The Applicant appealed the costs element of the Tribunal's decision dated 17 August 2023. The appeal was heard by Mr Justice Eyre on 23 April 2023 and judgment was handed down on 17 May 2024. The appeal was dismissed, and the Tribunal's judgment upheld. SRA v Hon – Ying Amie Tsang [2024] EWHC 1150 (KB) (Admin)

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12415-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

HON-YING AMIE TSANG Respondent

Before:

Mr A Ghosh (in the Chair)
Ms A M Sprawson
Ms J Rowe

Date of Hearing:
10-12 July 2023

Appearances

Benjamin Tankel, counsel of 39 Essex Chambers, 81 Chancery Lane, London WC2A 1DD instructed by Capsticks Solicitors LLP, 1 St Georges Road, Wimbledon, London, SW19 4DR for the Applicant.

Greg Treverton-Jones K.C., counsel of 39 Essex Chambers, 81 Chancery Lane, London WC2A 1DD for the Respondent.

JUDGMENT

Allegation and Executive Summary

1. The single allegation made by the SRA against Ms Tsang, was that:

   Whilst in practice at Amie Tsang & Company Limited ("the Firm") between around 2015 and 2018 she:

1.1. Failed to advise her clients investing in three property development schemes about the high risks inherent in the Schemes and, in so failing, breached Principles 4, 5, 6 and 10 of the SRA Principles 2011, and failed to achieve Outcomes 1.2 and 1.5 of the SRA Code of Conduct 2011.

2. The Tribunal did not find the allegation proved to the civil standard, (which was the requisite standard).

3. The Tribunal considered that Ms Tsang had acted reasonably within the terms of her retainer, for which she had charged a modest fee, to set out the wider risks of the investment plan.

4. As a matter of law, she had not been required to explain in great depth all conceivable commercial risks which might be faced by her clients if the developments failed, to a greater extent than she had done; nor was it reasonable to expect her to go beyond the scope of the retainer. She appeared to have done her best to set out the commercial risks for her clients' benefit, even though she had not been under a duty to do so.

5. The Tribunal had due regard to the judgment of Carr LJ *(as she then was)* in Spire Property Development LLP & Anor v Withers LLP [2022] EWCA Civ 970, and its consideration of advice 'reasonably incidental' to agreed work under the retainer between solicitor and client.

6. The Tribunal made a costs order against the Applicant in the sum of £74,950.00.

7. The Facts can be found here.

   The Applicant's Case can be found here.
   The Respondent's Submissions can be found here.
   The Tribunal's Findings can be found here.
   The Tribunal's Decision on Costs can be found here.

Documents

8. The Tribunal considered all the documents in the case which were contained in an agreed electronic bundle.

Factual Background

9. Ms Tsang was admitted to the Roll of Solicitors on 1 July 1994. At the relevant time, she was the owner and manager of the Firm.

10. The Firm closed on 31 March 2018. Ms Tsang currently worked at David Blank Furniss LLP, Manchester. She had a practising certificate free from conditions.

Findings of Fact and Law

11. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the civil standard (on the balance of probabilities). The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with Ms Tsang's rights to a fair trial and to respect for her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Witnesses

12. Neither the Applicant nor the Respondent called witness evidence.

13. **Allegation 1.1 - Whilst in practice at Amie Tsang & Company Limited ("the Firm") between around 2015 and 2018 she failed to advise her clients investing in three property development schemes about the high risks inherent in the Schemes and, in so failing, breached Principles 4, 5, 6 and 10 of the SRA Principles 2011, and failed to achieve Outcomes 1.2 and 1.5 of the SRA Code of Conduct 2011.**

<u>The Applicant's Case</u>

13.1 The case involved Ms Tsang's role when acting for buyers in relation to a number of "fractional" property development schemes. The typical features of these schemes were that:

- the schemes were large new-build residential properties comprising a large number of individual residential units
- in addition to or instead of funding from traditional lenders, funding was provided by stage payments generated from advance, off-plan sales of individual units to individual purchasers. In other words, purchasers step into the shoes of the lender
- as such, the stage payments were between around 30-80% of the purchase price, rather than the usual 10% deposits
- purchasers could sometimes choose the proportion of funds which they paid in advance, and thus the risk that they were taking on
- by definition, the individual units were unbuilt at the time they were purchased
- in return for this risk, purchasers had the potential to obtain financial reward. For example, to the extent that many units were sold on a buy-to-let basis, purchasers often had the benefit of a minimum rental guarantee representing a rate of return on their investment of usually between around eight and ten percent
- purchasers were usually overseas buy-to-let investors, often based in East Asia.

13.2 The sale of individual units involved a conveyance of title to the units in question. However, the commercial context in which that conveyance took place, and the risk profile of the transaction, was, on the Applicant's submission, very different from an ordinary residential conveyance. Ms Tsang accepted that "The transactions were closer in kind to a commercial property transaction than to a standard residential transaction."

13.3 The Applicant did not regard fractional development schemes as inherently dubious, but it claimed that the particular nature of the transactions rendered them inherently risky. It submitted that investors' funds would be at risk of the possibility of total, or significant, loss unless and until the development project had been completed.

13.4 The schemes in the instant case:

The Firm acted in the purchase of units in various developments as set out in the table below. Ms Tsang was the lead solicitor in respect of this work:

Developer	**Development**	**Number of Clients**	**Total funds through client account**
Developer A	Development A	1	£72,570.00
Developer B	Development B1	103	£4,723,991.34
	Development B2	180	£10,998,748.61
	Development B3	83	£7,344,996.80
	Development B4	56	£3,331,898.32
	Development B5	12	£242,641.83
Developer C	Development C	16	£1,034,070.00
	Total	451	£27,748,916.90

13.5 None of the developments listed were brought to successful completion. Purchasers' funds were, therefore, at risk of being lost, partially or completely. The Applicant was not aware of how much, if any, of these funds the purchasers had been able to recover, for example by way of civil actions or insurance claims. The Applicant suggested a figure in the region of £27,748,916.90 as being the total amount put at risk when acting for these buyer clients, whilst acknowledging that a proportion of these funds might in the event be recoverable.

Purchase agreements in Developments A and B1 to B5

13.6 In all cases, the main document governing the legal relationship between the scheme promoter and individual purchasers was the purchase agreement. The material terms of the purchase agreements across all Developer B developments were identical. The key provisions were that:

- purchasers would pay between 30 and 80 percent of the purchase price upfront and completion would occur in the ordinary way upon payment of the balance, which fell due only after practical completion

- by way of (at least partial) security for their deposits, the developer granted the buyers a legal charge over the development site. The charge was held by a security trustee known in each case as the "Buyers' Company". The charge was likely to be

inadequate, in that the value of undeveloped land would only ever be a fraction of the value of a completed development.

- The Agreements also permitted the Developers to create a prior legal charge, if further institutional lending was needed to bring the project to completion:

> "5.7 If during the course of the Seller's Works the Seller requires additional funds to enable the continuation of the Sellers Works and being unable to raise such funds from Buyers is able to finance those costs from a third-party lender then in such case the Company will consent to the creation of a prior legal charge in favour of such lender, and shall enter into a deed of priority, subordination or similar deed and that shall confer such lender's legal charge priority over the Company's legal charge, upon the following terms:
>
> 5.7.1 Such funds as are raised are paid directly to the Sellers Solicitors and retained and released in accordance with the provisions of this Agreement.
>
> 5.7.2 such loan does not delay restrict or prevent the completion of the sale of the Property to the Buyer in accordance with the terms of this Agreement."

13.7 The Applicant submitted that the ability to create a prior legal charge posed an obvious risk that the value of the buyers' security could be reduced.

13.8 Deposits, together with any further instalments, were to be held by the Seller's solicitor as stakeholder, held to the order of the Buyer's Company. The relevant Developer could draw funds down to purchase the development, to repay any loan taken for the purposes of purchasing the development; for professional fees; for marketing commission; and for carrying out the development works themselves. Funds for the development works could be drawn down upon presentation of a certificate issued by a supervisor, or upon production of the invoice, account, fee note or voucher. The Seller's Solicitor was not required to enquire into the accuracy, appropriateness, or authenticity of these. Buyers irrevocably authorised the release of these funds.

13.9 Save in one respect, the purchase agreement on Development A was materially identical to the agreements in the Developer B agreements. The exception was that, in respect of Developer A, the contract provided that purchasers' deposits were to be held not by the seller's solicitor, but rather in a designated account held by the Buyer's Company that had been set up to hold the charge.

13.10 The payment structure in respect of Development C was different but operated on the same basic principles. With respect to Development C, however, the funds would be held by the Seller's, in-house, solicitor. Mr Tankel alleged that Ms Tsang had provided no advice about this lack of effective protection, nor given even any general advice as to the risks of investing in off-plan, fractional, development schemes.

13.11 Mr Tankel claimed that the legal protections that existed were limited, as follows:

13.12 as to the release of funds to the Developers, the Seller's solicitors were not required to, and would not have the expertise to, go behind the certificates issued by the supervisor (or other invoices, receipts, etc.) There was thus no effective means for anyone

representing the interests of the buyers to check that the certificates were appropriate, accurate, or authentic. Ms Tsang pointed out in her Response to the Referral Notice, the contract was specifically intended to be designed in this way.

13.13 Further, none of the protections that, Mr Tankel claimed usually exist in respect of funding for construction projects of this size were available. Mr Tankel gave examples of the protections which, he submitted, were now available in large scale construction property financings, as set out in the very latest updated versions of practice notes on Real Estate Finance (development) in Practical Law and Lexis Nexis which he adduced. He submitted that there was no equivalent, in the projects Ms Tsang had dealt with, of (amongst other things) budgeted costs or development appraisal for the purchasers to consider or to measure progress against; no project monitors; no cost overrun guarantees, no project control group, no project reports, and limited provision for access and inspection. Instead, buyers effectively had to trust entirely the developers, and the surveyors appointed by them.

13.14 If the project were to fail, the charge was likely to prove inadequate to cover the buyers' losses. The inadequacy of the charge was exacerbated by the ability of the sellers to create further charges against the same land which would take priority over the charge in favour of the buyers.

13.15 The requirement that funds were held *"to the order of the [Buyer's] Company"* in clause 5.1 of the agreement also provided no additional protection in practice. From the perspective of laymen buyers, a reasonable reading of the above clause was that funds could not be released without the consent of someone representing the interests of the buyers. In practice, however, the director of the buyer's company was invariably the seller's solicitor - which at least in respect of Developer B developments was permitted, but not required, by the contracts. As such the only interests represented at the point that deposits were released were those of the sellers/developers, not the buyers. Accordingly, the contractual requirement that the funds be held *"to the order of the Company"* did not necessarily add any extra legal protection.

13.16 The legal risks of entering into these Agreements were, correspondingly, high.

Further matters in relation to Developer B

13.17 The supervisor of the Developer B developments was Elizabeth Slessor of Inca Management Limited. David Choules was a director and a person with significant control of Inca Management Limited, and was understood to be Ms Slessor's senior.

13.18 David Choules, was also a director of the SPVs responsible for Developments. Not only this, but Mr Choules was also a director of the parent of each of the SPVs responsible for Developments B1 to B5, i.e., Developer B, from 28 April 2015.

13.19 Mr Choules resigned from each of these roles on 25 July 2016. 18. In other words, the supervisor of the development was not independent of the developer. This relationship gave rise to the risk that the supervisor would not be able to act independently, and fairly as required of a person carrying out such a role. This further weakened the available protection.

13.20 Keating – a leading practitioner text on construction law - recognised that: "An architect is not disqualified by being a shareholder in, or even the president of, the employer company, or an employee of the employer, provided that the contractor knows or, it seems, must be taken to know, of the architect's interest" (Keating at 5-069). However, Ms Tsang did not advise buyer clients of the connections between the architect/supervisor and the developer.

Further matters in relation to Development A

13.21 In Development A the Buyer's Company had only one director: David Roberts of Wirrall Solicitors, who also represented the developer/sellers. As such, no director was appointed to represent the buyers' interests. That gave rise to a significant risk of conflict of interest, as his developer client's interest was in drawing down funds to complete the development as quickly and cheaply as possible; whereas the buyers' interest was in ensuring that their funds were only drawn down in accordance with the contractual terms to ensure a good quality finished product. This further weakened the available protection.

13.22 Ms Tsang either did, or ought to have, appreciated that risk of conflict. The SDT in the case of David Roberts [Case No: 11970-2019] found (at [17.47] to [17.52]) that this was a *"*significant*"* risk. The existence of this risk of conflict materially increased the risk that funds would be drawn down inappropriately. Ms Tsang ought to have, but failed to, advise clients of this risk.

Scope of the Respondent's retainer

13.23 The Firm produced standard introductory letters, client care letters and Terms of Business. The introductory letter provided amongst other things that:

> "It is your responsibility to obtain your own valuation and survey of the premises which will indicate the market value of the property and highlight any wants of repair and physical defects at the property. I am not a surveyor or valuer and my work **does not** involve visiting or inspecting the property. I cannot therefore give you any advice about whether the price you have agreed to pay is fair and reasonable, or about the condition of the property. This is the purpose of a valuation and survey, which you should arrange for yourself as soon as possible."
>
> (EMPHASIS IN ORIGINAL)

13.24 The client care letter set out the scope of the work as follows:

> "Outline of the Work A broad outline of the work we will undertake on your behalf is as follows:
>
> Carry out local searches and preliminary enquiries of the seller;
>
> Summarise the information obtained about the property and advise you as to the meaning of the provisions in the draft sale of contract;

> PLEASE NOTE THAT IT IS YOUR RESPONSIBILITY TO ENSURE THAT YOU HAVE AVAILABLE ALL THE MONEY NEEDED TO PAY FOR THE PROPERTY AT COMPLETION OF THE PURCHASE;
>
> Ask you to sign the contract and pay the agreed deposit to us so that the contracts can be exchanged;
>
> Check the title of the property and prepare the document to transfer ownership to you and prepare the mortgage (if any);
>
> At completion, the money is passed to the seller's solicitors in return for the Deeds and signed transfer document. At that point you will be entitled to occupy the property and take possession of the keys;
>
> After completion, we send the transfer or conveyance to HMRC for its details to be entered in their records and any necessary Stamp Duty Land Tax to be paid;
>
> When HMRC return the document we then deliver it to the Land Registry with an application to register title;
>
> On return of the title document we lodge it with the mortgage lenders, or if there is no mortgage, we would deal with the title document as you wish."
>
> (EMPHASIS IN ORIGINAL)

13.25 The letter included the Firm's "Guide to Clients in Conveyancing Matters" and "General Guidance to Purchasers: Insurance and Survey Recommendations" These were tailored to conventional, residential conveyancing transactions. They were not tailored to the type of commercial property investment involved here.

13.26 Clause 3 of the Firm's Terms of Business expressly excluded advice about foreign law, taxation and completion law, and said "nor do we provide financial advice generally, or comment upon the commercial viability of any transactions upon which we advise".

13.27 Ms Tsang produced a "Report on Agreement for Sale". It contained the following exclusion:

> **"What we do not do**
> Our retainer does not extend to expressing a view on the quality of the build, the viability of the business plan or to providing investment advice on the purchase generally and particularly, 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 guarantee or tenancy and the leverage of any rental bond that may exist. We do not advise a view as to the ability of the Seller to deliver the project."

13.28 None of the above excluded responsibility for giving advice about the legal merits of the contracts into which Buyers were entering, or the strengths of the legal protections that the contracts conferred upon Buyers.

13.29 It was alleged by the Applicant that:

13.29.1 The Firm's retainer with the clients naturally included provision of advice as to obvious risks of the type referred to in paragraph 13.23 above. The types of risk referred to above at paragraph 13.23 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.

13.29.2 Further or alternatively, the Firm's representations set out above did not have the effect of successfully limiting her retainer.

13.30 Even if advice as to risks was strictly outside the scope of her retainer, Ms Tsang still had a duty to advise as to obvious risks which came or ought to have come to her attention whilst carrying out her retainer.

13.31 Alternatively, to the extent that Ms Tsang's representations set out above did have the effect of successfully limiting her retainer that is in itself a regulatory issue given the obvious risks about which she ought to have advised her clients.

Ms Tsang's position as to the scope of her retainer

13.32 In correspondence Ms Tsang agreed that*:*

> "Any legal risk with the potential to cause legal harm (e.g., deficient title) or financial harm (e.g., loss of deposits) is - applying the Minkin principles - reasonably incidental' to the essence of the retainer. It is therefore implicit in the retainer that a solicitor must proffer advice on all legal risks with the potential to cause legal or financial harm. Further, it would be very difficult to fairly and properly exclude from the scope of the retainer, the duty to proffer advice on any legal risk that could cause legal or financial harm to the client. Any such limitation on the scope of the retainer would be likely to be inconsistent with the fiduciary and regulatory duty to act in the best interests of each client.
>
> …Within the category of building risks, there is a sub-category which we concede to be so significant and overarching that it is probably reasonably incidental to the retainer. This is the risk that building work is substantially delayed or is never completed ... ...
>
> a solicitor must carry out sufficient due diligence into an inherently risky development scheme to enable that solicitor to identify, and proffer reasonably competent advice on, legal risks which have the potential to cause legal or financial harm to prospective buyer clients ..."

13.33 Each of the pieces of advice which Ms Tsang (or her firm) should have provided, but were not, fall within the above.

Advice

13.34 Ms Tsang's *"Report on Agreement for Sale"* explained the relevant contractual terms as follows:

> "The terms upon which funds are released on exchange of contracts are set out in clause 5 of the Purchase Agreement. The clause provides that funds are to be paid to the Seller's Solicitor to the order of Warwick Road Buyers Limited.
>
> At first instance, the funds will be released by the Seller's Solicitor to purchase the Development and to pay the other expenses listed at Clause 5.2.1. Clause 5.2.2 relates to the payment of professional fees and disbursements etc. in respect of the Purchase development. Thereafter, the funds together with the instalment payments are released to secure the marketing expenses and commissions referred to at Clause 5.2.3 and thereafter to fund the works upon certification of expenditure issued by the works Supervisor pursuant to Clause 5.2.4. Funds will only be released for the build works once the Supervisor has issued a certificate to equate to the release of the additional funds.
>
> The term 'off plan purchase' describes a property transaction where a Buyer agrees to purchase a property that does not yet exist, other than on the Seller's plans. There are obviously certain risks in such a deal by reason of the fact that you cannot inspect the finished Unit at the point of purchase and must rely on lay out plans. The Seller may not finish the development and deliver the Unit."

13.35 The report said the following about the legal charge:

> "Legal Charge This is an off-plan purchase by a Seller company set up for the specific purpose of developing this site. Warwick Road Buyers Limited has been set up to secure the obligations of the Seller under the purchase agreement to deliver the Unit. The purpose of this security is that, if the Seller fails in their build obligations, the investors can take steps to enforce the Legal Charge so giving a measure of protection to their investment."

13.36 Ms Tsang's representative said, in correspondence, that Ms Tsang "arranged meetings or telephone attendances with individual investors during which she carefully took them through the reports, cross referencing where necessary to key contract terms including the provisions in clause 5. She did not make attendance notes of these meetings."

13.37 From the context, the scope and content of Ms Tsang's advice during telephone attendances is likely to have been similar to that which she gave in writing.

Advice about the charges from October 2015 onwards.

13.38 In October 2015, Ms Tsang was copied into emails from the developers that made it clear that a first legal charge had been granted to Bridging Finance Ltd on Development B2 and that the same was planned (by way of a deed of priority) for Development B1.

13.39 From that point onwards Ms Tsang was aware, or ought to have been aware, that the legal charge in favour of the buyers' company on those developments would offer even less protection to buyers. Indeed, Developer B or its wholly owned subsidiaries created charges over the development sites. 38. There was no evidence, Mr Tankel submitted, that the Respondent advised her existing clients of the above, or that she adapted the report on title for future clients buying a unit at either of these developments.

13.40 The Applicant drew attention to the case of Various Development B1 Purchasers v 174 Law Solicitors Limited v Key Manchester Limited (formerly Amie Tsang and Company Limited) [2022] EWHC 4 (Ch). A claim was brought in the Chancery Division against another firm of solicitors, on the specific issue of funds having been released from the Development A stakeholder account before the charge in favour of the Buyers Company had been registered. 174 Law Solicitors Limited sought a contribution from the Firm, which had jointly authorised the release of the funds, pursuant to the Civil Liability (Contribution) Act 1978 and Part 20 of the Civil Procedure Rules (MLR1, p. 1239-1289). The issue is a different one from that which arises in the instant case.

13.41 Ms Tsang gave evidence at the trial. The Judge rejected the primary claim against 174 Law Solicitors Limited. While doing so, he rejected an allegation that Ms Tsang had ever sought to "minimise" the risk involved in buying into Development B1. Further, he found that "On the basis of what I have seen of her at this trial, I am satisfied that Ms Tsang would never consciously or deliberately have failed to act in the best interests of any of her clients simply in order to conclude a sale or to secure further instructions" [ibid.]

13.42 Despite rejecting the primary claim against 174 Solicitors, the Judge nevertheless went on to consider the Part 20 claim against the Firm. In so doing he found that, instead of looking to protect her clients' interests, she had:

- failed to consult them about the absence of a charge in their favour;
- failed to give them any relevant information or advice; and
- did not have their express instructions or authority to release funds in the absence of a charge.

13.43 Had the primary claim been made out, the Judge would have found Ms Tsang chiefly responsible, at 80% liability, for the losses that were incurred. Mr Tankel submitted that this was consistent with Ms Tsang's approach generally to advising as to the risks of these investments.

SRA's Warning Notice on investment schemes

13.44 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."

13.45 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.

13.46 Mr Tankel summarised what he claimed was Ms Tsang's position, which, he said, had been set out to the Applicant during its investigation as follows:

13.47 The transactions were more similar to commercial investment deals than residential conveyancing. The scope of her retainer was as set out above and she gave adequate advice about the legal risks. Ms Tsang had made a limited admission that she ought to have advised about the ability of the developers to create prior legal charges. Nevertheless, in this regard, and in any other regard in which her advice may be found to have been deficient, this was negligence and/or an honest and genuine decision of Ms Tsang's on a question of professional judgment. It was not professional misconduct.

The Allegation

13.48 In many respects these were commercial deals in which investors and developers shared not only the rewards but also the risks. What the clients needed to be able to do was to weigh up all the risks (commercial, legal, etc) against the potential rewards, so that they were in a position to make a properly informed decision about whether to make an investment. It thus fell to the Ms Tsang, within the scope of her retainer, to provide advice that fairly presented all of the legal risks. In particular, this ought to have included advice:

- As to the comparatively limited legal protections available for buyers' funds, whether compared to an ordinary residential transaction or traditional project finance.

- That the charge was likely to be inadequate.

- That it was possible to render the charge even less adequate by the creation of other charges which would take priority.

13.49 As to the first of these risks, Ms Tsang submitted as follows in her Response to the Referral Notice dated 21 April 2021:

> "There was a legal risk that the legal controls on the use of the buyers' deposit funds were inadequate:
>
> 1. Under clause 5.1.2.3 all payments had to be 'certified in certificated issued by the Supervisor" who was a "professionally qualified person or firm who is appointed by the Seller as the employers' agent in connection with the

supervision of the Seller's Works and certification of payments due in respect of the Development and its construction."

2. This clause is based on a standard construction law contract where it is standard practice for the supervisor to be appointed by the developer.

3. Inca Management was the supervisor. Inca are well-regard and reputable professionals and are qualified to do this sort of work.

4. There is no evidence that Ms Tsang had any cause to believe that the legal controls on the use of the buyers' deposits were inadequate, or that she was negligent at all in this respect, let alone grossly negligent."

13.50 However, it was submitted by Mr Tankel that these submissions miss the point. They are about the substantive strength of the protection, not about the advice that was given about the strength of the protection. It was said that Ms Tsang did not give advice about the strength of the protection, and these submissions do not suggest otherwise.

13.51 Even then, these submissions simply point out one feature in the overall assessment of the strength of this protection i.e., that the supervisor who was supposed to present the certificates was to be "professionally qualified". However, they do not address the legal weaknesses inherent in this clause highlighted above nor do the submissions refer to the absence of other forms of legal protection that would ordinarily be available in respect of funding at this level, by a traditional lender.

13.52 As to the second risk above, Mr Tankel said that Ms Tsang had drawn attention in her submissions to the fact that she referred in her advice to the charge being "a form of security" and to it providing "a measure of protection". She contended that clients would have realised from this that the charge was not a complete security. Moreover, clients would have known that a charge over undeveloped land would only ever be worth a fraction of the value of a completed property. Mr Tankel said that the Applicant did not accept that, in all the circumstances, this adequately met the point. Ms Tsang accepts that her advice could have been better or clearer, but she did not accept that this was professional misconduct. As to the third risk above, Ms Tsang, it was said, had made a limited admission that she ought to have advised about the ability of the developers to create prior legal charges, and that this breached Outcome 1.5.

13.53 In all the circumstances, it was said by Mr Tankel that Ms Tsang treated her approach to advising too much like this was an ordinary conveyance, and not enough like the commercial property investment that more accurately it was as the risk profile of the transaction better matched the latter rather than the former.

13.54 The Applicant's position was that Ms Tsang's conduct was not "mere" negligence as in their view:

- the risks were obvious, yet the advice given would give no reasonable layperson an adequate appreciation of these risks.

- the misconduct reflected a fundamental failure on the part of Ms Tsang to recognise the scope of the role that she was required to play in the context of this transaction.

- the misconduct was repeated across hundreds of buyers over a substantial period of time.

- the investors were foreign nationals who were likely to place a particularly high degree of reliance upon the legal advice that they received.

Additional matters

13.55 Mr Tankel addressed issues related to the Applicant's investigation process and the context in which it had decided to refer Ms Tsang's case to the Tribunal.

Alleged inappropriateness/disproportionateness of these proceedings

13.56 Mr Tankel said that within her Answer Ms Tsang raised the possibility of an abuse of process application *(in the event no such application was made)*. In a pre-emptive submission Mr Tankel referred the Tribunal to its earlier decisions in the cases of SRA v Roberts; SRA v Hayhurst; SRA v Sewell, and SRA v Ma and Cheung each raising similar factual issues to the instant case. These cases indicated that the subject matter of these proceedings is inherently sufficiently serious to justify consideration by the Tribunal.

13.57 As to the issue of delay, there were good reasons why this case had taken time to come to the Tribunal. Namely, the SRA received credible allegations from a respectable institutional source. It was unarguably reasonable, he claimed, for the SRA to investigate these matters. There were then civil proceedings and, again, it was reasonable for the SRA to await the outcome of that case before continuing with these proceedings. Mr Tankel said that the Forensic Investigator had been subject to bouts of medium sickness in which he was incapacitated for 3 to 4 months at a time.

13.58 As to the civil proceedings the Applicant had reflected carefully upon the HHJ Hodge's judgment in Various North Point Pall Mall Purchasers v 174 Law Solicitors Limited [2022] EWHC 6 (Ch) but the matters in that case were not directly on point with the Applicant's case and it had concerned events which took place after the events with which these proceedings were concerned. The Judge made some observations that were favourable and some that were unfavourable regarding Ms Tsang's conduct towards her clients, however, there was nothing in it, read as a whole, that would justify the withdrawal of the proceedings.

13.59 The matters in this case had narrowed greatly resulting in a single allegation before the Tribunal and the Applicant recognised that, at most, Ms Tsang faced a Level 3 if found liable. Level 3 fines reflected conduct assessed by the Tribunal as *"more than moderately serious"*. The costs of proceedings could not be a reason for an amnesty on such conduct.

Professional standards: scope

13.60 SRA v Libby [2017] EWHC 973 (Admin) was a case involving carelessness (but not negligence) amounting to professional misconduct. The Court held that a failure to show the care and attention to be expected of a reasonably competent solicitor when

drawing down a loan was capable of, and did, undermine the trust and confidence that the public would place in a solicitor: see Libby at [35]-[42].

13.61 Relevant factors included the size of the loan [36], the fact that it was a nonstandard transaction [ibid]; and the presence of carelessness [38]. The Court in Libby recognised that: "[39] The obligations of a solicitor, however, extend beyond ensuring probity and integrity. They can extend to ensuring that a solicitor demonstrates the degree of competence called for in a solicitor in circumstances involving the handling of money belonging to others ... [42] Whether incompetence amounts to a breach of the Principles, and Principle 6 in particular, and what the appropriate sanction would be for any such breach, will depend upon all the circumstances of the case."

13.62 In SRA v Day [2018] EWHC 2726 (Admin), the Court held similarly that:

> "It no doubt can be accepted that negligence may be capable of constituting a failure to provide a proper standard of service to clients. But even so, questions of relative culpability and relative seriousness surely still come into the equation under this Principle if the matter is to be the subject of disciplinary proceedings before a tribunal. We do not, we emphasise, say that there is a set standard of seriousness or culpability for the purposes of assessing breaches of the core principles in tribunal proceedings. It is a question of fact and degree in each case. Whether the default in question is sufficiently serious and culpable thus will depend on the particular core principle in issue and on the evaluation of the circumstances of the particular case as applied to that principle. But an evaluation of seriousness remains a concomitant of such an allegation."

Solicitor's common law duty to advise

13.63 Mr Tankel submitted that 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. 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 inexperienced 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.

13.64 In some cases the significance of the legal consequences lies in the financial implications (compare County Personnel Ltd v Alan R Pulver & Co [1987] 1 WLR 916 per Bingham LJ at 924A). 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 experience of the client is relevant: an inexperienced client will need and 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].

13.65 Having regard to the commercial reality of these transactions, the absence of the usual protections and the risk that this entailed was either central to the retainer, or an obvious hazard that a layman would not appreciate, or part of Ms Tsang's ordinary duty to explain unusual provisions.

Related disciplinary proceedings

13.66 The SRA had made Agreed Outcome proposals involving admitted breaches of Principles 4, 5, 6 and 10 of the SRA Principles 2011, in the materially identical cases of *SRA v Edward Fowler (Case No 11998 - 2019)* and *SRA v David Sewell (Case No 12087-2020),* and in the very similar case of *SRA v (1) Siu Yung Alan Ma and (2) Taut-Yang Cheung (Case No. 11947-2019).*

13.67 Mr Tankel said that the Applicant did not seek to rely upon those determinations as proof of the facts upon which they were based rather, the Applicant sought to rely upon them as authority for the following propositions:

a. *"Failure to advise"* cases can amount to professional misconduct;

b. Cases involving materially identical facts involved professional misconduct.

The alleged breaches of the Principles 2011 and Outcomes

13.68 In failing to give advice that adequately matched the particular risk profile of this transaction, the Respondent breached:

Breach of Principal 4 of the Principals 2011 (Best interests of her clients)

13.69 It was in her clients' best interests to be advised of the risks referred to above, so that they could make informed decisions about whether to invest. 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.

Breach of Principal 5 of the Principals 2011 (Proper standard of service)

13.70 There is no complaint about the standard of 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 above. The buyer clients were instructing Ms Tsang to provide a service which included advising them on the legal terms of the purchase documents. Clients were entitled to assume that, if those terms carried any risks to them or their deposits, Ms Tsang would inform them of those risks as part of the service for which they were paying. Ms Tsang not only failed to provide such advice, she also failed to put clients on notice that she would not be providing advice in this area. Instead, she relied upon clients to seek out other less well qualified professionals. In doing so, she failed to provide a proper standard of service to her clients.

Breach of Principle 6 of the Principle 2011 (public trust and confidence)

13.71 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. Ms Tsang's failure to give proper advice placed client funds at risk. 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.

13.72 Ms Tsang also failed to achieve:

13.72.1 *Outcome 1.2 (protecting client's interests)* - *M*s Tsang's clients were committing substantial funds to a legally risky transaction. They needed to be properly advised about the existence of these risks before entering into the transaction. Those investing after the creation of additional charges also needed to be properly advised about the further limits upon the adequacy of the security. Ms Tsang's clients made decisions to invest funds that were not fully informed and, in so doing, their interests were not adequately protected. The Judge in the Chancery Division claim found that Ms Tsang had not adequately protected the interests of her clients.

13.72.2 *Outcome 1.5 (competent and timely service, taking account of clients' needs and circumstances)* - The advice provided and representations given were inadequate. Moreover, Ms Tsang wrongly considered that because (in her view) some of her clients were sophisticated, therefore they did not require relevant advice.

13.72.3 The Applicant did not call any witnesses and relied entirely on documentary evidence.

<u>The Respondent's Case</u>

13.73 Ms Tsang denied the allegation in its entirety. She did not give evidence and Mr Treverton-Jones KC made submissions on her behalf.

13.74 Firstly, he submitted that the Tribunal should not place any significance on Ms Tsang's decision not to give evidence on the basis that the issues in this case was entirely legal rather than factual. The advice that Ms Tsang did and did not give was clear on the face of the documents and he submitted that the Tribunal ought not to draw any adverse inference from her decision not to give evidence.

13.75 The single allegation against Ms Tsang related to a failure to advise. It followed that in order for there to be a disciplinary offence, she must have been under a *duty* to advise. The duty contended for by the Applicant was a duty on the part of a conveyancing solicitor to know in detail, and to advise her clients, on what safeguards a lender providing funding to a developer would reasonably expect.

13.76 Mr Treverton-Jones submitted ordinarily this duty was to be found in the express or implied terms of the retainer between solicitor and client. The retainer is the contractual document which sets out what the solicitor will (and will not) do for the client, and how much the solicitor will be paid for that service. It was trite law that any duty to advise must be found in the terms of the retainer, and any failure to advise would, therefore, logically amount to professional negligence. A legal or professional duty could not be drawn out of fresh air.

13.77 Mr Treverton-Jones noted that Mr Tankel had said it was not the Applicant's case that Ms Tsang's, alleged failure to advise was negligent and Mr Tankel had gone on to explain that "The problem is not with the advice to individuals but to the cohort as a whole… [The Respondent was] a solicitor who advised 450 clients about what to do with £27 million of their money but did not take proper account of the substance of the transactions when she did so." At other stages in his opening, he submitted "The pure numbers increase the potential level of harm and the risk to the reputation of the profession and the culpability [of the solicitor]" and "The number of clients may not be relevant to negligence, but it is relevant to conduct and culpability".

13.78 Mr Treverton-Jones said that the effect of Mr Tankel's submissions was that the Applicant contended that:

- The source of Ms Tsang's duty to advise was not the retainer but was founded in her professional status as a solicitor and was some sort of "professional" duty but at no stage was it submitted that the retainer was the foundation stone of the alleged duty to advise.

- There is a sliding scale by which in some way this professional duty does not arise when the solicitor has only one client, or a small number of clients, but only comes into play when the solicitor has a large number of clients and large sums of money are passing through the solicitor's client account.

13.79 Mr Treverton-Jones said if the Applicant was correct on those points then a solicitor can abide by all of the express or implied terms of the retainer (one of which is to exercise reasonable care and skill), so that the client has no legal claim against her; and yet simultaneously be in breach of the SRA-imposed "professional" duty and so be liable to sanction at the hands of the regulator.

13.80 In this situation the solicitor would be expected to know when the critical mass of clients became sufficiently large to bring this "professional" duty into play. Ms Tsang was not to know at the outset how many clients she would attract, and the Applicant had not explained at what number of clients the asserted "professional" duty became operative, 5 clients? 10 clients? 50 clients? 100 clients?

13.81 Mr Treverton-Jones submitted that this would be an absurd situation and in reality, the position was simpler and more logical:

a. There are some transactions which bear the hallmarks of fraud, but which may not in fact be fraudulent, i.e. "dubious transactions", in respect of which solicitors should decline to act, if they ignore the warning signs and decide to act, they may be disciplined for doing so.

b. Where however, the transaction was not "dubious" the solicitor's duties are to be found in the express and implied terms of the retainer between her and her client. If the solicitor breaches that contract, she may be liable to action in the civil courts, and, in a small minority of cases where the degree of negligence is egregious, she may also be guilty of professional misconduct.

13.82 The starting point for the analysis was therefore the retainer between Ms Tsang and her clients. However, the source of the "professional" duty, which was said to exist independently of the retainer, had not been explained by the Applicant. Outcomes 1.2 and 1.5 merely expressed and did not change the law of the land, which is that if solicitors comply with the express and implied terms of the retainers with their clients, they cannot be impugned before the civil courts.

13.83 Therefore, if the Applicant considered that solicitors should go well beyond the requirements of the civil law, or should not enter into limited retainers with their clients, so as to justify disciplinary sanctions against them if they fail to satisfy the regulator's requirements, it would have to make specific rules to that effect. It had not done so.

13.84 Mr Treverton-Jones' submitted that solicitors were entitled to know where they stood before any alleged misconduct occurred, rather than afterwards, retrospectively, and he referred to the 1792 polemic of Jeremy Bentham where Bentham had likened the common law to *"dog law":*

> "It is the judges (as we have seen) that make the common law. Do you know how they make it? Just as a man makes laws for his dog. When your dog does anything, you want to break him of, you wait till he does it, and then beat him for it. This is the way you make laws for your dog: and this is the way the judges make law for you and me. They won't tell a man beforehand what it is he should not do – they won't so much as allow of his being told: they lie by till he has done something which they say he should not have done, and then they hang him for it."

13.85 Mr Treverton-Jones submitted that the Applicant's case as to the alleged existence of the "professional" duty in Ms Tsang's case was a classic example of "dog law", as, until the opening in this case, it had never been suggested that there was a duty on the part of a conveyancing solicitor to know in detail, and to advise her clients, on, safeguards a lender providing funding to a developer would, allegedly, expect.

13.86 The Warning Notice relied upon by the Applicant did not assist the analysis. Such notices are issued by the Applicant when it is in possession of information, which is not generally available to the profession, and which it considers that the profession needs to know. The Notice was issued a long time after Ms Tsang had advised her clients and had since been redrafted twice by the Applicant.

13.87 The 2017 Warning Notice did not accurately reflect the common law. Its principles, as asserted by the Applicant were:

> " .. you must advise clients fully about the transaction" and "you should ensure that clients fully understand the risks they are taking ..."

This implied, without any foundation in law, that solicitors acted under the terms of an implied general retainer.

13.88 The criticism of limited retainers being "a red flag warning of serious misconduct" by the regulator of the solicitors' profession was an extraordinary comment. Solicitors are entitled to protect themselves from trespassing into areas of a transaction in which they are not necessarily qualified to advise and for which they will not be paid if they happen to carry out necessary research, by agreeing with their clients the scope of the work which they will undertake.

13.89 Mr Treverton-Jones invited the Tribunal to reject the Applicant's approach, and to start by considering the retainer between the solicitor and their client, as it was clear that Ms Tsang limited her retainer so as not to expose herself to the type of advice about the commercial side of this development project that she was not qualified to give.

13.90 The Applicant had not explained precisely what advice it contended should have been given. The Tribunal had been taken to a long list of features of property financing transactions involving substantial property development projects downloaded from Thomson Reuters Practical Law in July 2023, some 7-8 years after the developments relevant to the present case. However, it was unclear whether the Applicant contended that in order to comply with her "professional" duty, each and every feature set out in that publication ought to have been drawn to the attention of each of Ms Tsang's clients, and, if so, how and why.

13.91 Mr Treverton-Jones said that at one stage the Applicant had submitted that clients should have been told that these risks existed and that in order to give clients an idea of the level of those risks, they should have been told about the controls that the market generally required (such as guarantees, debentures, liens, personal guarantees and conditions precedent).

13.92 However, when this was queried by the Tribunal and pointed out that various lenders high in the hierarchy of lenders would put greater protections in place than lenders lower down that hierarchy (who would have been in much the same position as Ms Tsang's clients), this submission evaporated. Mr Treverton-Jones' submitted that this was because the Applicant's case had never been properly thought through and/or rooted in legal principle. Mr Treverton Jones' characterised the Applicant's case as amounting to little more than saying "Look how many clients lost their money, and what would the public make of that?"

13.93 Mr Treverton-Jones questioned whether the Applicant could or should advance a case on the basis that Ms Tsang owed a "professional" duty in preparing a report on title, to educate each and every one of her 450 clients about the structure of a typical development finance transaction and then to explain the risks and legal protections in such a transaction to them and whether could be said to be part of the "incidental advice" that solicitors should proffer as part of their legal duty to their clients.

13.94 The crucial point was that the Applicant's case ignored the settled law by creating a species of duty, the "professional" duty which could not be derived from any rule of conduct that did not exist.

13.95 Mr Treverton-Jones set out the relevant case law.

13.96 It was established that advice reasonably incidental to a transaction does not include advice on the wisdom of the transaction and the courts recognise that to hold otherwise would place intolerable burdens on solicitors: see Clarke Boyce v Mouat [1994] 1 AC 428.

13.97 In Minkin v Landsberg [2015] EWCA Civ 1152 per Jackson LJ:

> "38. Let me now stand back from the authorities and summarise the relevant principles:
>
> i) A solicitor's contractual duty is to carry out the tasks which the client has instructed and the solicitor has agreed to undertake.
>
> ii) It is implicit in the solicitor's retainer that he/she will proffer advice which is reasonably incidental to the work that he/she is carrying out.
>
> iii) In determining what advice is reasonably incidental, it is necessary to have regard to all the circumstances of the case, including the character and experience of the client.
>
> iv) In relation to (iii), it is not possible to give definitive guidance, but one can give fairly bland illustrations. An experienced businessman will not wish to pay for being told that which he/she already knows. An impoverished client will not wish to pay for advice which he/she cannot afford. An inexperienced client will expect to be warned of risks which are (or should be) apparent to the solicitor but not to the client.
>
> v) The solicitor and client may, by agreement, limit the duties which would otherwise form part of the solicitor's retainer. As a matter of good practice the solicitor should confirm such agreement in writing. If the solicitor does not do so, the court may not accept that any such restriction was agreed."

13.98 There was no such thing as a general retainer as set out in Midland Bank v Hett Stubbs and Kemp [1979] Ch 384 and, later in Credit Lyonnais v Russell Jones and Walker [2022] EWHC 1310 (Ch). *"A solicitor is not a general insurer against his client's legal problems. His duties are defined by the terms of the agreed retainer."*

13.99 In Spire Property v Withers [2022] EWCA Civ 790, per Carr LJ:

> "56. In terms of a solicitor's contractual duties owed under a retainer, the relevant legal principles on current authority can be summarised as follows:
>
> i) The solicitor's duty is limited to carrying out the tasks which the client has instructed and the solicitor has agreed to undertake. The court must beware of imposing on solicitors duties which go beyond the scope of what they are requested and undertake to do. The duty is directly related to the confines of the retainer;

ii) However, it is implicit in the retainer that the solicitor will proffer advice which is "reasonably incidental" to the work that they have agreed to carry out;

iii) In determining what advice is "reasonably incidental", regard should be had to all the circumstances of the case, including the character, sophistication and experience of the client. More burdensome responsibilities are likely to be placed on solicitors if their clients are inexperienced or vulnerable and more limited responsibilities for experienced or sophisticated clients. The extent of the burden that the allegedly incidental task places on the solicitor will be relevant. Claims that the solicitor was obliged to take expensive and burdensome allegedly incidental steps are unlikely to find favour. In determining what is "reasonably incidental" to the solicitor's engagement, regard may be had to the level of fees charged.

57. The general principle is thus that a retained solicitor owes no duty to go beyond the scope of their express instructions and give advice in relation to other matters. This is subject to the qualification that the duty extends to giving advice that is "reasonably incidental". This is an elastic phrase, similar to that adopted in Gilbert v Shanahan [1998] 3 NZLR 528 ("Gilbert") (at 537) to the effect that "matters which fairly and reasonably arise" in the course of carrying out express instructions are to be regarded as coming within the scope of the retainer. But it must have its limits, consistent with earlier authority and as demonstrated by subsequent authority. Thus, in Credit Lyonnais SA v Russell Jones & Walker [2002] EWHC 1310 (Ch); [2003] PNLR 2 ("Credit Lyonnais") at [28], approved in Minkin at [37]), it was held that, where a solicitor becomes aware of a risk to the client in the course of doing that for which they were retained, it is the solicitor's duty to inform the client. In so doing, the solicitor is neither going beyond the scope of their instructions or doing extra work on such matters.

In Denning v Greenhalgh Financial Services Limited [2017] EWHC 143 (QB) Green J, agreeing with Credit Lyonnais at [28], commented (at [53]) that it would only be in "obvious" cases that an extended duty to advise would arise. There would have to be a "close and strong nexus" between the retainer and the matter upon which it is said that the professional should have advised. In Lyons it was held that the solicitor was not under a duty to advise on the meaning of disability insurance policies taken out for his benefit by his employers, something which the solicitor could not have done without thorough examination of the policies and a certain amount of legal research. At [42] Patten LJ confirmed that:

"Neither Credit Lyonnais nor Minkin are authority for the proposition that the solicitor is required to carry out investigative tasks in areas he has not been asked to deal with, however beneficial to the client that might in fact have turned out to be."

13.100 Mr Treverton-Jones said there was no evidence before the Tribunal that any of Ms Tsang's clients were vulnerable in any respect. Each had made a decision to invest in an off-plan building development, with all the (largely obvious) risks that such investment entailed, before ever instructing Ms Tsang. Had they wished to invest in

less risky (and doubtless less potentially profitable) matters, they could and would have done so in the mainstream financial system. Ms Tsang had no basis upon which to know whether their investment was to be profitable or not. She was simply there to carry out the wishes of her clients to purchase the properties in question and limited her retainer accordingly.

13.101 With respect to the civil proceedings and the judgment of HH Judge Hodge K.C. Mr Treverton-Jones said the Judge's factual conclusions were admissible as proof but not conclusive proof of those facts [Rule 32(2) of the Solicitors (Disciplinary Proceedings) Rules 2019]

13.102 The Judge presided over a 10-day trial, in which Ms Tsang gave evidence for 5½ hours. There were numerous important findings of fact in the judgment at:

a. Paragraph 17
b. Paragraph 18
c. Paragraph 20
d. Paragraph 23-24
e. Paragraph 117 *et seq*.

13.103 Those facts included that Ms Tsang was careful, honest and competent.

13.104 Finally in relation to the previous Tribunal cases of Roberts, Hayhurst and Sewell and Ma and Ch*eung* Mr Treverton- Jones said that these cases differed from the instant matter.

13.105 In Ma and Cheung, decided in September 2019 there were a wide range of charges and the allegations were far more serious than those in the present case. Allegations 1.1.1 and 2.1.1 alleged inadequate advice. These were admitted. In opening the case, nothing appeared to have been said about the "professional" duty now contended for in Ms Tsang's case. All these allegations were proved or admitted, and the sanction of £17,500 on each Respondent, together with restrictions on practice reflected the greater seriousness of this case than the present case.

13.106 Roberts was decided in November 2019. No allegation of inadequate advice was made. The allegations were far more serious than those in the present case, principally (a) acting in dubious transactions, and (b) conflict of interest. The former was dismissed, the latter proved. The Respondent was fined £10,000 with no restrictions on practice.

13.107 Hayhurst was decided in May 2020 and *Sewell* was decided in December 2020 both as Agreed Outcomes. In setting out the SRA's case, nothing seems to have been said about the "professional" duty now contended for.

13.108 Mr Treverton-Jones said that caution was required when placing significance on decisions arising from Agreed Outcomes as there were 'inherent dangers' as Respondents may wish to dispose of cases on a commercial basis to avoid a trial. Respondents have every commercial incentive to seek to settle cases if an Agreed Outcome can be achieved which permits the Respondent to continue in practice, rather than undergoing the stressful and expensive experience of a hearing before this

Tribunal. This means that the parties may reach agreement which does not adequately reflect the gravity of what has occurred.

13.109 In the present case, Mr Treverton-Jones said the Tribunal had heard detailed submissions from both sides, and can make its decision without being influenced by earlier cases which did not involve proper argument.

The Tribunal's Findings

13.110 The Tribunal reviewed all the material before it and considered the submissions made by Mr Tankel and Mr Treverton-Jones with great care.

13.111 The Tribunal had due regard to Ms Tsang's rights to a fair trial and to respect for her private and family life under, respectively, Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

13.112 The Tribunal applied the civil standard of proof, as it was required to do.. The burden of proof lay entirely with the Applicant. The Applicant had relied entirely on documentary evidence. It had not called any witnesses.

13.114 Whilst Ms Tsang had decided not to give evidence, this was understandable, as the case against her had been presented by the Applicant on the basis that the contested issues were matters of law and not of fact. It would be inappropriate for the Tribunal in such circumstances to draw any adverse inference from her decision not to give oral evidence.

13.115 The Applicant, had not called any witnesses and the submissions which had been made by it appeared to the Tribunal to represent a species of *res ipsa loquitur*, more commonly deployed in the tort of negligence where the facts pointed blatantly in one direction. The principle of *res ipsa loquitar* was inappropriate, in this jurisdiction, where the livelihood and reputation of respondents were at stake. Furthermore, it was, in any case, far from self-evident that the facts pointed in only one direction in support of the Applicant's allegations.

13.116 In the present matter, Mr Tankel submitted that negligence, amounting to professional misconduct, had not been part of the Applicant's case. The Applicant's case had rested upon the core submission that Ms Tsang's misconduct arose from her alleged failure to give advice which adequately matched the particular risk profile of the transaction and that Ms Tsang wrongly considered that because (in her view) some of her clients were sophisticated, therefore they did not require relevant advice.

13.117 The Applicant called no evidence from any client or anyone else and did not adduce any evidence regarding the vulnerability or lack of sophistication of Ms Tsang's clients. The Tribunal had therefore been in no position to assess the practical impact of Ms Tsang's advice upon her clients.

13.118 The Applicant's case rested on nothing more than (i) extracts from Thomson Reuters Practical Law which postdated the relevant transactions by 7 or 8 years, (ii) unsubstantiated suppositions as to sophistication or otherwise of the Applicant's clients; (iii) an unsubstantiated assumption that foreigners, who, it was alleged were

Ms Tsang's clients, required greater protection merely because of the fact that they were foreign; and (iv) reliance upon its Warning Notice on investment schemes, a document which post-dated the events with which the Tribunal was concerned, which Mr Treverton-Jones had characterised as an element of "Dog Law" and which , as Mr Treverton-Jones had pointed out, been amended on no less than three subsequent occasions.

13.119 Whilst the Tribunal accepted that the Warning Notice was an important source of guidance for the profession and not something to be ignored, there was no evidence which proved to the requisite standard that Ms Tsang had not followed the Warning Notice's admonition that "[you should] ensure that clients fully understand the risks they are taking ...". Clearly it could not be complied with retrospectively after it had been amended subsequent to the relevant events.

13.120 Furthermore, the Tribunal also accepted that Ms Tsang had physically met with each of her clients and explained in terms and language they would understand the issues, risks and red flags which they needed to be aware and which she also set out within her client care documentation:

a. Scope "Your Instructions"
b. Outline of work
c. Fee
d. Excluded Advice

13.121 From which the Tribunal drew the following selection:

> "We do not advise on competition law, nor do we provide financial advice generally, or comment upon the commercial viability of any transactions upon which we advise".
>
> "The term "off plan purchase" describes a property transaction where a Buyer agrees to purchase a property that does not yet exist, other than on the Seller's plans. There are obviously certain risks in such a deal by reason of the fact that you cannot inspect the finished Unit at the point of purchase and must rely on lay out plans. The Seller may not finish the development and deliver the Unit."
>
> "There are risks in all speculative property investment transactions".
>
> "The following particularly relate:-
>
> **Quality of Construction** - All construction within the UK must comply with strict building guidelines known as Building Regulations. Those engaged in building must satisfy those regulations and they will be independently supervised either by the Local Planning Authority or by an Approved Inspector, independent of the Purchase Agreement or and Developer. However, these do not cover finishes or quality of fittings.
>
> **Inspections** - Please note that we will not be inspecting the property on your behalf on or prior to Completion. If you cannot arrange this yourself we can recommend a surveyor to carry out an inspection at a modest cost to you.

Management - The Developer will either be providing management services for this property or will arrange with a third party to do so. Again we are not managing agents and we cannot advise as to the capability of the Developer/Agent to provide such services. We know from experience that the success of this property as an investment for you depends largely upon effective and professional management. You should make enquiries of the agent and developer as to the experience and reputation of the Agent.

Rental Guarantee - A promise by a Developer is only as good as the strength of the promisor If the company or individual, giving the promise has no money or assets than, the guarantee has little or no value. We are not financial advisers or forensic investigators and cannot advise you on the merits of any rental guarantee. If you wish, we can refer you to accountants and valuers, who for a fee, will carry out relevant enquiries as to the merits and strengths of any income guarantee Council Tax - As the owner of the apartment you are liable to pay Council Tax when the Unit is not occupied. Whilst the Unit remains occupied by a tenant the liability to pay the Council tax will fall upon the tenant.

Our Retainer We have pointed out to you here are risks to any off-plan property investment regarding value, progress of the works and projected returns.

What we do; Our retainer with you is to advise on the legal terms of the purchase documents to exchange the contracts and when completion falls due to register your purchase in the UK Land Registry

What we do not do;
Our retainer does not extend to expressing a view on the quality of the build, the viability of the business plan or to providing investment advice on the purchase generally and particularly, 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 guarantee or tenancy and the leverage of any rental bond that may exist.

We do not advise or express a view as to the ability of the Seller to deliver the project. The rental guarantee is only as good as the company that gives it. We do not advise or express a view as to the strength and value of the Seller's promise or the ability of the Seller to deliver on the rental guarantee if there is a shortfall in the Unit Income. Of the sub tenant to perform the sub let obligations or the value of the guarantee incidental thereto.

Generally It is most important that you completely understand the matters set out in the purchase documents and the nature and effect of the deal they represent. It is most important that you read and understand all of the enclosed papers before you. In signing and returning these papers contract documents you are confirming that you do fully understand the matters set out in this report, that you accept the risks associated with an off plan purchase and you are authorising us to proceed with the purchase as soon as we are in funds.

If you have any queries, please do not hesitate to contact us via email."

13.122 The Applicant had provided no evidence that any of Ms Tsang's clients could be described as vulnerable. Rather they relied on stereo-typical assumptions based on nothing more than the fact that the clients appeared to live abroad, may have been foreigners and may not have spoken English as their first language. As persuasively argued by Mr Treverton-Jones, this "vulnerability" even if it existed, was, in any case, removed in the case of her clients because (a) Ms Tsang was able to speak to them fluently in Cantonese, and (b) she travelled to see them in Hong Kong, rather than vice-versa.

13.123 The Applicant adduced no evidence upon which the Tribunal could conclude rationally that Ms Tsang's clients were anything other than commercially minded investors, who wanted high returns on their investments and were prepared to take upon themselves the risks in achieving that objective and who did not want to pay a large amount in legal fees to obtain any more advice than they had received.

13.124 In this regard, the Tribunal had due regard to the decision of Carr LJ (as she then was) in, Spire Property v Withers and advice which was 'reasonably incidental' to the agreed work under the retainer.

13.125 Whilst the information in Ms Tsang's client documentation may not have reached the exactitude envisaged by the later Warning Notice there had been sufficient information in her communications with her clients to flag the relevant risks in what was at the time a developing area of commercial activity. It was important to note that Ms Tsang ensured that communication with her clients was left open and she entreated them to e-mail her if they had further queries so this was clearly not a case where the solicitor was abandoning the client to their own devices.

13.126 The Tribunal considered that Ms Tsang had gone as far as she was reasonably able under the terms of her retainer, for which she charged a modest fee, to set out the wider risks. As a matter of law, she had not been required to explain the commercial risks faced by her clients if the developments failed and she had not been required to carry out investigative tasks beyond the scope of the retainer, however, she appeared to have done her best to have set out the commercial risks for clients' benefit.

13.127 The Tribunal did not find the allegation proved to the requisite standard.

Costs

14. Given the Tribunal's findings Mr Tankel made no application for the Applicant's costs to be recovered from Ms Tsang.

15. Mr Treverton-Jones asked the Tribunal to award costs in Ms Tsang's favour as she had incurred costs in the sum of £79,950 in contesting a matter in which she had prevailed ultimately.

16. Mr Treverton-Jones said that in the circumstances of this case it was right for Ms Tsang to recover her costs from the Applicant. Not only had the Applicant not proved its case,

it had brought a case to the Tribunal which had been bad in law (for the reasons he had set out in his earlier submissions).

17. Further, as Ms Tsang had set out in her Answer, the Applicant's decision to refer her to the Tribunal was unjustified, unfair and disproportionate. The proceedings had a long, slow history, commencing in April 2017 when the Applicant had requested information and then starting an investigation in October 2019, leading to an FI Report in January 2020. In August 2020, the Applicant received a complaint against Ms Tsang by a firm of solicitors, Browne Jacobson, acting on behalf of her professional indemnity insurers, who would have been able to decline insurance cover in the event that she had been shown to behave dishonestly. The complaint contained multiple allegations of the utmost gravity.

18. Even after those represented by Browne Jacobson withdrew all allegations of dishonesty against Ms Tsang (July 2021), the Applicant persisted with the same allegations for many months and refused requests to reconsider matters in the light of what was by then overwhelming evidence that the Browne Jacobson allegations were false.

19. In the present proceedings, the Applicant had abandoned any suggestion that the transactions at the centre of this case were either fraudulent or dubious and the array of serious allegations levelled against Ms Tsang was reduced to one single allegation of a failure to advise her clients adequately. There was no allegation of dishonesty or lack of integrity.

20. Mr Treverton-Jones said that it was almost 6 years since the Applicant's first production notice, and almost 5 years since Ms Tsang closed her firm. The total period of time taken by the Applicant to investigate and then bring this matter to a hearing was totally unacceptable.

21. The Applicant's prolonged and relentless interest in, and investigation of, Ms Tsang had caused her great personal stress and financial expense, out of all proportion to the gravity of the case which had been set out by the Applicant before the Tribunal.

22. Notwithstanding the Supreme Court's decision in Competition and Markets Authority (Respondent) v Flynn Pharma Ltd and another (Appellants) [2022] UKSC 14 Mr Treverton-Jones said that the observation made by Moses LJ in the Law Society v Baxendale Walker (upheld on appeal) set out the correct position:

> "Absent dishonesty or a lack of good faith, a costs order should not be made against such a regulator unless there is good reason to do so. That reason must be more than that the other party had succeeded. In considering an award of costs against a public regulator the court must consider on the one hand the financial prejudice to the particular complainant, weighed against the need to encourage public bodies to exercise their public function of making reasonable and sound decisions without fear of exposure to undue financial prejudice, if the decision is successfully challenged."

23. Mr Treverton-Jones pointed out that the Tribunal had a wide discretion as to costs under its own rules. In this case, to award costs against the Applicant the case need not have

been a 'shambles from start to finish', as there were other good reasons for the Tribunal to depart from the normal course of not making a costs order against the SRA. Here, not only had there been inordinate delay on the Applicant's part, the case had also been brought improperly by the Applicant to the Tribunal. It was a wholly unmeritorious case and one based upon an incorrect and selective view of the law.

24. In response, Mr Tankel said that there was no good reason to depart from the Tribunal's normal practice of not awarding costs against the SRA. Whilst recognising the individual and human cost on Ms Tsang of undergoing an investigation and then a hearing before the Tribunal, this was part of the price of being in the solicitors' profession wherein its members would be expected to address concerns relating to their professional conduct brought by their regulator.

25. The Applicant had acted in the public interest and had quite properly brought the case before the Tribunal for determination. Ultimately, the Tribunal had found the allegation not proved to the requisite standard, but this did not mean that it could then be inferred that the case had been a 'shambles from start to finish' and that it had been brought improperly.

26. There had been a realistic prospect of conviction and it had been in the public interest for the matter to be pursued by the Applicant to its conclusion.

27. As to delay, this had not, subject to the acknowledged personal impact on Ms Tsang, been a factor which had prejudiced Ms Tsang in being able to put her case. This case had largely been based matters of law and submission rather than recollection of events diminished by the effluxion of time.

28. Mr Tankel reminded the Tribunal of the decisions in Baxendale-Walker and Flynn Pharma and that it should exercise great caution in deciding to award costs against the SRA, given the matters set out in those decisions and the 'chilling effect' upon the Regulator, which the Court of Appeal Civil Division and the Supreme Court had specifically been concerned to prevent.

29. This case had been but the latest in a line of cases which the Tribunal had dealt with previously, namely 'off plan' and 'failure to advise cases' to which earlier reference had been made in the parties' submissions.

30. Those cases, and indeed Ms Tsang's case, had been certified by the Tribunal as showing a case to answer. In the earlier cases, although not Ms Tsang's case, the Tribunal had accepted there had been misconduct on the part of the Respondents, imposed appropriate sanctions and made costs orders in the Applicant's favour.

31. Given the Tribunal's acceptance and disposal of these cases it had not been unreasonable for the Applicant to bring Ms Tsang's case to the Tribunal for consideration.

32. As to the quantum, Mr Tankel said the costs claimed by Ms Tsang were unreasonable and disproportionate; they compared unfavourably to the £44,000 in costs which had been sought by the Applicant and it would have been inconceivable that the Tribunal

would have entertained a costs order in the sum claimed by Ms Tsang had this been sought by the Applicant.

33. The claimed disbursements were also too high when viewed in the context of the nature of the allegation and the sanction which the Tribunal would probably have imposed, had it found matters proved.

34. Mr Tankel said it would be wrong for the Tribunal to award costs against the Applicant as a salutary warning to the Regulator and returning to Baxendale-Walker he stressed that the Tribunal was obliged to consider the financial prejudice to Ms Tsang when "weighed against the need to encourage public bodies to exercise their public function of making reasonable and sound decisions without fear of exposure to undue financial prejudice, if the decision is successfully challenged."

The Tribunal's Decision on Costs

35. The Tribunal noted that under Rule 43 (1) of The Solicitors (Disciplinary Proceedings) Rules 2019 it had the power to make such order as to costs as it thought fit, including the payment by any party of costs or a contribution towards costs of such amount (if any) as the Tribunal may consider reasonable. Such costs are those arising from or ancillary to proceedings before the Tribunal.

36. By Rule 43(4), the Tribunal must first decide whether to make an order for costs and when deciding whether to make an order, against which party, and for what amount, the Tribunal must consider all relevant matters such as:

- the parties' conduct.
- were directions/ deadlines complied with?
- was the time spent proportionate and reasonable?
- are the rates and disbursements proportionate and reasonable?
- the paying party's means.

37. Mr Treverton-Jones had applied for Ms Tsang's costs to be paid by the Applicant, for the reasons set out above and Mr Tankel had set out his detailed reasons why the Tribunal should not depart from its normal practice of not awarding costs against the Applicant in circumstances where the Respondent had successfully defended himself against the allegations.

39. The Tribunal had listened with care to the submissions by Mr Treverton-Jones and Mr Tankel., It gave due weight to the dicta in the Supreme Court judgment in CMA v Flynn Pharma Ltd [2022] UKSC 14 at [22] as follows:

> "… In its written intervention, the SRA points out that it undertakes about 120-130 prosecutions a year. It is funded predominantly by practising certificate fees and other fees paid by the solicitors' profession. Although, following Baxendale-Walker, it is not usually subject to an adverse costs order where the solicitor is successful, it does usually recover its costs from the unsuccessful solicitor when the Disciplinary Tribunal upholds the complaint. These costs can be considerable and if they were not recovered by the SRA from the unsuccessful solicitor, the costs would have to be borne by the profession.

> I recognise the importance of the Baxendale-Walker authority for the continued proper functioning of the SRA and I do not regard this judgment as casting any doubt on the correctness of that decision."

40. As set out in its Guidance Note on Sanctions (10th Edition) the Tribunal recognised that the starting point to be adopted by the Tribunal in considering whether costs should be awarded against the Regulator/Applicant is:

> "In respect of costs, the exercise of its regulatory function placed the Law Society in a wholly different position from that of a party to ordinary civil litigation. Unless a complaint was improperly brought or, for example, had proceeded as a "shambles from start to finish", when the Law Society was discharging its responsibilities as a regulator of the profession, an order for costs should not ordinarily be made against it on the basis that costs followed the event" (per Laws LJ, Baxendale-Walker v The Law Society [2007] EWCA Civ 233).

41. Where a Respondent seeks to pursue an application for costs against the Regulator, the Tribunal will have regard to the following principles:

- an order that the Applicant pay a successful respondent's costs on the grounds that costs follow the event should not ordinarily be made on that basis alone;
- there is no assumption that such an order will automatically follow;
- "to expose a regulator to the risk of an adverse costs order simply because it properly brought proceedings which were unsuccessful might have a chilling effect upon its regulatory function" (per Baxendale-Walker, above).

42. The Tribunal considered the balance to be struck between:

- the financial prejudice to the successful Respondent in the particular circumstances if an order for costs is not made in their favour; and

> "the need for a regulator to make and stand by honest, reasonable and apparently sound decisions made in the public interest without fear of exposure to undue financial prejudice if unsuccessful" (per Bingham LCJ, Bradford MDC v Booth (2000) 164 JP 485 DC).

43. The Tribunal also had regard to the judgment of the Court of Appeal in Perinpanathan v Westminster Magistrates Court [2010] EWCA Civ 40, which requires the Tribunal to examine the conduct of the Applicant to consider whether its conduct had been unreasonable or otherwise justified a costs order being made against it.

The Principle

44. The Tribunal had a wide discretion as to the award of costs under Rule 43 (1). In Baxendale Walker, Laws LJ, who was then the President of the Queen's Bench, had held "Unless the complaint is improperly brought, or, for example, proceeds… as a "shambles from start to finish", when the Law Society is discharging its responsibilities

as a regulator of the profession, an order for costs should not ordinarily be made against it on the basis that costs follow the event". The words "for example" were noted by the Tribunal. Mr Tankel had acknowledged, in reply to a question from the Chair, that "shambles from start to finish" was but one example of circumstances where costs might be awarded against the SRA, albeit costs should not ordinarily be awarded against the SRA on the basis of costs following the event.

45. Whether or not this case could properly be characterised as having been a shambles from start to finish, it was questionable, whether it had been properly brought, given the body of caselaw to which the Tribunal's attention had been drawn by Mr Treverton-Jones, regarding a solicitor not being under a duty to step outside the bounds of their retainer and/or expertise.

46. In this case the Tribunal had not been presented with any compelling evidence by the Applicant that Ms Tsang had 'failed to advise' or that her clients or some of her clients had been vulnerable or unsophisticated and that they had suffered harm. There was, however, evidence which pointed towards the fact that Ms Tsang had provided some advice to her clients as to the risks of such an investment despite this being outside the limits of her retainer.

47. The Tribunal noted the inordinate delay in prosecuting the case on the part of the Applicant. That delay had not only contributed to the considerable anxiety and stress that would have been suffered by Ms Tsang, but had contributed to the damage to her reputation and her practice substantially and unjustifiably. The Tribunal gave due weight to the judgment of Auld LJ in Aaron v Law Society [2003] EWHC 2271 (Admin) at paragraph 84 in which Auld LJ had held:

> "Disciplinary proceedings before the Solicitors' Disciplinary Tribunal are analogous to criminal proceedings. The uncertainty that springs from and festers with unnecessary and unreasonable delay can, in itself, cause great injustice to practising solicitors, whose livelihood and professional reputations are at stake. Nor does such delay serve the solicitors' profession as a whole. It is in their interest and that of the members of public whom they serve that their regulatory body and the Tribunal should be prompt, as well as otherwise effective, in the enforcement of the high standards of their profession."

The considerable stress to Ms Tsang, the harm to her practice and the damage to her reputation caused by the proceedings and exacerbated by the Applicant's delay, were highly relevant to the issue of costs. It was also relevant that the Applicant did not have a basis in law for its allegation, had called no witnesses and had relied almost entirely on extracts from Thomson Reuter's Practical Law which post-dated the relevant events by many years and which were of limited relevance, as no evidence had been adduced as to which of the ranks of lender or investor referred to in Practical Law equated to Ms Tsang's clients.

48. The Tribunal considered the point that the matter had been certified as showing a case to answer. Certifying a case merely means that there is an 'arguable case'. This is a decision made on the papers and in the absence of the Respondent's account and the testing of evidence at a hearing. It is a binary decision made in summary manner. The

bar is low, and the Tribunal expects the Applicant not to bring speculative matters to it but ones in which there has been a full analysis of the underpinning law and facts.

49. An essential mistake of law on the Applicant's part, as found in the present case, undermined the presumption that the case had been properly brought.

50. As to the submission that the Applicant had been encouraged by the Tribunal to pursue this matter on the basis of its previous decisions with respect 'off plan' and 'failure to advise cases' was not accepted by the Tribunal.

51. First, it was well established that previous decisions of the Tribunal provide only limited assistance as each case is fact sensitive.

52. Second, the previous cases were different as there had been admissions and the underlying facts relating to the misconduct were more serious in nature and distinguishable on this basis from Ms Tsang's case.

Quantum

53. Having decided that it was right i to make a costs order against the Applicant the Tribunal next considered quantum.

54. To this end the Tribunal took on board Mr Treverton-Jones' submission that his services and those of his instructing solicitors were not cheap. Ms Tsang had fought to maintain her reputation and she had been entitled to instruct leaders in the specialist field of professional conduct. A huge volume of documentation had been produced by the Applicant – in excess of 1,360 pages – which had to be considered by Ms Tsang's legal advisers. When looked at in this way, the costs were neither unreasonable nor disproportionate.

55. The Tribunal decided to grant Ms Tsang's costs in full, save for a reduction of £5,000 to reflect the fact that the case lasted two days instead of the anticipated three days.

Statement of Full Order

56. The Tribunal Ordered that the allegation against HON-YING AMIE TSANG, solicitor, be DISMISSED.

57. The Tribunal further Ordered that the Applicant, the Solicitors Regulation Authority Ltd, pay the Respondent's costs of and incidental to this application and enquiry fixed in the sum of £74,950.00.

Dated this 17TH day of August 2023
On behalf of the Tribunal

A Ghosh

JUDGMENT FILEDWITH THE LAW SOCIETY
17 AUG 2023

A Ghosh
Chair