Neutral Citation Number: [2022] EWHC 2722 (Admin)

Case No: CO/3483/2021

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31 October 2022

Before :

MRS JUSTICE LANG DBE

- -

Between :

(1) MARGARET BRIDGET HETHERINGTON **(2) PATRICK CLEMENT HETHERINGTON**	**Appellants**
- and -	
SOLICITORS REGULATION AUTHORITY LIMITED	**Defendant**

- -
- -

Gregory Treverton-Jones KC (instructed via **Direct Access**) for the **Appellants**
James Ramsden KC (instructed by **Capsticks**) for the **Respondent**

Hearing date: 13 October 2022

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Approved Judgment

This judgment was handed down remotely at 10 am on 31 October 2022 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mrs Justice Lang :

1. The Appellants appeal, pursuant to section 49 of the Solicitors Act 1974 ("the 1974 Act"), against the order of the Solicitors Disciplinary Tribunal ("the Tribunal"), dated 27 September 2021, that they be struck off the Roll of Solicitors, and required to pay costs in the sum of £98,000.

2. At the commencement of the hearing, I granted the Appellants' application to amend their grounds of appeal, by substituting a document titled "Amended Grounds of Appeal" which was drafted by newly-instructed counsel, in place of the grounds drafted by the Appellants when they were acting in person (a "Joint statement" and "Section 11 Evidence in Support"). Although the application was made very late, on 7 October 2022, the Respondent wisely took a pragmatic approach and did not object "because the amendments seek to achieve some focus and refinement" which was lacking in the Appellants' own documents. I concluded that, in all the circumstances of the case, the application to amend should be granted as it would further the overriding objective of enabling the Court to deal with the appeal justly and at proportionate cost and time. I wish to record my appreciation of the assistance given to the Court by the Appellants' counsel, Mr Treverton-Jones KC, who said everything that could be said on behalf of the Appellants, in a challenging case.

Factual background

3. The Appellants are siblings. At the material time, they were the only partners and directors in a solicitors' firm called the Hetherington Partnership Limited ("the Firm") and they each held 50% of the shares in the Firm. The Firm, which was based in Merseyside, commenced trading in 1995, and became a limited company in January 2012.

4. The First Appellant was admitted to the Roll in November 1994. Her expertise was primarily in conveyancing. She held a practising certificate for the year 2016-17 until its suspension on 16 October 2017 by an Adjudication Panel.

5. The Second Appellant was admitted to the Roll in October 1986. He was the Firm's Compliance Officer for Legal Practice ("COLP") and Compliance Officer for Financial Administration ("COFA"). He held a practising certificate for the year 2016-17 until its suspension on 16 October 2017 by an Adjudication Panel.

6. According to the Firm's renewal application submitted to the Respondent, the total turnover for the accounting period 1 April 2015 to 31 March 2016 was approximately £489,772. This was a reduction from turnover of about £845,000 in 2013/14 and £530,000 in 2014/2015.

7. In May 2017 the Respondent commenced an investigation, during which production notices dated 29 June 2017, 3 August 2017 and 5 September 2017 were served on the Firm. The investigation was conducted by a Forensic Investigation Officer ("FIO") of the Solicitors Regulation Authority ("SRA"), and initially resulted in an Interim Report dated 26 September 2017.

8. The Adjudication Panel was convened in light of the evidence set out in the Interim Report to consider whether it was necessary to exercise the SRA's statutory powers of intervention into the Firm. On 16 October 2017 the Adjudication Panel resolved to intervene into the practices of both Appellants and that of the Firm. The Appellants commenced a legal challenge to the intervention but did not proceed with it.

9. The FIO subsequently produced a Final Report dated 27 July 2018.

10. After a lengthy delay, on 8 March 2021, the Respondent produced its Rule 12 Statement, pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 ("the 2019 Rules"), setting out in detail the allegations against the Appellants.

11. The allegations made and found proved against the Appellants arose out of the Firm acting for large numbers of purchasers – either individual clients or the providers of Self Invested Personal Pensions ("SIPPs"), dealing with individuals' personal pensions – who wished to invest in schemes operated by companies linked to an entity named 'Group First' (the "Schemes").

12. Clients were referred to the Firm by the Group First entity or entities, and in some cases the Firm's fees were met by the Group First entity. Under the Schemes, individuals invested (personally or via the use of a SIPP) in a car parking space or a storage pod, within larger premises purporting to operate as an airport car park or storage facility. The Firm and the First Appellant acted on behalf of purchaser clients, carrying out conveyancing work on transactions involving the acquisition of parking spaces or storage pods. Over £100 million passed through the Firm's client account in relation to the Schemes. It comprised the major part of the Firm's practice and income.

Allegations

13. In its Judgment, the Tribunal set out the Allegations against the Appellants as follows:

> "1. The allegations made against the [First Appellant by the Respondent] were that, while in practice as a partner in and director of [the Firm]:
>
> 1.1. Between April 2011 and September 2017, she accepted instructions to act for purchaser clients in transactions, namely purchases of parking spaces or storage pods from companies linked to an entity named "Group First" ("the Schemes"), and, having accepted such instructions:
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> 1.1.1. failed to give her clients adequate advice as to the proposed transactions;
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> 1.1.2. failed to act in her clients' best interests;
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> and in doing so breached one or more of Rules 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct 2007 in respect of matters arising prior to 5 October 2011("the 2007 Code"), and

Principles 2, 4, and 6 of the SRA Principles 2011 in respect of matters arising on or after 6 October 2011 ("the Principles").

1.2. In acting for purchaser clients in respect of the Schemes in the manner set out at 1.1 above she preferred her own interests over the interests of clients and in doing so:

1.2.1. breached one or more of Rules 1.02, 1.03, 1.06 and 3.01 of the 2007 Code in respect of matters arising prior to 5 October 2011 and Principles 2, 3 and 6 of the Principles in respect of matters arising on or after 6 October 2011;

1.2.2. acted in a situation giving rise to an "own interest" conflict and so breached Rule 3.01 of the 2007 Code in respect of matters arising prior to 5 October 2011 and Outcome O(3.4) of the SRA Code of Conduct 2011 ("the 2011 Code").

2. It is further alleged against the First Respondent that by reason of the facts and matters set out at 1.1 and/or 1.2 above, or any of them she acted:

2.1. dishonestly;

2.2. recklessly; or

2.3. with manifest incompetence,

but proof of dishonesty, recklessness or manifest incompetence was not a necessary ingredient of a finding that the allegations set out at 1 above were proved.

3. The allegations against the Second Respondent are that, while in practice as a partner in the Firm, and while the Compliance Officer for Legal Practice ("COLP"), Compliance Officer for Finance and Administration ("COFA") and Money Laundering Reporting Officer ("MLRO") of the Firm:

3.1 Between April 2011 and September 2017 he failed to cause the Firm to:

3.1.1. give clients adequate advice as to the proposed transactions;

3.1.2. act in clients' best interests;

and in doing so breached one or more of Rules 1.02, 1.04 and 1.06 of the 2007 Code in respect of matters arising prior to 5 October 2011, and Principles 2, 4, and 6 of the Principles in respect of matters arising on or after 6 October 2011.

> 3.2 In allowing the Firm act for purchaser clients in respect of the Schemes in the manner set out at 3.1 above, he preferred his own and the Firm's interests over the interests of clients, and in doing so:
>
> 3.2.1 breached one or more of Rules 1.02, 1.03, 1.06 and 3.01 of the 2007 Code in respect of matters arising prior to 5 October 2011, Principles 2, 3 and 6 of the Principles in respect of matters arising on or after 6 October 2011;
>
> 3.2.2 allowed the Firm to act in a situation giving rise to an "own interest" conflict and so breached Rule 3.01 of the 2007 Code in respect of matters arising prior to 5 October 2011 and Outcome O(3.4) of the 2011 Code.
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> 4. It was further alleged against the Second Respondent that by reason of the facts and matters set out at 3.1 to 3.2 above, or any of them, he acted:
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> 4.1. dishonestly;
>
> 4.2. recklessly; and/or
>
> 4.3. with manifest incompetence,
>
> but proof of dishonesty, recklessness or manifest incompetence was not a necessary ingredient of a finding that the allegations set out at 3 above are proved.
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> 5. It was further alleged against the Second Respondent that by reason of the facts and matters set out at 3 above or any of them arising after 10 December 2012 he failed to ensure, or failed to take adequate steps to ensure, compliance with the Firm's obligations and in doing so breached his obligations as the COLP of the Firm under Rule 8.5(c) of the SRA Authorisation Rules 2011 and as the COFA of the Firm under Rule 8.5(e) of the SRA Authorisation Rules."

14. The relevant extracts from the 2007 Code, the 2011 Code, the Principles, and the SRA Authorisation Rules 2011 are set out in Appendix 1 to this judgment.

Proceedings before the Tribunal

15. The Tribunal heard the case on 2 to 9 August 2021. The Appellants were legally represented and Mr Ramsden KC represented the Respondent, as he has done in this appeal.

16. In its Judgment dated 27 September 2021, the Tribunal found the allegations proved. As it found that the Appellants had acted dishonestly, as alleged, it was not necessary for it to go on to determine the alternative allegations of recklessness or manifest incompetence.

17. In determining sanction, the Tribunal had regard to the Guidance Note on Sanctions (8th Edition), and the relevant case law (Judgment, [26] – [33]). It directed itself that its overriding objective was the need to maintain public confidence in the integrity of the profession. In determining sanction, it had to assess the seriousness of the proven misconduct and impose a sanction that was fair and proportionate in all the circumstances.

18. The Tribunal summarised the Appellants' conduct in the following way at paragraphs 27-30 of its Judgment (referring to them as Respondents):

> "27. The [Appellants] deliberately failed to take any action despite express warnings relating to the legitimacy of the transactions. They failed to advise (or cause advice to be given) relating to the material clauses in the contracts that detailed their clients' obligations. Further, they failed to advise on key contractual documents, or the meaning and effect of clauses contained within those documents. Such failings were motivated by the [Appellants'] desire to preserve their source of income. Such conduct was in breach of the trust placed in the [Appellants] by their clients to be fully and properly advised. The [Appellants] had direct control for their misconduct. The First [Appellant] fully understood her duties as the solicitor with conduct of the matters. The Second [Appellant] understood his duties as the Compliance Officer for the Firm. The Appellants were experienced solicitors *(sic)* knew how important it was to advise on all aspects of contractual documents. Even of *(sic)* their own case, namely that they were retained in relation to advise on the commercial conveyance only, they had failed to provide adequate advice.
>
> 28. The Appellants' failings had caused significant financial harm to a number of their clients who lost substantial amounts of money as a result of the transactions. They had also caused harm to the reputation of the profession.
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> 29. The Appellants' conduct was aggravated by their proven dishonesty, which was in material breach of their obligation to protect the public and maintain public confidence in the reputation of the profession; as per Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin:
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> "34. There is harm to the public every time that a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be "trusted to the ends of the earth"."
>
> 30. Their conduct was deliberate, calculated and repeated over a number of years and over 6,000 transactions. The [Appellants] had been evasive in their evidence and had deliberately failed to answer straightforward questions put to them in cross-examination. Their conduct was a complete

> departure from the standards of integrity, probity and trustworthiness expected of solicitors. Their clients ought to have been given full and proper advice. That did not occur. The Tribunal found many of the Appellants' answers to questions to be incapable of belief, and demonstrative of their disregard for their clients' interests."

19. The Tribunal accepted that the Appellants had previously unblemished careers. However, it held that, in view of the serious nature of the misconduct involving dishonesty, the only appropriate and proportionate sanction was to strike the Appellants off the Roll (Judgment, [33]).

20. The Respondent applied for costs in the sum of £113,797.24. The Tribunal ordered the Appellants to pay the Respondent's costs in the sum of £98,000 which it considered to be the reasonable and proportionate amount to pay in all the circumstances.

Legal framework

21. The Appellants have a statutory right of appeal to the High Court against the order of the Tribunal, pursuant to section 49 of the 1974 Act. The High Court, on such an appeal, can make such order "as it may think fit" (section 49(4)).

22. The appeal is governed by CPR Pt 52 and PD 52D. Under CPR 52.21(3), the question for the Court is whether the decision of the Tribunal is "wrong" or "unjust because of a serious procedural or other irregularity in the proceedings in the lower court".

23. The appeal proceeds by way of review unless the Court considers that it would be in the interests of justice to hold a rehearing: see CPR 52.21(1), and *Salsbury v Law Society* [2009] 1 WLR 1286, at [30]. The scope of the court's powers on a review in most cases renders it unnecessary to hold a re-hearing: *Adesemowo v Solicitors Regulation Authority* [2013] EWHC 2020 (Admin), at [9]-[12].

24. In *Ali v Solicitors Regulation Authority* [2021] EWHC 2709 (Admin), Morris J. summarised the authorities in this field on the meaning of "wrong", as follows:

> "94. Fourthly, as regards the approach of the Court when considering whether the Tribunal was "wrong", I refer in particular to *Solicitors Regulation Authority v Day* [2018] EWHC 2726 (Admin) at §§61-78, *Solicitors Regulation Authority v Good* [2019] EWHC 817 (Admin) at §§28-32, the *Naqvi* Judgment at §83, citing *Solicitors Regulation Authority v Siaw* [2019] EWHC 2737 (Admin) at §§32-35, and most recently, *Martin v Solicitors Regulation Authority* [2020] EWHC 3525 (Admin) at §§30-33. From these authorities, the following propositions can be stated:
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> (1) A decision is wrong where there is an error of law, error of fact or an error in the exercise of discretion.

(2) The Court should exercise particular caution and restraint before interfering with either the findings of fact or evaluative judgment of a first instance and specialist tribunal, such as the Tribunal, particularly where the findings have been reached after seeing and evaluating witnesses.

(3) It does not matter, with whatever degree of certainty, that the appellate court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge would have reached. That is a high threshold. That means it must either be possible to identify a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence. If there is no such identifiable error and the question is one of judgment about the weight to be given to the relevant evidence, the Court must be satisfied that the judge's conclusion cannot reasonably be explained or justified.

(4) Therefore the Court will only interfere with the findings of fact and a finding of dishonesty if it is satisfied that that the Tribunal committed an error of principle or its evaluation was wrong in the sense of falling outside the bounds of what the Tribunal could properly and reasonably decide.

(5) The Tribunal is a specialist tribunal particularly equipped to appraise what is required of a solicitor in terms of professional judgment, and an appellate court will be cautious in interfering with such an appraisal.

Finally, as regards reasons, decisions of specialist tribunals are not expected to be the product of elaborate legal drafting. Their judgments should be read as a whole; and in assessing the reasons given, unless there is a compelling reason to the contrary, it is appropriate to take it that the Tribunal has fully taken into account all the evidence and submissions: *Martin*, supra, §33."

25. In *Martin v Solicitors Regulation Authority* [2020] EWHC 3525 (Admin), the Divisional Court (Simler LJ and Picken J.) reviewed the authorities and concluded as follows:

> "32. For these reasons the well-established approach is that an appellate court should not interfere with a finding of fact unless satisfied that the conclusion is "plainly wrong": see McGraddie v McGraddie (above) and Henderson v Foxworth Investments Ltd (above). That means it must either be possible to identify "a critical finding of fact which has no basis in the evidence, or a

> demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence" (Henderson v Foxworth Investments Ltd at [67] (Lord Reed)); or if there is no such identifiable error and the question is one of judgment about the weight to be given to the relevant evidence, the appellate court must be satisfied that the judge's conclusion "cannot reasonably be explained or justified" ([67]). Lord Reed made clear that, in determining whether a decision cannot reasonably be explained or justified, "It does not matter, with whatever degree of certainty, that the appellate court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge would have reached." Again, we emphasise, that is a high threshold: see to this effect, Perry v Raleys (above) at [63] (Lord Briggs).
>
> "33. The effect of these authorities in the context of an appeal against a decision of the Solicitors Disciplinary Tribunal ("the SDT") was summarised in SRA v Day [2018] EWHC 2726, where, in addition to what we have said above, a number of additional considerations specific to appeals from decisions of the SDT were identified. First, the SDT is a specialist tribunal particularly equipped to appraise what is required of a solicitor in terms of professional judgment, and an appellate court will be cautious in interfering with such an appraisal. Secondly, decisions of specialist tribunals are not expected to be the product of elaborate legal drafting. Their judgments should be read as a whole; and, in assessing the reasons given, unless there is a compelling reason to the contrary, it is appropriate to take it that the tribunal has fully taken into account all the evidence and submissions. That does not mean that a decision which has failed in its basic task to cover the correct ground and answer the right questions will be upheld. A patently deficient decision cannot be converted by argument into an acceptable one."

26. The legal test for dishonesty was set out by Lord Hughes JSC in *Ivey v Genting Casinos (UK) Ltd* [2017] UKSC 67, at [74]:

> "When dishonesty is in question the fact-finding Tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledgeable belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder by applying the (objective) standards of ordinary decent people. There is no

> requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

27. A dishonest state of mind may consist in a person's knowledge that a given transaction is one in which s/he cannot honestly participate or it may consist in suspicion combined with a conscious decision not to make inquiries which might result in knowledge: *Barlow Clowes International Ltd (in liquidation) and others v Eurotrust International Ltd* [2006] 1 WLR 1476, at [10]-[12]. For example, in *Metcalfe v Solicitors Regulation Authority* [2021] EWHC 2271 (Admin), Murray J. held that the Solicitors Disciplinary Tribunal was entitled to find dishonesty on the basis that Mr Metcalfe had deliberately "turned a blind eye" and avoided making relevant inquiries, lest he learn something he would rather not know.

28. The meaning of the term "integrity" was set out by Jackson LJ in *Wingate v Solicitors Regulation Authority* [2018] 1 WLR 3969 at [96] to [103]. In summary, whilst it is a more nebulous concept than dishonesty, integrity is a "useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members". It connotes adherence to the ethical standards of one's own professions. At [100] – [101], Jackson LJ gave a number of examples of solicitors acting without integrity, including subordinating the interests of the clients to the solicitors' own financial interests; making improper payments out of the client account; and allowing the firm to become involved in conveyancing transactions which bear the hallmarks of mortgage fraud.

29. Jackson LJ observed at [103] that a professional disciplinary tribunal has specialist knowledge of the profession and its ethical standards. Accordingly it is well placed to identify want of integrity and the decisions of such a body on that issue must be respected, unless it has erred in law.

30. I accept Mr Ramsden KC's helpful summary of the duties owed by solicitors relevant to this case:

    i) There is a general 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 (*Gosfield School Ltd v Birkett Long (A Firm)* [2005] EWHC 2905 (QB)).

    ii) As Bingham LJ said in *County Personnel (Employment Agency) v Alan R Pulver & Co* [1987] 1 WLR 916 at 922D, "If in the exercise of a reasonable professional judgment a solicitor is or should be alerted to risks which might elude even an intelligent layman, then plainly it is his duty to advise the client of these risks or explore the matter further".

    iii) In *Boyce v Rendells* (1983) 268 E.G. 268 at 272, the Court of Appeal accepted that "if, in the course of taking instructions, a professional man like a land agent or a solicitor learns of facts which reveal to him as a professional man the existence of obvious risks, then he should do more than merely advise within the strict limits of his retainer. He should call attention to and advise upon the risks".

    iv) A solicitor owes a general duty to explain documents to the client or at least to ensure that he understood the material parts (*Clarence Construction Ltd v*

Lavallee (1980) 111 D.L.R. (3d) 582). It is not enough for the solicitor to argue that this was a matter of business in which they had no duty to advise.

v) In *Neushul v Mellish & Harkavy* (1967) 111 S.J. 39, it was held that "a solicitor carrying out a transaction for a client was not justified in expressing no opinion when plainly the client was rushing into an unwise, not to say disastrous, adventure".

Grounds of appeal

Ground 1

31. The Appellants submitted that the Tribunal's finding of dishonesty against them was wrong for the following reasons:

a) The finding of dishonesty *ab initio* ignored the high inherent improbability of such conduct by the Appellants, and the need for compelling evidence to establish it on the balance of probabilities: in particular, the Tribunal erred in taking significantly into account against the Appellants events which occurred after May 2011. In the premises, the Tribunal was wrong to find that the allegation of dishonesty *ab initio* had been made out on the balance of probabilities.

b) The Tribunal's findings of fact were flawed in that it failed properly to apply Rule 32(1) of the Solicitors (Disciplinary Proceedings) Rules 2019 to the findings of fact made by HH Judge Robinson in the judgment given on 28 May 2020 in the Sheffield County Court in the case of *[JH] v The Hetherington Partnership Ltd*.

c) The Tribunal erred in law in failing to take into consideration character evidence submitted by the Appellants.

d) The Tribunal erred in law in failing to consider the case against each Appellant separately.

Ground 2

32. The SDT erred in finding that any failures of advice by the Appellants, or either of them, amounted to professional misconduct, and therefore erred in finding that each of the allegations against each of the Appellants had been proved.

Ground 3

33. The Tribunal erred in finding in allegation 1.2.2 and allegation 3.2.2 that the Appellants were in a position of own interest conflict.

34. The Appellants did not pursue their appeal against the sanctions imposed and the order for costs, whilst reserving the right to argue that the costs order made by the

Tribunal should be reconsidered in the event that some or all of their other grounds of appeal succeeded.

Conclusions

35. The authorities of *Martin* and *Day* confirm that the burden of proof lies upon the Appellants to show that the Tribunal's conclusions were wrong, and that the decision under appeal is one that no reasonable judge could have reached. In this case, the criticisms advanced by the Appellants did not reach this high threshold.

36. In its judgment, the Tribunal concluded that allegations 1 and 3 were proved by the Respondent, stating:

> "*Breaches*
>
> 21.196 The Tribunal found that the [Appellants'] failings were more than negligent and crossed the threshold into professional misconduct. It was the [Appellants'] case that they were only retained to conduct the commercial conveyance and advise on the contract documentation. As detailed, the Tribunal found that the Appellants had failed to advise (or cause the Firm to advise) on a number of material clauses in the contracts, and had failed to advise on some of the contractual documents in their entirety. The advice that was provided, whilst not incorrect, was not sufficient such as to discharge their duties to their clients. The Tribunal noted the failures to take proper account of the Warning Notices from Action Fraud and the SRA. The Tribunal considered that the [Appellants'] failures in that regard formed part of the background against which their conduct was to be assessed.
>
> 21.197 The Tribunal found that the [Appellants'] failure to take proper heed of the SRA Warning Notices (save the 2017 Warning Notice) and the Action Fraud Warning Notices resulted from the [Appellants] not wishing to cease what was the main source of income for the Firm. The Tribunal did not accept the First [Appellant's] evidence that she did not consider that the 2014 Action Fraud Notice applied to the work she was carrying out on the basis that she had been undertaking the work since 2011, and the 2014 Notice referred to an "emerging trend". Such an explanation was extraordinary.
>
> 21.198 The Tribunal found that the [Appellants], in failing to adequately advise their clients, had failed to act in their best interests in breach of Rule 1.04 and Principle 4. Acting in their clients' best interests would have included providing clients with full advice as to the meaning and effect of the contract documentation. It was not enough to provide a limited report on the documents, telling clients to read the clauses without explaining the clauses in full.

21.199 Members of the public expected solicitors to advise them on legal documents when they had been retained for that purpose. In failing to do so, the [Appellants] had failed to maintain the trust placed in them and in the provision of legal services in breach of Rule 1.06 and Principle 6.

21.200 The Tribunal found that the [Appellants] had deliberately failed to provide clients with full advice so as to preserve the income generated from the schemes. If clients had properly understood the risk of the investments and their obligations, there was less likelihood that they would have proceeded with the transactions. The Tribunal determined that in deliberately failing to provide full and proper advice so as to maintain their income stream, the Appellants had acted where there was an own client conflict in breach of Rule 3.01 of the 2007 Code and Outcome O(3.4) of the 2011 Code.

Client M had required a number of enquiries to be made as regards the transaction. The [First Appellant] having asked some question and not having received answers that were satisfactory to Client M, unilaterally terminated the retainer. The Tribunal considered that no conflict had arisen due to the nature of the queries, and thus there was no reason arising from the queries for the [First Appellant] to terminate the retainer.

In evidence, the [First Appellant] explained that it had been a mutual decision, however, in her second Witness Statement, the [First Appellant] stated that she considered that the "professional relationship with [Client M] had broken down". When asked about the difference between her oral and documentary evidence, the [First Appellant] explained that she was not in a "great way" when she wrote the statement, that Client M was frustrated and whether that frustration equated to a breakdown in the relationship was "a moot point". The Tribunal did not agree. Either they came to a mutual agreement to end the retainer, or the [First Appellant] considered that the relationship had broken down. The Tribunal considered that in unilaterally terminating the retainer, the [First Appellant] was not of the opinion that the professional relationship had broken down despite her assertion to the contrary. As there was no client conflict arising from the queries, the Tribunal determined that the [First Appellant] terminated the relationship so as to preserve the relationship with Group First, the Firm's then major source of income. The Tribunal found that in preferring the interests of the income of the Firm over their clients, the [Appellants] had failed to act with independence in breach of Principle 3 and Rule 1.03. That such conduct failed to maintain the trust of the public in the [Appellants] and the provision of legal services in breach of Rule 1.06 and Principle 6 was plain.

> 21.201 The [Appellants'] conduct also breached Rules 1.02 and Principle 2. Solicitors acting with integrity would not prefer their own interests over their clients. Nor would solicitors acting with integrity fail to provide proper and adequate advice to clients regarding their transactions. Having read warnings that related to the work they were undertaking, solicitors acting with integrity would have carried out some investigation into the work they were conducting to satisfy themselves that the warnings did not apply to the work they were undertaking. The Tribunal, as detailed above, found that the [Appellants] had failed to do so in order to preserve their income stream. Accordingly, the Tribunal found that the [Appellants'] conduct was in breach of Rule 1.02 and Principle 2 as alleged.
>
> 21.202 The Tribunal found allegations 1.1, 1.2, 3.1 and 3.2 proved on the balance of probabilities."

37. In my judgment, the Tribunal was entitled to reach these conclusions in respect of the Appellants' conduct, on the basis of the evidence, both written and oral. I accept Mr Ramsden KC's submissions on the following aspects of the evidence.

38. The Tribunal was entitled to find the First Appellant's answers to questions about the document titled "contract of sale" ("COS") to be "astounding" (Judgment, [21.157]). The First Appellant said she had not read that document in detail or advised on it, since it was "just a reservation form with details of the client" (Transcript, 491B). In fact, as correctly found by the Tribunal, the COS required the payment by the client of the entire purchase price on a non-refundable basis. Whether that money was in the Appellants' client account, or passed to JWK, who were Group First's solicitors, clients had no legal right to enforce the return of those monies and no enforceable entitlement to receive anything in return at the time it was paid. Whilst the document had been signed prior to the Appellants' instruction, it was this document that authorised the payment of monies from the Firm to JWK. In those circumstances, the Tribunal was entitled to consider that this "should at the very least, have been explained to clients" (Judgment [21.158]) and the Appellants were "duty bound to read, understand, and advise their clients on the consequences of that document. They wholly failed to do so" (Judgment, [21.157]).

39. The Tribunal was entitled to find the First Appellant's explanation in respect of the 100% deposit "unsatisfactory" (Judgment, [21.159]). The First Appellant had suggested that it was easier to pay all of the money at once, as it saved clients' money on transfer fees. But she did not, at any time, explain to the clients that the 100% deposit was non-refundable or that, having paid those monies prior to any conveyance, those monies were at risk.

40. In circumstances where the COS purported to provide for an immediate 8% return upon signature and payment, prior to any transfer of title (on the Respondent's case, a 'red flag' indicator of a dubious scheme), the Tribunal was entitled to regard that as "a matter that ought, at the very minimum, to have caused the [Appellants] concern". The expert Tribunal was entitled to hold that "a reasonably competent solicitor would, having been instructed, ensured that the terms of the COS had been complied with, particularly when monies had been paid pursuant to the COS, and completion often

took place some time after the COS had been signed and monies paid to Group First" (Judgment, [21.161]).

41. The Tribunal was entitled to describe a clause whereby the seller had the right to resell the parking space if the client failed to respond to any communication within 21 days as "dangerous and onerous" (Judgment, [21.162]). The First Appellant herself had conceded that, if she was advising on a one-off transaction, she would advise her client not to enter into a contract that included such a clause. Yet the Appellants failed to do so here.

42. The Tribunal was entitled to find the First Appellant's answer to a question about Clause 3 in a Purchase Contract – that there was "no need to bombard clients with information" to be "incredible" (Judgment, [21.163]). The clause required payment of a premium already paid in full, pursuant to the so-called COS. At the very least, as the Tribunal held, the First Appellant "ought to have advised of any risk, and explained that in her view the risk was minimal".

43. The Tribunal's finding that the First Appellant's advice on a "Headlease" was "inadequate" (Judgment, [21.164]) was properly open to it. The report relied upon by the Appellants did not advise clients that if Group First exercised an option to stop paying rent after two years, the clients might still be liable for all charges save for the service charge. Nor did it alert clients that it was not clear whether they would be released from those obligations. The Tribunal was entitled to reject the First Appellant's partial and self-serving arguments to the contrary and to consider that "it was not sufficient to tell clients to read clauses without explaining the effect of those clauses" (Judgment, [21.167]).

44. It was common ground that the contractual provisions included a so-called 'buyback' option, the effect of which was that, once exercised, Group First could take up to five years to buy the property back, during which the client would be unable to sell to anyone else. The Tribunal was manifestly right to regard this as "a fundamental issue upon which advice should have been provided" (Judgment, [21.169]). Such advice was not provided in the Appellants' Report on the Option Agreement and the Tribunal was entitled to reject the First Appellant's self-serving suggestion that she "might have" provided it elsewhere. The Tribunal was entitled to consider that the advice actually provided, namely that the relevant entity may not exist at the time the option could be exercised, was "wholly inadequate".

45. The Tribunal was entitled to regard the First Appellant's evidence in relation to a "Minute of Agreement" as "extraordinary" (Judgment, [21.170]). On her own case, the First Appellant "caused clients to sign a document on which she did not, and did not intend, to provide any advice, notwithstanding that the document formed part of the clients' obligations".

46. The Tribunal was entitled to find that advising clients to seek independent advice from other specialists did not negate the Appellants' responsibility to ensure their clients were properly advised and it was entitled to hold that the Appellants "sought to abrogate their responsibilities" in this regard (Judgment, [21.173]). The information provided by the Appellants in their various reports manifestly fell "far below the advice that was necessary to ensure that their clients were in possession of all necessary information in relation to their transactions".

47. In respect of promotional materials about the Schemes (Judgment, [21.174-177]), the Tribunal was entitled to reject the First Appellant's attempt to distance herself from knowledge of the promises made in such documents. She clearly was aware of them and it was open to the expert Tribunal to infer that she could not have "failed to understand that the promises made did not match the contractual documents on which she had been retained to advise.". The Tribunal was also entitled to determine that the reality was as stated in paragraph 33 of the First Appellant's second witness statement of 5 December 2017, namely, that she was "not particularly interested" in the contents of the brochures. She obviously should have been.

48. The Tribunal was entitled to be critical of the Second Appellant failing to answer a questions as to the scope of Firm's contractual duties (Judgment, 21.176]). The Tribunal was also entitled to consider that neither of the Appellants "gave a satisfactory answer to questions about why they did not read the marketing material, or that having read it, the promises made therein were either not noticed or were [considered] not relevant to the retainer" (Judgment, [21.177]). The Tribunal's conclusion that "Clients, having read the client care letter, would have believed that the marketing material had been reviewed by the [Appellants], and not being advised otherwise, would have considered the promises made in the marketing materials to be true" was plainly open to them.

49. The Tribunal rightly did not accept that the Appellants had given "any proper consideration to the SRA Warning Notices or the Action Fraud Warning Notices" (Judgment, [21.178]). That conclusion was plainly open to the Tribunal for the reasons given at Judgment, [21.178-185], especially given the Appellants' "incredible" evidence, which was "incapable of belief" and left the Tribunal "incredulous".

50. The Tribunal had the benefit of hearing the witnesses give evidence, and it was entitled to find the evidence of the regulator's witnesses to be "factual and straight forward" (Judgment, [21.192]), and to find the Appellants' evidence "to be evasive and specious" (Judgment, [21.195]).

51. The Tribunal heard submissions on the issue of dishonesty (see Judgment, [22.1 – 22.12]), and were well aware of the legal test to be applied (see Judgment, [15] – [16]). The Tribunal concluded as follows:

> "22. **Dishonesty**
>
> The Tribunal's Findings
>
> 22.13 The Tribunal considered that the Reports prepared by the Respondents were deliberately limited so as to avoid transactions from not progressing and to preserve the Firm's major income stream. It was the Respondents' case that they were retained to undertake the commercial conveyancing only. This included advising on the contractual documents. For the reasons detailed above, the Tribunal found that the advice given was wholly insufficient. The Tribunal considered that the insufficiency of the advice was deliberate. Not only did the Respondents fail to advise on all of the material contract

> clauses, they also failed to undertake the investigations that they expressly stated they would in their client care letter. Further, they ignored the very clear warnings contained in the Action Fraud Notices which were directly relevant to the transactions. Those failings, the Tribunal determined, were deliberate failings on the part of the Respondents.
>
> 22.14 The Tribunal did not accept that at the time the Respondents considered that they were not required to do more. They were both experienced solicitors who knew that in order to advise their clients adequately, they were required to read all of the contract documentation and to advise clients fully as to the meaning and effect of clauses. That the First Respondent was 'not interested' in the content of the COS, Minute Agreement and promotional material was indicative of her indifference to the Firm's clients, and her preference of the Firm's fees.
>
> 22.15 The Tribunal considered that ordinary and decent people would find it dishonest for solicitors to deliberately provide limited advice so as to ensure that the transactions upon which they were instructed would proceed. Further, it would be considered dishonest for solicitors to prefer their own interests over the interests of their clients. Accordingly, the Tribunal found the Respondents' conduct was dishonest as alleged."

52. In my judgment, on the basis of their findings on the evidence, and their assessment of the Appellants during their oral evidence, the Tribunal was entitled to find that the Appellants acted dishonestly.

53. I did not accept the Appellants' criticisms of the finding of dishonesty, which were set out in paragraphs (a) to (d) of Ground 1.

Ground 1(a)

54. Mr Treverton-Jones KC submitted that the Tribunal upheld allegations 1 and 3 on the basis that, in 2011, the Appellants deliberately entered into a dishonest criminal conspiracy with Group First and others, and so evidence relating to their conduct in later years could not properly be taken into account. I agree with Mr Ramsden KC's submission that this was a false construct. It was not the way in which the Respondent put its case, either in the Rule 12 notice or at the Tribunal. It was clear from the wording of the allegations that the allegations concerned the Appellants' conduct between April 2011 and September 2017, and so any relevant evidence between these dates was potentially probative, and the Tribunal was entitled to take it into account. These dates reflected the dates upon which the Appellants were undertaking the work for Group First and others. The Tribunal was made aware that, during the period between April 2011 and September 2017, the nature of the property varied (between storage pods and airport car parks), and there were some variations in the wording of the documentation. The First Appellant's oral evidence was that the Firm's client care letters and reports were "consistent throughout the period the subject of the

allegations", with only "a couple of variations" (Transcript, 415F). The Tribunal was entitled to find that these changes did not make a material difference to its ultimate findings. The omissions in the documentation remained the same throughout. The Tribunal found that that the Appellants were at fault in failing to give the required advice to clients, not that the advice which they did give was incorrect.

Ground 1(b)

55. Mr Treverton-Jones KC submitted that the Tribunal's findings of fact were flawed in that it failed properly to apply Rule 32(1) of the 2019 Rules to the findings of fact made by HH Judge Robinson in the judgment given on 28 May 2020 in the Sheffield County Court in the case of *[JH] v The Hetherington Partnership Ltd*.

56. JH acquired a Group First product through his pension provider (Stadia) which instructed the Firm. Stadia subsequently went out of business. He invested most of his pension fund (£97,500) into Group First and received a single payment of £7,800 by way of returns. He obtained a report from an expert valuer who advised that the storage pods had been over-valued and identified the risks to investors in the scheme, including that there was no value in the Option Agreement as it could not be enforced.

57. Judge Robinson dismissed the claim, on the basis that Stadia was the Firm's client, not JH. The Judge also made the following findings:

> "96. …. Insofar as any advice was given, it was correct advice….There was no duty to give any further advice, in particular on the wisdom of the investment.
>
> ……
>
> 110. I have found that there was no reference to a leaseback or rental agreement in the literature seen by the Claimant. It follows that the claim relating to the Defendant's failure to secure such an agreement or to advise the Claimant of the absence of such an agreement must fail. Since there was no such reference, there
>
> cannot have been a duty to advise of the necessity for such an agreement. The claim on this ground fails…
>
> 112. The first point to make is that I am satisfied that the documentation sent to the Defendant for processing on behalf of Stadia was correctly processed by the Defendant.
>
> 113. The Report on Option and Report on Sublease documents were sent to Stadia. The Report on Sublease is an admirable summary, in clear language, of the effect of the sublease to Stadia. Similarly, the Report on Option document is in plain and simple language. It warns explicitly of the weaknesses in the Option Agreement from the investor's point of view. The observation that Store First may not be in existence in five years is an obvious one."

58. The Respondent submitted to the Tribunal that, whilst admissible, Judge Robinson's findings were not binding on the Tribunal. It made detailed submissions as to why the Tribunal should not adopt those findings, at Judgment, [21.82] – [21.90], which I summarise below.

59. The Respondent submitted that the findings were limited to the facts and circumstances of JH's case. They were "therefore based on a single "snapshot" of one client, who retained incomplete documentation and appears to have given limited assistance in his evidence regarding documentation he could no longer locate".

60. The Respondent further submitted that Judge Robinson was only directed to the 2017 Warning Notice (paragraph 108), however warning notices had been issued to the profession as early as 2013. The Respondent's case was that, despite numerous warnings which were repeatedly issued and re-issued by Action Fraud, the Respondent and the Self-Storage Association, the Appellants continued to act in facilitation of the Schemes.

61. It remained the Respondent's case that despite Judge Robinson's finding that the report on the sublease "was an admirable summary", the report failed to provide sufficient warning to the lay investor as to the serious shortfalls of the Scheme. The report failed to highlight that a leaseback or rental agreement was necessary in order to achieve the promised rates of return. The sample report obtained by the Respondent (in relation to Client K) had the explanation that the rent term of 6 years could be brought to an end earlier if Group First desired under the "break clause". This appeared to be the standard report that was used by the Appellants in each case. That danger was not evidently addressed at all in JH's case.

62. Solicitors are under a general duty to point out any hazards of the kind which should be obvious to a solicitor but which the client, as a layman, may not appreciate (*Gosfield School Ltd v Birkett Long (A Firm)* [2005] EWHC 2905 (QB)). To similar effect Bingham LJ stated in *County Personnel (Employment Agency) v Alan R Pulver & Co.* [1987] 1 WLR 916 at 922D that:

> "If in the exercise of a reasonable professional judgment a solicitor is or should be alerted to risks which might elude even an intelligent layman, then plainly it is his duty to advise the client of these risks or explore the matter further."

63. It was the Respondent's case that the inclusion of a break clause flagged an obvious risk to a reasonably competent solicitor who should have taken steps to advise their client to mitigate this risk, namely by making the client aware of such and advising steps such as a leaseback or rental agreement, or simply to walk away from the transaction.

64. The Respondent submitted that the advice rendered was not "admirable" and in "plain and simple language", as Judge Robinson found. The Appellants were required to point out the obvious shortfalls in the documentation. The Appellants were in possession of a prospectus which labelled the buy-back as a guarantee. In *Boyce v Rendells* (1983) 268 E.G. 268 at 272, the Court of Appeal accepted the following general proposition:

> "if, in the course of taking instructions, a professional man like a land agent or a solicitor learns of facts which reveal to him as a professional man the existence of obvious risks, then he should do more than merely advise within the strict limits of his retainer. He should call attention to and advise upon the risks."

A solicitor owes a general duty to explain such documents to the client or at least to ensure that he understands the material parts (*Clarence Construction Ltd v Lavallee* (1980) 111 D.L.R. (3d) 582), and it is not enough for the solicitor to argue that this was a matter of business in which they had no duty to advise.

65. The inclusion of the term "guarantee" in some of the promotional material may have led some investors to act on the understanding that the buyback was indeed a guarantee. Without the guarantee, the buyback was essentially worthless, and this should have been identified to each client, particularly given their vulnerabilities and inexperience.

66. In *Neushul v Mellish Harkway* (1967) 111 S.J. 39, it was held:

> "a solicitor who was carrying out a transaction for a client was not justified in expressing no opinion when it was plain that the client was rushing into an unwise, not to say disastrous, adventure".

67. The Appellants therefore had a duty to ensure the clients knew of the full extent of the risks involved. Judge Robinson's judgment did not dismiss these risks, simply concluding that in that case the duty to warn was adequately discharged.

68. The Respondent submitted that was a matter for the Tribunal to determine in this case.

69. In response, Mr Goodwin for the Appellants submitted to the Tribunal as follows:

> "21.132 Given those findings, the [Appellants] did not accept that they had failed to adequately advise their clients …. The advice given in the JH transaction was the same as the advice given to all clients. The [Appellants] advised all clients to seek appropriate independent advice; they could not and should not be held accountable if clients failed to do so. The Appellants considered that the decision and findings of Judge Robinson should be echoed by the Tribunal."

70. Mr Goodwin amplified these submissions at Judgment, [21.147] – [21.148].

71. The Tribunal considered the competing submissions and concluded as follows:

> "21.190 Similarly, there was no evidence as to the documents before HHJ Robinson. The Tribunal was considering the Respondents' conduct through the prism of the Respondents' regulatory duties. As detailed, it had found that the Respondents had failed to advise clients on a number of material clauses and, in some cases, had provided no advice or explanation as to documents the clients were required to sign.

> The Tribunal considered that solicitors were required to advise clients as to risk. Such advice did not equate to investment advice. The Tribunal did not accept the assertion."

72. Rule 32 of the 2019 Rules provides:

> "**Previous findings of record**
>
> 32(1) A conviction for a criminal offence in the United Kingdom may be proved by the production of a certified copy of the certificate of conviction relating to the offence and proof of a conviction will constitute evidence that the person in question was guilty of the offence. The findings of fact upon which that conviction was based will be admissible as conclusive proof of those facts save in exceptional circumstances.
>
> (2) The judgment of any civil court, or any tribunal exercising a professional or disciplinary jurisdiction, in or outside England and Wales (other than the Tribunal) may be proved by producing a certified copy of the judgment and the findings of fact upon which that judgment was based is admissible as proof but not conclusive proof of those facts.
>
> ……"

73. At common law, the admissibility of the findings of other courts or tribunals is governed by the principle in *Hollington v Hewthorn* [1943] KB 587, which held that evidence of a criminal conviction was not admissible in related civil proceedings as evidence of the truth of the facts on which it was based. The rationale of the principle was that the judge had to make his own independent assessment of the evidence before him, not rely upon conclusions reached by another court, on possibly different evidence.

74. This principle was reversed in respect of criminal convictions by section 11(1) of the Civil Evidence Act 1968 ("CEA 1968") which renders a conviction admissible in evidence in civil proceedings for the purpose of proving that he committed that offence, unless the contrary is proved. Thus, section 11(1) creates a presumption that the person has committed the offence, which may be rebutted.

75. However, there is no comparable provision to section 11(1) in respect of findings in earlier civil proceedings. The principle in *Hollington v Hewthorn* continues to apply, subject to a number of exceptions, such as previous findings of adultery and paternity (section 12 CEA 1968) and proceedings between the same parties. By way of example, it has recently been relied upon in *Jinxin Inc v Aser Media PTE Limited & Ors* [2022] EWHC 2431 (Comm), at [56] – [57].

76. Rule 32 of the 2019 Rules also distinguishes between convictions and findings in prior civil proceedings. By Rule 32(1) the "findings of fact upon which the conviction was based will be admissible as conclusive proof of those facts save in exceptional circumstances" (emphasis added). By Rule 32(2), the judgment of a civil

court or tribunal may be proved and "the findings of fact upon which that judgment was based is admissible as proof but not conclusive proof of those facts" (emphasis added).

77. I was referred to a Tribunal judgment in the case of *Solicitors Regulation Authority v Advani* Case No. 10865-2011, where the application of Rule 15(4) of the Solicitors (Disciplinary Proceedings) Rules 2007 was considered. It was almost identical to Rule 32 of the 2019 Rules. In *Advani*, there had been two High Court judgments on similar allegations to those before the Tribunal and the solicitor respondent had played a full part in the High Court proceedings. The Tribunal accepted submissions from the SRA which applied principles and case law (*Choudry v Law Society* [2001] EWCA Civ 1665 and *Constantinides v Law Society* [2006] EWHC 725 (Admin)) based upon Rule 30 of the Solicitors (Disciplinary Proceedings) Rules 1994 which used different wording as follows:

> "the findings of fact by the court or tribunal upon which the conviction, finding, sentence or judgment is based shall be admissible as prima facie proof of those facts."

78. The tribunal in *Advani* accepted that in some circumstances, such as those which arose in that case, it was appropriate to give determinative weight to prior judgments. It held that the probative burden had shifted to the respondent solicitor to show that the prior judgment was not correct, and the respondent solicitor had failed to discharge that burden.

79. Mr Treverton-Jones KC criticised the Tribunal for failing to have regard to Rule 32 of the 2019 Rules, or to apply it correctly. In my judgment, the experienced members of the Tribunal panel would undoubtedly have been well aware of Rule 32. It was not necessary for them to set it out in their judgment. Mr Ramsden KC correctly submitted that the effect of Rule 32 was that the judgment was admissible but its findings were not binding on the Tribunal. Mr Goodwin did not disagree with Mr Ramsden's summary.

80. Unlike the case of *Advani*, the burden of proof did not shift; it rested on the Respondent in respect of all issues, including the findings of Judge Robinson. Hence it addressed the findings in Judge Robinson's judgment in considerable detail. Clearly some of those findings were specific to JH. Much of Judge Robinson's judgment turned on the difficulties in identifying the correct documentation applicable to JH. The Tribunal was correct to state that the bundle of evidence which was before Judge Robinson in the County Court was not in evidence in these proceedings, and therefore it was not entirely clear which documents Judge Robinson was referring to. The Tribunal had to make its assessment on the basis of the documentation in evidence before it.

81. It is apparent from the judgment that the Tribunal accepted Mr Ramsden KC's legal submissions on the Appellants' professional obligations, and his submissions as to why Judge Robinson's findings ought not to be followed. It evidently preferred those submissions to those of Mr Goodwin. In my judgment, the Tribunal was entitled to form its own view of the evidence, and the conclusions to be drawn from the evidence. It was not bound by the findings and determination of Judge Robinson.

Ground 1(c)

82. Mr Treverton-Jones KC submitted that the Tribunal erred in law in failing to take into consideration character evidence submitted by the Appellants. I am satisfied that the Tribunal did take that evidence into account. It was read out to them in full at the hearing by Mr Goodwin, as is evident from the Transcript. It was not necessary for the Tribunal to refer to it in their Judgment, in the circumstances of this case.

Ground 1(d)

83. Mr Treverton-Jones KC submitted that the Tribunal erred in law in failing to consider the case against each Appellant separately. In my judgment, this submission is without foundation. The differences in the role, responsibilities and involvement of each Appellant were clearly identified in each of the Allegations, and throughout the evidence and submissions. The Tribunal had the benefit of hearing both Appellants give oral evidence which would have focussed the Panel's minds on the position of each individual.

84. The case against the Second Appellant, in particular, dishonesty, was properly put, see Transcript at 122F, 123H, 131E, 134A-E, 170H, 611A (evidence in chief) and 657C (cross-examination).

85. It is important to bear in mind that this was not a "cut throat" defence in which one Appellant was seeking to cast blame on the other. Throughout the investigation and disciplinary procedures, the Appellants were united in their responses and indeed they presented a "Joint Statement" in support of this appeal.

Ground 2

86. Mr Treverton-Jones KC conceded that, if the allegation of dishonesty was upheld, Ground 2 fell away.

Ground 3

87. Mr Treverton-Jones KC submitted that the Tribunal erred in finding that the Appellants were in a position of own interest conflict because such a finding was inconsistent with the Tribunal's view that the Appellants could properly act in these transactions. If a solicitor is in a position of own interest conflict, he or she must not act further in the matter in question.

88. I do not accept this submission. The Tribunal was entitled on the evidence to conclude that the Appellants deliberately failed to provide clients with proper advice so as to preserve the income generated from the Schemes. If clients had properly understood the risks, they would have been less likely to invest in the Schemes: see Judgment, [21.103] – [21.105]; [21.200]. It was proper for the Tribunal to characterise this as own interest conflict.

Final conclusion

89. For the reasons set out above, the appeal is dismissed.

APPENDIX 1

SRA Code of Conduct 2007

Rule 1.02 You must act with integrity

Rule 1.03 You must not allow your independence to be compromised

Rule 1.04 You must act in the best interests of each client

Rule 1.06 You must not behave in a way that is likely to diminish the trust the public places in you or the legal profession

Rule 3.01 You must not act if there is a conflict of interests (except in the limited circumstances dealt with in 3.02)

SRA Principles 2011

Principle 2 You must act with integrity

Principle 3 You must not allow your independence to be compromised

Principle 4 You must act in the best interests of each client

Principle 5 You must provide a proper standard of service to your clients

Principle 6 You must behave in a way that maintains the trust the public places in you and in the provision of legal services;

SRA Code of Conduct 2011

Outcome 3.4 You do not act if there is an own interest conflict or a significant risk of an own interest conflict

Outcome 3.5 You do not act if there is a client conflict, or a significant risk of a client conflict, unless the circumstances set out in Outcomes 3.6 or 3.7 apply

SRA Authorisation Rules 2011

Rule 8.5(c) The COLP of an authorised body must:

(i)
take all reasonable steps to:

(A)
ensure compliance with the terms and conditions of the *authorised body's authorisation* except any obligations imposed under the *SRA Accounts Rules*;

(B)
ensure compliance with any statutory obligations of the body,
its *managers, employees or interest holders* or the *sole practitioner* in relation to the body's carrying on of *authorised activities*; and

(C)
record any failure so to comply and make such records available to the SRA on request; and

(ii)
in the case of a licensed body, as soon as reasonably practicable, report to the *SRA* any failure so to comply, provided that:

(A)
in the case of non-material failures, these shall be taken to have been reported as soon as reasonably practicable if they are reported to the *SRA* together with such other information as the *SRA* may require in accordance with Rule 8.7(a); and

(B)
a failure may be material either taken on its own or as part of a pattern of failures so to comply.

(iii)
in the case of a recognised body or recognised sole practice, as soon as reasonably practicable, report to the *SRA* any material failure so to comply (a failure may be material either taken on its own or as part of a pattern of failure so to comply).

Rule 8.5(e) The COFA of an authorised body must:
(i)
take all reasonable steps to:

(A)
ensure that the body and its managers or the sole practitioner, and its employees comply with any obligations imposed upon them under the SRA Accounts Rules;

(B)
record any failure so to comply and make such records available to the SRA on request; and

(ii)
in the case of a licensed body, as soon as reasonably practicable, report to the SRA any failure so to comply, provided that:

(A)
in the case of non-material failures, these shall be taken to have been reported as soon as reasonably practicable if they are reported to the SRA together with such other information as the SRA may require in accordance with Rule 8.7(a); and

(B)

a failure may be material either taken on its own or as part of a pattern of failures so to comply.

(iii) in the case of a recognised body or recognised sole practice, as soon as reasonably practicable, report to the SRA any material failure so to comply (a failure may be material either taken on its own or as part of a pattern of failure so to comply).