scheme promoter to encourage investors to invest. A solicitor ought to have seen through that and not allow it to get in the way of providing proper and adequate advice.

The Respondent's financial incentives

26. The Firm was a panel (recommended) firm in respect of each of the schemes, meaning that it received referrals from the work from the scheme promoters. The Firm received fees for the work it did.

27. There is no allegation that the fee was an unreasonable sum for the work the Firm did. The Respondent estimates that this type of work made up approximately 10% of his Firm's income, and was not central to the viability of his Firm's practice. There is no other evidence of a financial incentive or inducement relating to the Respondent's participation in these schemes.

Applicable principles

Solicitor's duty to advise – common law principles

28. The basic principle is that in the ordinary way a solicitor is not obliged to travel outside his instructions and make investigations which are not expressly or impliedly requested by the client: *Pickersgill v Riley* [2004] UKPC 14. On the other hand, there is generally a duty to point out any hazards of the kind which should be obvious to the solicitor but which the client, as a layman, may not appreciate: *Boyce v Rendells (1983) EG 268 at 272, col.2*. A solicitor carrying out a transaction for an inexperience client is not justified in expressing no opinion when it is plain that the client is rushing into an unwise, not to say disastrous, adventure: *Neushul v Mellish Karkavy* (1967) 111 SJ 399, *per* Danckwerts LJ. There is no distinction between legal consequences and financial implications in this case: in this case the significance of the legal consequences lie in the financial implications (compare *County Personnel Ltd v Alan R Pulver & Co* [1987] 1 WLR 916 *per* Bingham LJ at 924A). The risks identified at paragraph 6 above were precisely the types of hazards about which the Respondent ought to have advised his clients, applying these principles.

29. As part of his ordinary duty to explain legal documents, a solicitor should in particular explain any unusual provisions: *Sonardyne Ltd v Firth & Co* [1997] EGCS 84 QBD. The instant cases were clearly very different from (a) ordinary property transactions in the UK; and (b) ordinary facility agreements in development/construction finance. The purchasers' attention ought to have been drawn to these differences. Doing so would have given them a more informed view as to the risks they were taking on.

30. The experience of the client is relevant: an inexperienced client will need and will be entitled to expect the solicitor to take a much broader view of the scope of his retainer and of his duties than will be the case with an experienced client – *Carradine Properties Ltd v DJ Freeman & Co* [1999] Lloyd's Rep PN 48 *per* Donaldson LJ at [487]. At interview the Respondent described the purchasers in these cases as having been reasonably astute, but nevertheless non-professional, investors.

SRA's Warning Notice on investment schemes

31. The SRA's view on such schemes is set out in its *warning notice on investment schemes (including conveyancing)*, dated 23 June 2017. The relevant sections are:

"**Financing a development**

Schemes are being promoted as involving the routine buying of a property when in reality the buyers' money is being used to finance a development or refurbishment. This is of particular concern when in unusual developments such as the buying of individual hotel rooms, rooms in care homes, or self-storage units. Similar concerns also apply to some extent to any "off-plan" purchases. These may not be investment frauds but they still involve a higher risk than the simple purchase of a property.

High "deposits" are used by property developers to finance their developments. Investors are not being advised, or properly advised, that this often presents a much higher risk than simply buying an existing house or apartment

Where you are acting for the buyers in these types of transactions, you must advise clients fully about the transaction and how it significantly differs from the simple buying of an existing property, such as:

Buying a property not yet built or completed i.e. off plan or subject to significant refurbishment, involves substantial risk that the developer or seller could fail and money will be lost;

Promises of substantial returns are often illusory – and standard warnings in publicity about the risk of capital loss are not enough to ensure that a law firm has properly advised a client about a transaction

High "deposits" are being used to finance the development (see below).

We are seeing cases of solicitors simply processing transactions for buyers and adopting the language of conveyancing. The effect is to mask what is really happening. For example, investors provide money for a "deposit" which is released to the seller upon some (often spurious) condition. The investor's money is used to buy the property or finance its building or refurbishment. This carries substantial risks such as the money being misappropriated, the seller failing to complete the scheme or the seller becoming insolvent.

The usual deposit in a conveyancing transaction is 10 percent. It is paid to ensure that the buyer will complete the contract. In dubious schemes we have seen deposits of 30 percent or even 80 percent. These are not market standard deposits but involve both pre-payment of the price and effectively the providing of finance to

the developer. Referring to them as deposits is part of the psychology of presenting a risky "investment" as routine conveyancing. Clients are actually paying their money into often what is high-risk property development leading to substantial losses. You should ensure that clients fully understand the risks they are taking and it may well be necessary to strongly advise clients against entering into such transactions.

...

We have also seen solicitors supposedly acting for investors who appear more focused on ensuring the scheme continues than upon advising their investor clients properly.

Firms sometimes argue that they were not required to advise clients on a transaction because they had a "limited retainer". We have not seen a case where the retainer was limited at the client's (genuine) request. Limited retainers, particularly when dealing with consumers and small businesses, are in fact a red flag warning of serious misconduct. In most cases the law firm is aware that there is or might be a problem and is trying to avoid telling the client this."

32. The above Warning Notice was not in force at the time of the events in question, but the principles contained therein are entirely consistent with the common law principles referred to above, given the obvious hazards associated with these schemes. In the SRA's view solicitors involved in such schemes ought to have conducted themselves in a manner consistent with the principles referred to in the Warning Notice, even prior to its publication.

33. By failing to advise of the risks referred to at paragraph 6 above, the Respondent fell below the standard set out in the Warning Notice.

SRA Principles 2011

34. In failing to give the above advice, the Respondent breached:

34.1. Principle 4 – it was in clients' best interests to be advised of the risks referred to above, so that they could make informed decisions about whether to invest. The Respondent's evidence during the SRA's investigation was that the typical profile of an investor was a thirty-something schoolteacher who had gradually saved up enough to invest by putting something aside each month. They were not obvious candidates for a high-risk investment scheme. They may well have regarded investing in the UK buy-to-let property market as a relatively safe investment, when in fact these particular schemes were anything but.

Advice as to risks was at the very least capable of having a material bearing upon the decisions that these clients made. In the event, clients did not receive that advice and so were unable to make such informed decisions. Where some clients might have decided that it was not in their best interests to invest, they have been deprived of that opportunity and instead face the risk of losing the whole of their capital.

34.2. Principle 5 – There is no complaint about the standard of the Respondent's conduct of the conveyance itself. But part of that service, in the context of these schemes, involved providing advice as to the types of obvious risk referred to at paragraph 6 above. By failing to provide such advice, and relying instead upon clients to seek out other less well qualified professionals, the Respondent failed to provide a proper standard of service to his clients.

34.3. Principle 6 – the public expects those earning fees to represent buyers in a property transaction to act as a first line of defence against unduly risky transactions. Indeed, the SRA's experience is that many developers rely upon the involvement of solicitors to lend an additional degree of credibility and legitimacy to their schemes. The failures of the scheme were well-reported and in the public eye. The reputation of the profession requires maintaining public confidence in the profession as a whole. The public would lose confidence in a profession that fails to protect it in circumstances such as these.

35. The Respondent also failed to achieve *Outcome 1.5*: The advice provided and representations given were so inadequate as to be incompetent. Moreover, the Respondent wrongly considered that because (in his view) some of his clients were sophisticated, therefore they did not require relevant advice.

Mitigation

36. The following points are advanced by way of mitigation on behalf of the Respondent, but their inclusion in this document does not amount to adoption or endorsement of such points by the SRA:

    a. The Respondent is now 65 years of age. He has been qualified for very nearly 40 years with an impeccable reputation and an unblemished regulatory and disciplinary record.
    b. The transactions which are the subject of the admitted allegation took place in the period November 2014 – November 2016. Whilst the Applicant relies upon the *warning notice on investment schemes (including conveyancing)*, the warning notice is dated 23 June 2017, subsequent to the date of the Respondent's involvement in the transactions, the subject of the proceedings.
    c. The Respondent exercised his professional judgement in an honest and genuine way, at the time, and which informed his approach to the transactions.
    d. The Respondent provided clients with a client care letter and terms and conditions which made express reference to risk and the extent of the Firm's retainer. The extent of the retainer was explained on the basis that the Firm was instructed to advise only on the legal provisions of the purchase documentation and provided an indication as to matters upon which the Firm was not retained to advise. However, with the benefit of hindsight and reflection, and supportive of genuine insight, the Respondent now accepts and admits that he failed to advise adequately in relation to the risks inherent in the schemes as particularised in paragraphs 19 – 21 herein.
    e. The Respondent believed, at the time, and supported by the documentation, that proper advice had been provided to the buyer clients and at all times the Respondent believed he was acting in the best interests of those clients and provided a proper standard of service to them, although the Respondent now accepts that he failed to advise adequately as alleged.

Agreed Outcome

37. The Respondent agrees:

    a. To pay a fine of £10,000;
    b. To pay costs to the SRA in the sum of £15,000 (inclusive of VAT).

38. The sums set out above take account both the severity of the conduct, and also the Respondent's Statement of Means.

39. The Parties consider and submit that in light of the admissions set out above, and taking due account of the mitigation put forward by the Respondent, the proposed outcome represents a proportionate resolution of the matter, consistent with the Tribunal's Guidance Note on Sanctions 7th Edition. The Respondent's professional misconduct is assessed (taking into account the suggested mitigation outlined above) as justified a fine falling within "level 3", i.e. "conduct assessed as more serious".

Signed: .....

(Mark Rogers, Capsticks Solicitors LLP, on behalf of the Solicitor Regulation Authority)

Dated:

Signed: ..

(David Hayhurst)

Dated: