UNAPPROVED

THE COURT OF APPEAL

ecord No.: 2020/2 59

Donnelly J.

Neutral Citation Number [2022] IECA 2

Haughton J.

Collins J.

BETWEEN/

LAW SOCIETY OF IRELAND

RESPONDENT

-and-

KATHERINE DOOCEY

APPELLANT

JUDGMENT of Ms. Justice Donnelly dated the 11th day of January, 2022

Introduction

1. By Order of the President of the High Court made on the 16th November, 2020), the appellant ("Ms. Doocey") was struck off the roll of solicitors pursuant to s. 8 of the Solicitors (Amendment) Act, 1960 as substituted and amended (hereinafter, "the Act of 1960"). Ms. Doocey appeals against that Order and the judgment of Irvine P. delivered on the 2nd November, 2020 ([2020] IEHC 581).

2. The Law Society of Ireland ("the Law Society") is the educational, representative and regulatory body of the solicitors' profession in Ireland. The regulatory functions are exercised through the Solicitors Disciplinary Tribunal ("the Tribunal") a body appointed by the President

of the High Court in accordance with s. 6 of the Act of 1960. Under s. 7 of the Act of 1960, either a person or the Law Society may bring an application for an inquiry into the conduct of a solicitor on the ground of misconduct. It is unnecessary to set out the procedural safeguards in this judgment save to record that the Tribunal is required to make a decision that there is a *prima facie* case for inquiry before a full inquiry is heard. Further relevant legal provisions are set out later in this judgment.

3. In the present case and in accordance with s. 7 of the Act of 1960, the Tribunal held an inquiry on the application of the Law Society into alleged misconduct on the part of Ms. Doocey. On the date of the inquiry, admissions were made by Ms. Doocey in respect of each of the 24 allegations of misconduct she faced. Her admissions were made as to the facts alleged against her and also that those facts amounted to misconduct. The Tribunal had documentary evidence before it in the form of affidavits from the Law Society and from Ms. Doocey. The Tribunal also heard oral evidence and submissions as to sanction.

4. In its written decision of the 5th February 2020, the Tribunal found there had been misconduct on the part of Ms. Doocey "by reason of the admissions made by [Ms. Doocey]". In accordance with statutory provisions, the Tribunal directed the Law Society to bring its report before the High Court. The Tribunal did not impose any of the limited sanctions over which it had jurisdiction. The Tribunal gave its opinion and recommendation that Ms. Doocey's practising certificate should be subject to a series of specified conditions. This recommendation fell short of seeking that Ms. Doocey be struck off the roll of solicitors. Notwithstanding that recommendation – and as it was entitled to do - the Law Society applied to the High Court pursuant to s. 7(3)(c) of the Act of 1960 for an order that Ms. Doocey's name be struck off the roll and also seeking some other ancillary others.

The appeal

5. This appeal involves consideration of

i) the scope of the High Court's enquiry, and the extent to which that court is bound by the findings of the Tribunal, when a case comes before the President for imposition of sanction only,

ii) the nature of the findings of the Tribunal and, in particular, the extent to which the nature of the charges against Ms. Doocey may be considered objectively dishonest and,

iii) whether the President made errors in assessing factors mitigating against the imposition of the ultimate sanction of striking off the roll.

6. Ms. Doocey's central contention is that the President erred in her appraisal of the scope of her enquiry. The Tribunal found that Ms. Doocey had been guilty of professional misconduct based on admissions that Ms. Doocey had made. Ms. Doocey had, however, emphatically denied that she was guilty of dishonesty at any stage. Ms. Doocey submitted that the Tribunal thereby accepted that she had no dishonest intent but that contrary to that finding, Irvine P. concluded that Ms. Doocey had been guilty of dishonest conduct. Ms. Doocey submitted that the President was not entitled to substitute her own views of the evidence for the findings that the Tribunal had made. She submitted that an issue in this appeal is the limit of the High Court's jurisdiction based on facts found proven by the Tribunal.

7. Ms. Doocey also contends that the President of the High Court erred in departing from the sanction that the Tribunal had recommended. The sanction imposed by the High Court was not proportionate to the facts that the Tribunal had found proved and to Ms. Doocey's personal circumstances with due regard to the relevant mitigating factors. Ms. Doocey submitted that the judgment was vitiated by two additional errors at the level of principle; no weight was afforded to the measures that Ms. Doocey and the independent professionals who have assisted her had put in place to protect the public and, Ms. Doocey was punished for asserting (correctly) that no client of her firm had suffered loss and that no claim had been made on the Law

Society's Compensation Fund where the authorities recognise that these can be mitigating factors.

The Statutory Disciplinary Regime for Solicitors

8. Section 3 of the Act of 1960 has a broad definition of "misconduct" including "any … conduct tending to bring the solicitors' profession into disrepute". It does not refer specifically to dishonest conduct or to any offence of dishonesty.

9. The President of the High Court plays a central role in the disciplinary framework established under the Act. She appoints the Tribunal of which no more than 20 are solicitors and no more than 10 are laypersons. Each Tribunal sits in a division of three to hear a case, of which two members are solicitors and one is a layperson.

10. The application brought by a person or the Law Society will only proceed to a full inquiry after there has been a finding by the Tribunal that there is a *prima facie* case. After a full inquiry (which in practice is held before a differently constituted panel), the Tribunal is required to consider each allegation of misconduct separately and to make a separate finding in respect of each such allegation. Under s. 7(3)(c), on completion of the inquiry the Tribunal must specify in a report (which shall include a verbatim note of the evidence given and the submissions made), the nature of the application, the evidence before it, the findings made and the reasons therefor. The Tribunal is to report any other matters in relation to the respondent solicitor which they think fit to report. Under s. 7(9), where the Tribunal has found misconduct, it is entitled to make certain orders such as to advise, admonish or censure the solicitor, to direct payment of a sum of not more than €15,000 to the Compensation Fund (and/or as restitution or part restitution to an aggrieved party), and/or, to direct payment of costs.

11. Where the Tribunal does not make any order under s. 7(9), the Tribunal must include in its report to the High Court, its opinion as to the fitness or otherwise of the solicitor to be a

member of the solicitors' profession and its recommendations as to sanction which should be imposed, having regard to its findings and to any findings of misconduct previously made.

12. The Act of 1960 provides various mechanisms through which the Law Society, the person who sought the inquiry or the respondent solicitor, may appeal to the High Court. Of relevance to this case is s. 8 which provides for what happens after the Tribunal makes a report under s. 7 to the High Court. A s. 8 procedure before the High Court is concerned only with the sanction to be imposed by the High Court on the solicitor after consideration of the Tribunal's report. In an application under s. 8, the Law Society may make submissions as to the opinion of the Tribunal as to the fitness or otherwise of the solicitor to be a member of the solicitors' profession, having regard to the findings of the Tribunal.

13. Under s. 8(1)(a) the High Court may, *inter alia*, do one or more of the following:

(i) strike the name of the solicitor off the roll,

(ii) suspend the solicitor from practice for a limited period on terms,

(iii) prohibit the solicitor from practising on his or her own or in partnership for a limited period,

(iv) restrict the area of work the solicitor may practise in or,

(v) censure the solicitor with or without a requirement to pay a money penalty.

14. Under s. 8(1)(b) of the Act of 1960, "the High Court may, if it thinks fit, remit the case to the Disciplinary Tribunal to take further evidence for submission to it and to make a supplementary report, and the Court may adjourn the hearing of the matter pending the submission to it of such further evidence and the making of such supplementary report."

The Complaints of Misconduct

14. In the 24 allegations of professional misconduct brought against Ms. Doocey, none made any express allegation of dishonesty. At its core however, the case against Ms. Doocey was correctly identified by the President of the High Court as involving the movement of

"funds between client and business accounts and between client ledgers to conceal shortfalls as they arose". Reference will be made below to Ms. Doocey's complaint regarding the use of the word "conceal". The process of transferring from one account to another to cover a shortfall is known within the profession as "teeming and lading" or in the more common parlance, can be referred to as "borrowing (or, as used by the President of the High Court, robbing) from Peter to pay Paul".

15. The Law Society's application to the Tribunal arose from a solicitors' accounts investigation carried out in May 2018. The Law Society's investigating accountant, Jim O'Dowd, found a deficit of in excess of €169,000 on Ms. Doocey's client account as at the 31st December, 2017; €50,000 of the deficit was attributable to a payment of €50,000 made on the 21st August, 2015 from the client ledger account of Clients A. Ms. Doocey claimed that this related to a hacking of the email account of that company and that earlier payments by her, of €25,000 to each of the clients on the 10th August, 2015, had been lodged to the bank accounts of a fraudster in the UK (due to a cyber-attack), was taken into account by the Tribunal in explaining its recommendation as to sanction. Ms. Doocey then used €50,000 of *other clients' monies* to repay Clients A, by client account cheque on the 21st August, 2015, the €50,000 deficit on its account. The *other clients' money* was credited to Clients A's client account thereby concealing the deficit. In addition, Ms. Doocey put a statement of account dated the 1st September, 2015 on the client's file which concealed the irregularities and which, in particular, misdescribed the sales price, by the precise amount of the deficit (€50,000).

16. Both the Law Society and Ms. Doocey agree that the books of account were written up in arrears by her *i.e.* Ms. Doocey did not record the transactions in her accounts but she wrote the account ledgers up on later dates. Ms. Doocey said that when she first started her practice she had a reporting accountant that she did not meet for a year and that she purchased an accounting software package that she did not incorporate into her firm. A new accountancy

system was only put in place in or about April 2017. At the relevant time in 2015 and 2016, Ms. Doocey was before the High Court arising out of certain matters to do with her practice and was seeking to comply with orders to regularise her accounts.

17. The following (in *italics*) are a list of the findings of misconduct of Ms. Doocey made by the Tribunal with a brief explanation of those facts as necessary.

a) Allowed a deficit of €169,152 to arise on her client account as of 31 December 2017.

This deficit was never explained by Ms. Doocey and could not be accounted for by the hacking of her account as set out above, which involved an amount of €50,000 only.

(b) She concealed a deficit of €50,000 in relation to Clients A by using other clients' monies credited to their ledger account thereby concealing that deficit.

This is referred to above. The reference (twice) in this finding to concealing the deficit is significant. As will be seen, many of the other counts also refer to concealment on the part of the solicitor.

(c) She put a statement of account dated 1 September 2015 on the client's file which showed an incorrect sales price of €255,000 instead of the actual sale price of €205,000 and also showed a total of €100,000 paid to the clients which had the effect of concealing the irregularities in relation to this matter.

This also relates to transactions on the file of Clients A.

(d) Used €42,720 received from Client B in respect of a purchase which helped conceal the deficit which had arisen in relation to the Clients A matter leaving a shortfall of €42,658.50 on the Clients B ledger account.

This €42,720 received from client B was part of the *other clients' monies* used to conceal the Clients A deficit. This then left a deficit of €42,720, in the Client B ledger account.

18. The teaming and lading continued throughout 2017. This was reflected in many of the 24 findings of misconduct by the Tribunal. Examples of these are as follows:

(e) Used €42,195.57 from the Client C Estate to help clear the deficit on the Client B Estate ledger account and thereby created a shortfall on the Client C Estate ledger account.

(f) She took €37,831.78 from the Estate of Client D deceased and credited that sum to the Client C Estate ledger account which helped conceal the shortfall on that ledger account.

(g) Cleared the debit balance of €33,177 on the Estate of Client D ledger account with a transfer of that amount, dated the 30th June 2017, from Client E ledger account, which concealed the shortfall on the Client D ledger account and left a shortfall on the Client E ledger account.

(h) Cleared the shortfall on the Client E client ledger account by the transfer of €35,900 dated the 30th June 2017, from the Client F ledger account which left a shortfall on the Client F ledger account.

19. Teeming and lading was not the only way in which deficits were concealed. In addition to the statement of account in the Client A matter, which concealed irregularities in the handling of client monies, further findings involving concealing the misappropriation of client funds and misdescription to conceal the deficits were made:-

(l) She took €24,000 out of a sum of €64,659.60 received into a client account from Client H on the 11th July, 2017 and lodged the amount to the office bank account on the 12th July, 2017 and failed to record the receipt and payment of this sum in the client books of account thereby concealing the misappropriation. (Emphasis added)

(m) She wrongfully credited the €24,000 taken from Client H's money in client account to the office ledger account of the Client E account describing it as 'rectification' and wrongfully described the lodgement of €24,000 as 'loan funds' in the office bank account.

(n) She wrongfully paid the sum of €8,581.41 from the client account [of Client H] to the office account and described it as "rectification" in the office bank account….

(o) She mis-described the sum of €34,772.30 in the client account books which helped conceal the fact that it was mainly composed of clients' money used to clear debit balances and deficits balances on other client ledger accounts.

Ms. Doocey had described the €34,772.30 in the client account books as "received funds rectification" and it was credited to the Client E client ledger account and it was mainly used to fund the clearance of debit balances on other client ledger accounts.

20. As appears from the complaints, on some occasions, monies were taken from probate matters to clear deficits on other client matters. On other occasions, monies were taken from funds received from clients for specific matters but were not used for those matters.

Previous Findings of Misconduct

21. Ms. Doocey had two previous findings of misconduct relating to failures to file her Reporting Accountant's Report in accordance with the Solicitors Accounts Regulations, for the years ended 31st December, 2015 and 31st December, 2016, and in respect of which she was censured and order to pay, respectively, €600 and €10,000 to the Society's Compensation Fund.

Proceedings before the Tribunal

22. At the commencement of the inquiry on the 23rd July 2019, Ms. Doocey, through her counsel, admitted the allegations before the Tribunal and specifically indicated that she did not require proof of them. She admitted that the facts amounted to professional misconduct. The circumstances in which she did so will be outlined further below. The Tribunal made an oral finding that there had been misconduct on all 24 complaints and then proceeded to hear evidence in relation to sanction. Ms. Doocey had put forward evidence on affidavit and she also gave oral evidence to the Tribunal on the 23rd July, 2019.

Ms. Doocey's Evidence to the Tribunal

23. Ms. Doocey was admitted and enrolled as a solicitor on the 17th February, 2014. She commenced practice as a sole practitioner on the 28th March, 2014, from premises at American Street, Belmullet in the County of Mayo. She is from Belmullet and she is the first solicitor ever to open an office there. Ms. Doocey's practice was unexpectedly successful and she soon became overwhelmed by the volume of work that she had to manage. She found it difficult to discharge her workload and to maintain proper books of account at the same time. Ms. Doocey quickly established a broad, general practice in probate, conveyancing and criminal law. She had employed different bookkeepers, but none was specialised in accounting for solicitors' practices.

24. For the purposes of the application before the Tribunal, Ms. Doocey swore an affidavit of the 19th February 2019 in which she responded to each of the allegations. She stated at the outset that she had "not any at any time acted in manner, knowingly or negligently, such as would damage or have detrimental consequences to any of [her] clients". She said she made no personal gain. She averred she had not been dishonest at any time during her practice as a solicitor. She also said that she acknowledged and admitted she had acted haphazardly with clients' funds and the financial affairs of the office due to prioritising the day to day work of the practice. This was due to naivety and inexperience in practising as a solicitor or in management. She said she did not conduct adequate enquiries or put in place adequate procedures and systems or seek appropriate training. She did not meet her own reporting accountant prior to his appointment. She said that she put in place an accounting software package she did not understand and her staff were also inexperienced.

25. In her affidavit, Ms. Doocey averred that while she had thanked Mr. O'Dowd for his work with her practice, she could not accept the contents of his affidavit. She said that she had retrospectively tried to manage client funds and that the books of account were written up in

arrears. She had worked under pressure to input dates and present the books. She vehemently denied ever attempting to conceal balances or the misapplication of clients' funds.

26. In specific replies to certain issues, she agreed that the deficit as *per* the books was €169,152.27 as of the 31st December, 2017 but she said that she had set out various amounts that had been repaid or lodged since that date to reduce the deficit to €116, 038.17. She said all monies were repaid by August 2018.

27. She said in respect of the Clients A matter (at para. 31(c)) of her affidavit:-

> "The bank gave me some hope of having one payment returned at least, I assumed they would be able to recall the funds. I panicked under pressure from my client to conclude and from myself knowing something was wrong and on the basis I would sort it out I paid the balance due out to the clients creating the initial deficit. I intended to replace this immediately hoping the bank would recall the funds**.** This didn't occur". (Emphasis added)

28. Although Ms. Doocey repeatedly avers that there was no deliberate altering or concealing, with respect to the Clients A matter, she does state "in some way I thought I might have rectified it that when I went back and did update the accounts there would be money there to cover it." She avers that she marked down every amount and says that in some cases the written ledger account was correct, although the amount recorded in the software package was wrongly entered. She maintains that her entries were as a result of trying to find the accurate position rather than to conceal matters.

29. Ms. Doocey gave oral evidence to the Tribunal at the sanction stage. Her main aim in giving evidence appears to have been to address an issue that was specifically raised by the Tribunal; the deficit in the client account apart from the €50,000 said to be the result of the cyber-attack. Ms. Doocey stated (p. 56, lines 21-27):-

"I understand the point that's being made about personal gain, if it is going into office and I am being paid out of office or I am living out of office then it is personal gain to an extent, but it wasn't like that per se. There was a lot money being wasted here because I wasn't engaged fully with what I was doing."

30. Ms. Doocey admitted to the Tribunal that she had been engaged in teeming and lading. This arose where she was asked to explain the following averment in the affidavit "This was not a deliberate action or an attempt to conceal any transaction, it occurred due to my own organisational failures at the time rather than any effort at conscious teeming and lading". She was asked did she know what teeming and lading is and confirmed that she did know and knew at the time of the affidavit. The following exchange then occurred:

Q. To use a phrase that is used all the time in relation to teeming and lading it is robbing Peter to pay Paul?

A. Yes.

Q. Were you engaging in teeming and lading here, either directly or indirectly?

A. It is what was happening, that's what was happening.

31. She further clearly acknowledged that the unexplained deficit in the client account was spent on, *inter alia*, office matters: (p. 60, lines 21-27):-

Q. Let's just deal with the question that the Chairman Mr Condon, asked you, what happened to the money, in essence?

A. It was taken over to [the] office in fees, it was spent on rectifying issues that were in client account, it was spent on office matters and an accumulation of all of that.

32. In respect of the deficit, she stated (p. 61 lines 18-21):-

"It started with this €50,000 and then a drive to push to get fees in to rectify that and losing control of it which is, effectively, what happened."

33. Ms. Doocey accepted, that she had made the misrepresentations and misdescriptions in the books of account (p. 68, lines 5-7):

Q. The Society's accountant came across misrepresentations, misdescriptions in the books that you rewrote, that you wrote up?

A. Yes.

34. The Chairman summed up the shift in her position as follows: (p. 69, lines 621):-

Q. One further question and it's hardly even a question, I think you've faced up, very much today, to the reality of this and I think that's very much to your credit. I think that probably means that one of aspect of your affidavit where you said, when speaking about:

> "I already accept the deficit as identified and existed in my client account. I categorically deny that same was caused in the manner averred to by Mr. O'Dowd on behalf of the Law Society."

I think you would concede now that it did arise in that way, I think it follows from the evidence you've already given.

A. Yes."

35. Ms. Doocey stated the following in her evidence to the Solicitors Disciplinary Tribunal:-

"I would sit down with the bank statement and see that somebody's conveyance was happening around that time, maybe seeing that the money going out a couple of transactions later and retrospectively writing books, not going back to change anything, in effect, I started afresh a number of times. That was often done under pressure, there might have been a follow-up or something.

Effectively, I started a practice with an accountant's name. I didn't meet with the accountant for many months, that's my fault and I acknowledge that. I didn't look

for the guidance that was there. I just started to post things in different ways and then would go back and start again, creating a mess all the time and creating a situation where I thought that everything was fine and clearly it wasn't."

The Findings of the Tribunal

36. The Tribunal made an Order on the 5th February, 2020 stating that after its enquiry commencing on the 23rd July, 2019 concluding on 9 January 2020 under s. 7 of the Act of 1960 and on hearing evidence, it found Ms. Doocey guilty of the 24 complaints of misconduct as set out in the affidavit of Mr. O'Dowd, sworn on the 19th October, 2018. That Order is consistent with the oral decision of the Tribunal conveyed shortly after the enquiry began when the Tribunal heard that Ms. Doocey was admitting the facts alleged and also that they amounted to professional misconduct. The report to the High Court also made on the 5th February, 2020 ("the Tribunal's Report") records the finding as being based upon the admissions made by Ms. Doocey. Ms. Doocey, who was legally represented, by her admissions knowingly waived her right to contest the complaints made against her. These were complaints based upon the facts set out in the affidavit of Mr. O'Dowd. She accepted those facts.

37. The manner in which the admission was made was as follows. Immediately after the solicitor for the Law Society read out the allegations of misconduct, her counsel told the Tribunal in explicit terms that the allegations were admitted and proof of them was not required. Counsel said he was not seeking to characterise them save that they arose during a very difficult period for Ms. Doocey, that all of the irregularities had now been regularised and that he proposed to call evidence of regularisation (which he did). The Chairman asked "she is admitting the facts and that the facts constitute misconduct?" Counsel replied saying yes (but) Ms. Doocey did not necessarily agree with the way in which all the allegations were phrased, particularly the word "conceal" but she conceded that *the conduct had that effect*.

Ms. Doocey accepted that the facts which she admitted amounted to professional misconduct. Counsel repeated that this came about as a result of inadequacies on her part.

38. The Tribunal was then told by the Law Society's solicitor that the deponent Mr. O'Dowd was present and could give evidence. Ms. Doocey's counsel indicated that there was no dispute. The Chairman of the Tribunal then stated:-

> "In that case rather than us rising I think we will make formal findings of misconduct in respect of each of the allegations set out in the affidavit of Jim O'Dowd, as already referred to…[constituting the 24 complaints]…and, having made those findings, we will move onto submissions with regard to penalty."

39. That was the context in which the Tribunal found that she had committed professional misconduct. In the Tribunal's Report, for each of the 24 counts of misconduct the Tribunal says that it found "that there had been misconduct on the part of [Ms. Doocey] in respect of the complaints…for the following reasons: ...*by reason of the admissions made by [Ms. Doocey]*." The Tribunal's Report contained the documentary evidence received and a verbatim transcript of the oral evidence and the oral submissions received by the Tribunal at the Inquiry. It has not been raised as an issue in these proceedings but, for the avoidance of doubt, I do not consider that there is any discrepancy between the oral decision, the Order made and the recording of the reasons for the findings in the Tribunal's Report.

The High Court Judgment

40. In her judgment, the President of the High Court noted that allowing a deficit in excess of €169,000 to arise on a solicitor's client account and engaging in a significant number of irregular transactions known as teeming and lading constituted a serious departure from the Solicitors Accounts Regulations 2014 (particularly Part II) and the standards expected of solicitors in respect of management and custody of client funds. Irvine P. outlined the evidence the Tribunal had heard, at the sanction stage of proceedings before them, in respect of the

checks and balances that were in place in the appellant's practice to ensure compliance with the regulations. Ms. Doocey contended that the supervision of her conduct by an accountant and also from a supervising solicitor was sufficient to rectify the financial mismanagement which had earlier occurred and which would protect any repetition of her prior conduct. Irvine P. noted that the success of the scheme depended on the honesty of Ms. Doocey in the first place.

41. Irvine P. outlined the factors which appear to have persuaded the Tribunal to propose a sanction of less than a strike off. Irvine P. observed that unusually the Law Society was asking the Court not to follow the recommendation of the Tribunal. The Law Society argued that the extent of the financial irregularities, the clear pattern of teeming and lading to conceal the deficit demonstrated a complete disregard by the appellant for her obligations under the Solicitors Acts and the Solicitors Accounts Regulations and revealed elements of professional dishonesty at the higher level of professional misconduct. The Law Society relied, *inter alia*, upon the decision of the Supreme Court in *Re Burke* [2001] 4 I.R. 445 in which it was stated that if public confidence in the solicitors' profession is to be maintained, any abuse of that trust must inevitably have serious consequences for the solicitor concerned. A strike off was necessary, the Law Society submitted, to mark the seriousness of the findings against the solicitor, to maintain public trust and to protect the reputation even allowing for the mitigating factors that were present.

42. Irvine P. records that Ms. Doocey submitted that the Court should not depart from the conditions recommended by the Tribunal. These conditions were considered proportionate by the Tribunal, they were a significant limitation on her ability to practise, they were designed to meet the major objectives of public protection and to ensure that financial mismanagement would not reoccur. She noted that the heart of the submissions was the claim that Ms. Doocey was not untrustworthy and that the issues which had arisen were as a result of a chaotic and

incompetent approach on her part towards the finances of her clients and her practice; to portray her as dishonest was unfair and misplaced. In mitigation, Ms. Doocey said she had no training, was inexperienced and was unsupported as a solicitor practising in an isolated area.

43. Irvine P. noted that there was no dispute between the parties as to the role of the court on the present application or as to the principles to be applied. She quoted from McKechnie J. in *Law Society v. Coleman* [2020] IEHC 71 to the effect that the High Court may on receipt of a report under s. 8 give any decision or make any order that it thinks fit and there is no question of being bound by an opinion expressed or a recommendation made by the Tribunal. The President acknowledged that the views of the Tribunal and the Law Society carry great weight but said that the Court itself was obliged to embark upon an examination of the issues arising and after due consideration declare its own position. She noted, at para.25, that in a case of "proven dishonesty the sanction of dismissal will be a frontline consideration" "and, at para.26 that *"[i]t is clear from the case law that a very strict view is to be taken of serious misconduct which might be described as dishonest behaviour".* She quoted from paragraphs 65 – 69 from the judgment of McKechnie J. in *Carroll v Law Society of Ireland* [2016] 1 I.R. 676 where he details the principles applicable to consideration of whether a person is "fit and proper" to be a member of the profession and cites Bingham M.R. in *Bolton v. Law Society* [1994] 2 All E.R. 486 to support the proposition that proven dishonesty is the most serious of misconduct.

44. Irvine P. concluded that Ms. Doocey's conduct, based upon the admitted facts, concerned "a complete abuse of the trust and confidence which clients are entitled to expect of their solicitor" that was at the uppermost end of the scale of seriousness. She rejected the view that this was nothing more than a chaotic, haphazard or incompetent moving of funds. She said it was systematic, extensive and deliberate teeming and lading with a view to disguising a deficit of €169,152 in her client account as of the 31st December, 2017. She said

that Ms. Doocey's misconduct did not stop at teeming or lading but she had used other strategies to conceal deficits in the books of account. She rejected the submission that Ms. Doocey had not been dishonest.

45. Irvine P. stated that there was no knowing how long Ms. Doocey would have continued with these actions or how large the deficit would become. She said that she was concerned that Ms. Doocey sought to minimise her actions by saying no client had suffered a financial deficit. The shortfall had been made good by loans from Ms. Doocey's family. Irvine P. said that while that may be factually correct, her approach demonstrated a complete lack of understanding concerning her obligations to her clients, her profession and the administration of justice *"[a]nd this in itself is a persuasive factor in assessing her fitness to practice and bears heavily on my assessment."*

46. The President of the High Court referred also to the fact that no effort had been made to explain the responsibility for the deficit in the account which was over and above the €50,000 explained by the cyber-attack. The deficit which was made by good by her family was in the teeth of the solicitor's submission that the practice was viable. She referred to the fact that there was no mitigation such as serious ill-health or other satisfactory explanation for the conduct. In those circumstances, a strike off was the only appropriate sanction which would serve to maintain the reputation of the profession and also mark the Court's disapproval of her conduct. After all, the President concluded, Ms. Doocey's conduct was of a type which seriously undermined the reputation of the profession, concerning as it did the dishonest handling of clients' monies.

47. Irvine P. expressly disagreed with the submission that the Court was under an obligation to assist Ms. Doocey and to afford her as much leniency as possible. She concluded at para. 41:-

> *"[w]hat the Court's obligation actually entails is to form an independent view after a full assessment of the facts as to what would be an appropriate and proportionate response to the misconduct. While leniency may be one of the factors the Court may balance, especially in the presence of factors in mitigation such as those of the type described in D'Alton, it cannot be said that the Court's obligation is towards assisting the respondent with as much leniency as possible. The Court's obligation is to protect the public from solicitors whose practices place their funds at risk. The Court marks in the strongest terms its disapproval of the respondent's failure to adhere to the standards of honesty and integrity expected of the person who is fit and proper to remain on the Roll of Solicitors and considers that anything less than a strike off would not be appropriate."*

The issues

48. The parties were not in full agreement as to the issues which arise on this appeal. The Law Society stressed the high deference an appellate court must give to the ruling of the President of the High Court on issues related to solicitors' matters. The High Court decision may only be reversed *"if as a matter of law it was clearly incorrect"* (as per Geoghegan J. at para. 46 in *Law Society v. Carroll & Colley* [2009] 2 I.L.R.M. 77). Ms. Doocey did not take issue with that but stressed that this was a case where as a matter of law the High Court judge had erred. The main issue she identified was whether the President of the High Court was entitled to reach the decision she did in the exercise of her jurisdiction *under s. 8* in which the only issue before the High Court is the sanction to be imposed and where, as Ms. Doocey submitted, there was no finding of dishonesty by the Tribunal. In those circumstances, Ms. Doocey submitted, Irvine P. was bound by the findings made and could only impose a sanction commensurate with those findings; she was not entitled to reach her own view of the facts.

She also raised the issue whether as a matter of law the sanction imposed by the President was proportionate.

49. In my view, an important, perhaps the most important, consideration is to identify what were the findings of the Tribunal and thereafter consider whether those findings supported the President's view that Ms. Doocey had been guilty of dishonest conduct. The proportionality of the sanction will then be considered. First, it is necessary to address a sub-issue that arose during the hearing of the appeal; whether the President of the High Court breached fair procedures in not giving notice that Ms. Doocey was at risk of being found guilty of dishonesty.

Fair Procedures before the High Court?

50. Not only did counsel for Ms. Doocey submit at the appeal that the President was neither entitled to recharacterize the findings of the Tribunal nor entitled to find that there was premeditation or conscious or calculated dishonesty, but he submitted that this was also a fair procedures point. If such a finding was to be made, it should have been flagged in the High Court as a possibility.

51. Ms. Doocey had not relied upon any ground of lack of fair procedures in her Notice of Appeal. In written submissions, there was a brief allusion to a fair procedures argument where it was said that even if the test for dishonesty was wholly objective, the President of the High Court could not safely conclude she had been dishonest without engaging with this issue and explaining why she had reached this conclusion (inferentially) from the fact that the Tribunal had actually found proved. This type of process would have placed Ms. Doocey on notice of the intended approach.

52. Having read the transcript of the hearing before the President, forwarded to this Court after the oral hearing, I am surprised that this point of fair procedures was pressed before us. The transcript demonstrates however that the Law Society continued to press the issue of

dishonesty in the High Court as they had done before the Tribunal. Moreover, there were repeated exchanges between the President of the High Court and (then) counsel for Ms. Doocey as to the issue of whether this was deliberate conduct or whether it could truly be called haphazard. I reject the submission that there was any breach of fair procedures in the manner in which the hearing before the High Court was conducted. Ms. Doocey was on clear notice that it was being argued that the misconduct findings amounted to findings of dishonesty and submissions to the contrary were made on her behalf. Indeed, that too had been the position before the Tribunal, where the Law Society had maintained throughout that the sanction of strike-off was the appropriate sanction.

What did the Tribunal Find?

53. Initially Ms. Doocey submitted that the Tribunal had "accepted that Ms. Doocey had no dishonest intent" and that "this Court is left with an unchallenged finding by the Tribunal that Ms. Doocey did not act dishonestly". During the course of the hearing, counsel accepted that there was *no express finding* that there had been *no dishonesty*. Nonetheless, counsel on behalf of Ms. Doocey urged upon the Court that as a matter of fact there had been no finding of dishonesty.

54. Counsel for Ms. Doocey referred to the affidavit of Mary Fenelon filed in the High Court on behalf of the Law Society in which Ms. Fenelon noted that the solicitor for the Law Society at the Tribunal had sought a recommendation that Ms. Doocey be struck off. Ms. Fenelon had submitted that this was in the highest range of misconduct and that Ms. Doocey's misconduct revealed elements of both professional dishonesty, concealment and issues of deceit, combined with the worryingly reckless disregard for her responsibilities as a solicitor in general, to her clients and under the Act and regulations. Counsel submitted that no such finding was made by the Tribunal because the Tribunal had referred to the reasons for the findings as the admissions of Ms. Doocey.

55. The submissions regarding the dishonesty of Ms. Doocey made by the Law Society before the Tribunal were made in the context of advocating for the ultimate sanction of striking her off the Roll. The Tribunal gave as its reasons for making its recommendation that Ms. Doocey be permitted to continue to practice subject to certain conditions on her practising certificate due to the following:

- The admissions made by her,
- The repayments made by and on her behalf,
- The absence of any loss for her clients,
- The fact that there was no claim on the Compensation Fund,
- The fact of her difficulties as a result of the cyber-attack on her practice accounts causing her loss.

56. Counsel relied strongly upon the assertion that there was a duty on the Law Society to cross-examine her if she was to be found guilty of dishonesty. The failure to expressly make a finding that she was dishonest was also indicative that the Tribunal was rejecting the submission of the Law Society. That submission does not take into account however that (a) the Tribunal had made its finding of misconduct in advance of any hearing on the sanction, and (b) the facts were those as set out in the charges of misconduct themselves and elaborated upon in the affidavit of Mr. O'Dowd, to which facts Ms. Doocey admitted. Even on the point of cross-examination, the issue on which evidence was being heard was the discrete issue which she sought to bring before the Tribunal namely the "safe system" devised for the purpose of ensuring some supervision of her activities. She gave evidence to address a specific issue raised by the Tribunal and, in any event, the cross-examination referred to the substantial deficit and the misrepresentations and mis-descriptions contained in the books that she had rewritten.

57. In the circumstances, there was no duty to cross-examine in an explicit manner where the facts were being admitted as was the fact that those facts amounted to professional misconduct.

58. It is perhaps unnecessary to clarify that the reference by the Tribunal to taking into account the admissions made by Ms. Doocey was meant to refer, and did refer, to taking them into account in the same way *as a plea of guilty* is taken into account for the purpose of penalty in a criminal trial. The purpose of stating this however is to demonstrate that the mitigating factors outlined by the Tribunal were being balanced against the misconduct findings.

59. In my view what is central to resolving what it was that the Tribunal found is an examination of what precisely was meant by Ms. Doocey when she said she was admitting the facts as amounting to misconduct. What did her admission to the misconduct entail?

60. Ms. Doocey admitted the conduct alleged against her; the nature of the conduct was set out in the wording of the complaints and the facts upon which those complaints were based were set out in the affidavit of Mr. O'Dowd. The misconduct was therefore clearly signposted in the complaints as laid and the evidence as given by Mr. O'Dowd Accordingly, the admissions were made *to those complaints* incorporating *that evidence*. Those admissions are at the core of the case. They were an acceptance by Ms. Doocey that she had engaged in the misconduct comprising the complaints. Once the admissions were made the focus of the Tribunal turned to the appropriate sanction based upon those admissions. Ms. Doocey strives in this appeal to say that her admissions were qualified in that she did not admit to dishonesty. As this judgment will demonstrate the admissions are to conduct which must be assessed in terms of the fundamental requirements of probity, honesty and integrity on the part of solicitors. This is an objective assessment of the nature of the admitted misconduct and is one which cannot be diluted because of a solicitor's assertion that she had not been dishonest but was a naïve and inexperienced solicitor operating in chaotic circumstances.

Assessing Misconduct

61. It is noteworthy that Ms. Doocey did not appeal on grounds that the Tribunal *were not entitled to find her guilty of dishonesty* based upon the wording of the complaints. Indeed, it would have been difficult to make that submission based upon the manner in which the proceedings before the Tribunal had run. The Law Society at all times characterised the misconduct as dishonest while Ms. Doocey's submissions were directed towards asking the Tribunal to accept that her actions came about as a result of her inadequacies and her haphazard approach due to her inexperience.

62. The central theme in this appeal was that the Tribunal had made no finding of dishonesty. Occasionally however, counsel suggested that if there was an intention to make a finding of dishonesty, the Law Society ought to have cross-examined her on this basis. That was not a ground of appeal but in any event, given what has been said above about the acceptance of Ms. Doocey in respect of her conduct while giving evidence, it is difficult to see how much further any other cross-examination could have brought the matter. The factual basis underlying the misconduct was put forward by the Law Society as amounting to dishonest conduct and, if correct, there was no need for the Tribunal to go further and make a finding that Ms. Doocey knew that her actions were dishonest. If correct, there was no need to question her in a direct manner accusing her of knowingly acting dishonestly.

63. At a further point in oral submissions, counsel submitted that it was just not possible to "graft on a finding of dishonesty" to the findings of the Tribunal. Counsel submitted that if there was to be such a finding it should have been made expressly, and that the President could not do so, but under the Act could send the matter back to the Tribunal for a finding. This was raised as another point of fair procedures which was not actually advanced before the Tribunal or before the High Court. Indeed, it is difficult to see how this is a fair procedures point at all. Ms. Doocey was aware at the Tribunal that the Law Society was contending that the conduct

to which she admitted amounted to dishonest behaviour which called for the ultimate sanction of strike off. That was also clear at the High Court stage. Counsel referred at the oral hearing of the appeal to the decision in *Lucey v. Law Society of Ireland* [2018] IEHC 344 where it was submitted that because the Law Society had not alleged dishonesty the President said he would not address it. That was an appeal by the solicitor against the findings of misconduct of the Tribunal but also involved consideration of the sanction by the President which was dependent on the findings as to misconduct. What the President said in that case about dishonesty was simply to point out that at no stage either in the hearing before the Solicitors Disciplinary Tribunal or in the High Court did the Law Society allege any dishonesty on the part of the solicitor. He said *"[w]hatever may have been her shortcomings as perceived by the Law Society it made it clear on numerous occasions that none of the allegations against her involved dishonesty on her part."* In his judgment on liability the President did not address dishonesty any further. That case involved very specific facts which cannot be directly compared to those here. I do not find it in any way relevant to the submission that Ms. Doocey now makes. In contrast with that case it was at all times clear that the Law Society viewed the (admitted) conduct of the solicitor as involving dishonesty. In the manner in which this case proceeded there is no breach of fair procedures.

64. The first ground of appeal (in the distilled grounds of appeal) recognises that the President was obliged "to impose an appropriate sanction based on the conduct as proved before the [Tribunal]". The second ground was that the President erred in finding that the appellant had been guilty of dishonesty when no such finding had been made by the [Tribunal]. These are the only two grounds relating to the issue of a finding of dishonesty. It is abundantly clear that the real issue is whether the findings of misconduct based upon the admissions made by Ms. Doocey amounted to dishonesty.

The meaning of misconduct in the Act of 1960

65. Section 3 of the Act of 1960 does not provide for a definitive interpretation of misconduct. Instead, the section identifies what misconduct *includes*. Misconduct includes, *inter alia*, the commission of a felony or misdemeanour, the contravention of certain provisions of the Solicitors Acts, 1954 to 2002 and *any other conduct tending to bring the solicitors' profession into disrepute*. The courts have long accepted however that honesty is required of a solicitor and dishonesty in the conduct of one's practice amounts to misconduct. There is no definition of honesty or dishonesty in the legislation but there is a reference to dishonesty in the provisions of the Solicitors Acts directly concerned with *disciplinary* matters. This occurs in s. 19(4) of the Solicitors (Amendment) Act, 1994 (hereinafter, "the Act of 1994") which provides that a solicitor seeking to have his or her name restored to the Roll "where…the circumstances which gave rise to the striking off the roll…*involved an act or acts of dishonesty*" must establish, *inter alia*, that he or she is a fit and proper person to act as a solicitor.

66. Furthermore, there is a reference to dishonesty in sections 19,20, 21 and 22 of the Act of 1960 as amended by the relevant provisions of the Act of 1994. These provide protections for clients from dishonest solicitors through a variety of remedies. Section 19 permits the Law Society, where it is of the opinion that a solicitor has been dishonest in his or her practice, to take certain steps (including applying to the High Court) to secure documents from a solicitor. Section 20 permits the Law Society when of the same opinion to apply to the High Court for one or more orders which have the aim of securing assets from dispersal. Section 21 now permits for the maintaining and administering of a compensation fund the purpose of which is to compensate clients who, to the satisfaction of the Law Society, have sustained loss in consequence of the dishonesty of the solicitor arising from the solicitor's practice.

67. It is also worth commenting that s. 50(1) of the Legal Services Regulation Act, 2015 approaches the definition of misconduct differently. It lists acts or omissions which may be

considered as constituting misconduct and the first is one which "involves fraud or dishonesty." There is no definition in the said Act of 2015 of fraud or dishonesty.

68. Section 19(4) of the Act of 1994 was referred to in *Carroll v. Law Society of Ireland*, where the Supreme Court was dealing with the standard of conduct required of an apprentice solicitor for admission to the roll of solicitors. The principles set out in the case provide an important overview of the rationale behind ensuring that only fit and proper persons are solicitors. In that case, the education committee of the Law Society had found certain allegations against an apprentice to be true and to amount to misconduct. In the High Court, it was held that the allegation that he had unlawfully deprived a client of monies due to her and without just cause detained the monies and did so by providing her with false and misleading information was true and would amount to misconduct if found against a solicitor.

69. The Supreme Court (McKechnie J.) reviewed the law on the meaning of *fit and proper person* which was the standard required of a person who wished to be admitted as a solicitor. Standards such as probity, honesty and trustworthiness apply to an apprentice as they apply to a solicitor. McKechnie J. then gave a summary of the principles at para. 71 of the judgment. In so far as relevant they are as follows:

"...

> *(iii) that the phrase "fit and proper", although composed of two words which appear synonymous with one another, and with associated concepts such as "suitability" and "appropriateness", contains two elements which, whilst related, are distinct components; it cannot be the case the legislature or the respondent, in enacting s. 24 of the 1954 Act (as substituted by s. 40 of the 1994 Act) and reg 26(a)(iv) of the 1997 Regulations respectively, intended either word to be redundant or devoid of meaning. It seems to me that fitness essentially relates to academic/professional qualifications, knowledge, skills, experience, and the like, whereas properness is concentrated on*

human attributes, honesty, integrity, probity, trustworthiness etc., as well as issues such as prior criminal convictions or unlawful conduct. These considerations are not intended to be exhaustive in respect of either category, but provide an illustration of the factors arising in respect of each element of the test. Only after this individual analysis does the phrase merge into the overall issue of character suitability;

(iv) that such requirements do not stand only at the entry door; their presence and application continues throughout the entirety of one's professional life;

(v) that to practice in this profession one does not have to possess extraordinary talent and/or intellect – the vast majority, like all other professions, are not so gifted – nor is it required. Competence and application at a reasonable level are most adequate to fulfil virtually all functions for most clients. Expertise at a higher level is also readily available. However, as with one, as with all: compliance with professional standards is essential, for without this, individual solicitors, firms of whatever size and the profession as a whole will be damaged and irreparably impaired. Such would impact greatly on an essential service which society as a whole depends on;

(vi) that one common strand permeates all levels of the profession: it is trust, integrity, probity and, in a nutshell, honesty; violations of these principles will differ as to degree and seriousness, as will the sanction imposed in response;

(vii) that substandard behaviour not reaching the misconduct level, such as moments of neglect or carelessness, can be differentiated from that which does. The former can attract a range of sanction options, up to and including suspension and conditionality of further practice. The latter, when established, may well involve a consideration of dismissal from the profession. Where proven dishonesty is involved, with or without the oft associated features of misrepresentation, concealment and deceit, such misconduct will almost always feature at the highest level of the scale which I have referred to:

therefore, in such circumstances, the sanction of dismissal will be a front line consideration;

(viii) O'Laoire v. The Medical Council (Unreported, High Court, Keane J., 27 January 1995) and so many other cases show how established misconduct of a serious nature is regarded both by the professional body and by the courts: despite the personal devastation which a strike off may have for most individuals and their families, the same must be regarded as a likely result of such a finding;

(ix) however, such an outcome should not be regarded as a certainty and should not be applied in some mathematical or formulistic way. The sanction imposed may, if appropriate, have a punitive and dissuasive element to it; it will always be influenced by the necessity to maintain the public policy considerations underpinning the regulatory and judicial approach to the solicitors' profession. In addition, however, given the constitutional dimension involved, the penalty must be proportionate both to the misconduct as established and to the considerations as mentioned;

[…]

(xii) the reasons for demanding such an exacting standard start with the nature of the profession and the service it provides: The right to represent any member of the public in any area of his or her expertise and the right to appear in that capacity in every court established by law and under the Constitution. Such involves the deepest level of personal and mutual trust as between the solicitor and client;

(xiii) not infrequently one's liberty, one's wellbeing and one's assets, even one's future, are unconditionally entrusted to a solicitor: there are notorious examples which demonstrate that neither the civil law nor the prospect of criminal sanctions, even with the personal and public shame attached, have been sufficient to deter the occasional but nonetheless most serious form of malpractice. Therefore regulatory control and

enforcement of the standards, under direct judicial supervision, to the level demanded, is fully justified. (Emphasis added)"

70. In *Carroll v. Law Society of Ireland,* the Supreme Court concluded that the complaint based on the facts established involved elements of dishonesty and must be viewed in a most serious way saying *"[o]vercharging, if that is even a correct description of what was involved, attendant with an element of concealment, misrepresentation, and dishonesty, may undoubtedly amount to misconduct."* The Court noted in that case it was not even contended that this was not so; that applicant's argument was that a lesser standard should be applied to him as an apprentice. That was rejected by the Supreme Court in so far as probity, honesty and trustworthiness were concerned.

71. The decision in *Carroll v. Law Society of Ireland* is a clear reminder, if one was needed, that dishonesty is misconduct of the utmost seriousness. That much is apparent from the role a solicitor plays in the administration of justice and the importance of public confidence in the profession of solicitors and the administration of justice.

72. From the foregoing it is undoubtedly the position that observing the core principle of honesty is fundamental to practice as a solicitor. That is reflected in the Law Society's Guide to Good Professional Practice (3rd ed, 2013) which states as follows:

"1.3 Core Values of the Profession

General

In addition to the legislative requirements, solicitors are also required to observe general core principles of conduct, in particular honesty, independence, confidentiality and the avoidance of situations of conflict of interest. A solicitor should at all times observe and promote these core values of the profession and avoid any conduct or activities inconsistent with those values.

[...]

Honesty

A solicitor must be honest in his practice as a solicitor in all his dealings with others."

The meaning and assessment of dishonesty as misconduct

73. Undoubtedly honesty and dishonesty are two sides of the one coin. The UK decisions of *Solicitors Regulatory Authority v. Wingate* [2018] 1 WLR 3969, was opened to us and relied upon by both sides. Rupert Jackson LJ. stated the following as regards honesty/dishonesty at para. 93:

> *"Honesty is a basic moral quality which is expected of all members of society. It involves being truthful about important matters and respecting the property rights of others. Telling lies about things that matter or committing fraud or stealing are generally regarded as dishonest conduct. These observations are self-evident and they fit with the authorities […] The legal concept of dishonesty is grounded upon the shared values of our multicultural society. Because dishonesty is grounded upon basic shared values, there is no undue difficulty in identifying what is or is not dishonest."*

74. Those observations are apposite. Identifying what is honest and/or dishonest is not unduly difficult. It will be based upon shared values in a community. It is also true to say that certain language connotes dishonesty. In *Carroll v. Law Society of Ireland*, the language used in the complaint found against the apprentice solicitor was that of unlawfully depriving a client of money and detaining it without just cause and providing false and misleading information. That complaint was said to involve elements of dishonesty. In the case of *Law Society of Ireland v. Coleman*, the High Court judgment records that counsel for the solicitor conceded *"that the use of the language "fictitious contract" and "misleading" did, indeed, connote dishonesty".* In *Law Society v. Callanan* [2018] IEHC 160, Kelly P. did not have any difficulty with concluding that the five counts of misconduct which involved providing false certificates

to lending institutions and giving multiple undertakings to named lending institutions on a single property was conduct that *"can only be characterised as being seriously dishonest."*.

75. Ms. Doocey's written submissions placed significant reliance on UK case law as to what the law required for a finding of dishonesty. It is unnecessary to recite in detail those submissions in which the development of the law in the UK regarding the meaning of (and the assessment of) dishonesty in both the criminal sphere (*R v. Ghosh* [1982] QB 1053 concerning the Theft Act, 1968) and dishonest in civil and disciplinary proceedings (*Ivey v Genting Casinos (UK) Ltd* [2018] AC 391 and *Solicitors Regulatory Authority v. Wingate*). It is sufficient to say that on the civil and disciplinary side in England and Wales dishonesty is to be judged on a wholly objective standard, that is the standards of the community as regards dishonesty, rather than on a standard that also requires a subjective element *i.e.* knowledge on the part of the person that his or her conduct was dishonest.

76. Case law from the UK demonstrates that although the test is an objective test of dishonesty, there must however be subjective knowledge or belief as to the facts amounting to dishonesty (as distinct from knowledge that they are dishonest). In *Solicitors Regulation Authority v. Wingate* concerning disciplinary proceedings against solicitors, the Court of Appeal reviewed the evolving case law in the UK and concluded that the subjective element of knowledge that the person was behaving dishonestly was no longer applicable. Both parties to the present appeal agree that while the objective test is the main requirement, there is still a subjective element to be assessed, relying upon *Ivey v. Genting Casinos (UK) Limited*. The subjective element is limited however to the actual state of the individual's knowledge or belief as to facts. Lord Hughes said in delivering the judgment of the UK Supreme Court:

> *"When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice*

determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder 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." (para. 74).

77. It is noteworthy that in this jurisdiction the Court of Appeal has on two occasions held that dishonesty in criminal law is to be assessed on an objective basis and has specifically rejected the *R v Ghosh* line of authority. In *The People (DPP) v. Bowe & Casey* [2017] IECA 250 in respect of an offence of conspiracy to defraud held:

"All of the jurisprudence relating specifically to this offence seems to us to indicate that it is sufficient for a conviction that the prosecution should prove merely that the accused intended to do the impugned act or to participate in the impugned scheme in circumstances where the relevant act or scheme would attract the value judgment, judged by the standards of ordinary reasonable men, that it was dishonest."

78. In the subsequent case of *The People (DPP) v. Murphy* [2019] IECA 63, which unlike the offence of conspiracy to defraud, concerned a statutory offence - the offence of theft - under the Act of 2001, the Court of Appeal also adopted that approach. The Court cited *dicta* from *The People (DPP) v. Bowe & Casey* in which the Court of Appeal had said that the *R v. Ghosh* approach appeared to be predicated on the idea that dishonesty was a state of mind for the purposes of the Theft Act, 1968 (having regard to a definition therein). The Court in *The People (DPP) v. Murphy* concluded at para. 21 that:-

"Dishonesty has a statutory meaning under the 2001 Act and so can be contrasted with the English position. Section 4(1) includes the term 'dishonestly' in the

definition of the offence of theft and so, must be a constituent element of the offence. Therefore, the prosecution must prove that element of the offence. If the defence can point to evidence of an honest belief that he/she was entitled to the property in question, then the prosecution must negative that belief beyond reasonable doubt."

79. I am satisfied that there is also no basis for the argument that dishonesty in the context of disciplinary proceedings in this jurisdiction must be judged on a standard that leaves it to the individual solicitor's understanding of dishonesty. The rationale of the disciplinary code would be shaken if the amoral solicitor, who simply does not advert to the possibility of dishonesty, can escape severe sanction for their otherwise deliberate actions which are objectively dishonest. In fairness to Ms. Doocey, I do not understand her to contend vigorously for such a standard of dishonesty to be accepted. For the avoidance of doubt however, I reject any such approach to judging the standard of dishonesty. It is a standard to be assessed objectively. The requirement that there be knowledge or belief as to the facts at issue is nonetheless a sensible one.

Did the finding of misconduct by the Tribunal amount to a finding of dishonest conduct?

80. Counsel for the Law Society noted that Ms. Doocey's submissions have varied over time. Initially, she had suggested that the Tribunal had made a positive finding that she did not act dishonestly (a suggestion which had no basis in fact) but this moved into a submission that the finding of misconduct on behalf of Ms. Doocey was limited to what she admitted. Counsel submitted that, when correctly interpreted, the admissions were consistent only with deliberate dishonesty and that the findings of the Tribunal are consistent only with a finding of dishonesty. To admit teeming and lading, concealment and misappropriation speaks for itself and is an admission of dishonesty. Counsel asked rhetorically 'was it necessary for the Tribunal to add dishonesty?'.

81. Does the misconduct in this case include the broader concept of dishonesty which Rupert Jackson LJ. has so eloquently described? Although we are not dealing with the criminal concept of dishonestly found in the Criminal Justice (Theft and Fraud Offence) Act, 2001 (which means without a claim of right made in good faith), it is of some note however that Ms. Doocey does not claim that she did what was "right" or indeed that it was done "in good faith". Indeed, it would stretch credulity for any solicitor to advance a case that he or she had a right to use money from one client account to cover a shortfall in another or to use money from a client account to cover office expenditure. Instead, her claim is advanced on the basis of an absence of dishonest intent, or more particularly an absence of knowledge or belief that the acts she was doing were in fact dishonest *i.e.* there was a lack of *conscious dishonesty*. This is however a submission which is close to requiring that dishonesty can only be found when she knew what she was doing was dishonest; I have rejected such a test. Incorporated in her submission is the suggestion that what she did was the result of the chaotic and haphazard approach to bookkeeping that she took due to her inexperience and as a result of the pressure she was under due to the cyber-attack.

82. There cannot really be any doubt that Ms. Doocey had knowledge of the acts that she was carrying out with regard to the accounts. The deliberate nature of what she did was directly put to her Counsel in the High Court when the President asked: "But don't you have to be deliberate to systematically move precisely the same amount of money from one client's account to another client's account?" To this her counsel replied "To a degree, yes. But in certain circumstances, she clearly, ultimately, operated a system where money came in, she transferred it across to cover a liability and then decided to try and fix it in retrospect. And that's where she came unstuck". Further exchanges in that vein took place with the President where the systematic and haphazard nature of what was done by Ms. Doocey was raised by the President with counsel.

83. I am satisfied that on the subjective issue of Ms. Doocey's knowledge of the facts, the actions she carried out were known to her and deliberately carried out. In her affidavit Ms. Doocey accepts that she transferred the monies between client accounts, and from client account to the Office account, and that she made the postings complained of, and that "this was wrong and unacceptable"; she accepts, in relation to the misdescription of the sum of €34,772.30 in the client account that this "…had the effect of concealing a deficit". This is not a case of a partner's firm being in breach of regulations because of an employee's covert actions. This was deliberate and systematic actions carried out by Ms. Doocey herself, which amounted to teeming and lading, concealment (whether simultaneously or retrospectively) and misappropriation. She made transfers or she recorded transfers in the ledgers with knowledge of what she was doing. This was not accidental activity. She had actual knowledge therefore of the factual situation.

84. The remaining question is whether her conduct was objectively dishonest? Although counsel for the Law Society turned the question on its head by asking rhetorically could you teem and lade honestly, that is not the way to address the issue. It might be possible to find a situation where an instance of teeming and lading may not amount to dishonest conduct. I would give an example where at least there would be an argument to make that despite taking from one account to pay another there was no objective dishonesty; a solicitor, on a one off basis transferred a sum from one client account to another for the purpose of paying out a sum due immediately (to secure a property for example) where a discrepancy had arisen on that client account due to a genuine bank error and there were no immediately available funds in the office account to settle up the client account, but other funds were already lodged to that office account but not cleared at the time of the required payment, where the funds were paid back the following day and all transactions were recorded accurately in the account ledgers. However, the situation here bears no resemblance to that example.

85. At issue here was systematic teeming and lading, wrongfully crediting money and misdescribing it in the client account books, on occasion concealing shortfalls in clients' accounts books and on one occasion taking money from one client account and lodging it to the office account and failing to record this receipt and payment in the client books of account thereby concealing the misappropriation. Overall there was a deficit of €169,152 in Ms. Doocey's client account of which only €50,000 could be accounted for by the cyber hack. This is a system of behaviour that is by community standards fundamentally dishonest. This standard would apply to any person who was entrusted to deal with monies belonging to another person. It is a standard of behaviour that is *a fortiori* fundamentally dishonest when applied to a solicitor for whom standards of probity, honesty and trustworthiness are basic human attributes necessary for a person to be a fit and proper person to practise as one. That is the standard by which the President of the High Court judged the conduct at issue when she marked that court's disapproval in the strongest terms *"of [Ms. Doocey's] failure to adhere to the standards of honesty and integrity expected of the person who is fit and proper to remain on the Roll of Solicitors".*

86. The explanations that Ms. Doocey attempted to give in her affidavit amounted to no more than an attempt to explain how some of these events had occurred. By acknowledging that she was admitting what was set out in the complaints and the facts set out in Mr. O'Dowd's affidavit, she was admitting the objective dishonesty that shone through the system at work. It is in fact difficult to understand how Ms. Doocey has attempted to pursue the line that these were facts not known to her or were not objectively dishonest in the light of the admissions she made to the Tribunal. Even though she had contested active concealment, she admitted there were misrepresentations and misdescriptions in the books that she rewrote. She also positively accepted that the denial in her affidavit that the deficit arose in the way claimed by the Law Society was not correct, as she positively conceded that the deficit did arise in this

way. Furthermore, and with particular relevance to the issue of objective dishonesty, she accepted that money had been taken over to the office in fees and was spent on rectifying issues in the client account and on office matters. This was an admission of personal gain from the unaccounted shortfall in the client account.

87. From the foregoing, there is no other explanation other than that the pattern of the conduct that was charged against Ms. Doocey, the many irregularities that were involved, in particular the payment to the office account and the concealment of that misappropriation, together with the shortfall in the client account, were consistent only with deliberate action on the part of Ms. Doocey which amounted objectively to dishonesty. As counsel for the Law Society stated in the course of oral argument, the findings involved a "*waterfall of transactions*" involving the Solicitor breaching fundamental rules relating to the handling of client monies to conceal a growing deficit on her client accounts. She put a false and inaccurate statement of account on one file for the purposes of concealment (c). She failed to record transactions for the purposes of concealing her "misappropriation" (i). She misdescribed sums in client account books (o). She also improperly took money from client accounts into her office account (r), (s), (v) and (x).

88. I therefore reject the core aspect of Ms. Doocey's appeal which was that Irvine P. erred in going beyond the findings of the Tribunal when she rejected Ms. Doocey's submission that she should not be portrayed as dishonest. The Tribunal's findings of misconduct were consistent only with dishonesty on the part of Ms. Doocey. Irvine P. was entitled to approach her decision as to the appropriate sanction on the basis that there had been findings of serious misconduct of a dishonest nature.

The Sanction

89. Ms. Doocey submitted that the President erred in law in imposing the sanction of striking her off the Roll. Her primary submission was that the President of the High Court had

erred in finding that she had been guilty of dishonesty, but for the reasons above I have rejected that submission. The High Court's findings were based upon the conduct as proved before the Tribunal. To a large extent Ms. Doocey's complaints about proportionality appeared premised on the finding that she was not dishonest, but they must also be considered as stand-alone grounds because of the submission that there was a misdirection by the President in her approach to aspects in mitigation. These other grounds can be summarised as follows:-

a) The President had gone beyond the finding of fact by the Tribunal with respect to the system for protection of clients that had been put in place by Ms. Doocey and that she failed to have adequate regard to the protection that had been put in place for clients.

b) That there was an error in principle in the manner in which the President had mischaracterised the submission by Ms. Doocey that no client had suffered and instead found the submission an aggravating feature.

The High Court's role in the Solicitors' Disciplinary Regime and the role of an Appellate Court

90. In *Law Society of Ireland v Coleman*, the Supreme Court provided guidance as to the role of the High Court on an application to it under s. 8 of the Act of 1960. The judgment of the Supreme Court (McKechnie J.) is emphatic as to the independent role of the President of the High Court in the imposition of an appropriate sanction under the terms of s. 8 of the Act of 1960.

91. In his judgment, McKechnie J. emphasised that it is the High Court, as judicial arm, which is ultimately responsible for the findings of misconduct and resulting sanction and that arguably the High Court's scrutiny must be even greater. There was *"no question of being bound by an opinion expressed or by a recommendation made by the Tribunal"*. He noted the entitlement of the Law Society and the respondent solicitor to make submissions on the

appropriate sanction and also noted that case law demonstrated that the High Court on occasions departed from the recommendation of the Tribunal.

92. The Supreme Court (Geoghegan J.) in the case of *Law Society v. Carroll & Colley* echoed the above in holding that:

> *"As in any appeal to the Supreme Court including factual matters, the key question is whether as a matter of law it was open to the judge of the High Court to arrive at the decision made by him or her. In my view, it is all the more important to maintain this principle in relation to solicitors' matters for the resolution of which the Oireachtas specially provided for a qualified disciplinary tribunal and an ultimate decision of the High Court with the express intent that that decision would normally be made by the President of the High Court himself or herself."*

93. Geoghegan J. stated that appellate judges could not therefore, simply substitute their own views for the President of the High Court (or the delegated judge). A decision of the High Court can only be reversed if, as a matter of law, it was clearly incorrect. This includes however a situation where even though there might have been no particular question of law involved as such, a decision of the High Court was one which it was not open to the judge to make on the basis of the evidence.

94. In *Law Society v. Carroll & Colley* the Supreme Court refused to overturn the High Court's decision in circumstances where "*the learned High Court judge [had] given a closely reasoned judgment…in which in my view he has considered all the relevant points"*. Geoghegan J. observed (at p. 85):

> *"It is clear, therefore, that the learned High Court judge's decision was a finely balanced one. Indeed if he had decided that the respondents ought to be struck off the rolls, it is not easy to see how that decision could be overturned. But by the same token and for reasons upon which I will elaborate further in due course, this court, in my*

view, is confined to considering whether it was open to the learned High Court judge to take the view which he did."

Is there an error of law in the High Court's decision to strike Ms. Doocey off the roll?

95. There can be no doubt that the President of the High Court was not bound by the view of the Tribunal as to the various matters that had been accepted as mitigation by the Tribunal but was quite entitled, if not obliged, to consider them anew. Counsel for Ms. Doocey submitted that there was a failing by the President to show curial deference to the Tribunal, but any such deference must give way to the independence of the role of the President at the apex of the Solicitors disciplinary regime in so far as the imposition of serious sanctions are concerned. So long as the findings of the President are based upon the findings of misconduct and on the facts before the Tribunal as to sanction, then the President is not bound by any recommendation that the Tribunal has made. Another point that bears emphasising is that the case law supports the view expressed by the President in this case, that in cases of proven dishonesty, the sanction of dismissal will be a frontline consideration. Many of Ms. Doocey's submissions were based upon the fact that there was no proven dishonesty. Given that this Court has upheld that finding of proven dishonesty, Ms. Doocey's points in mitigation must be viewed in that light and not through the lens of being made in the context of an honest but naïve solicitor who did these things in a haphazard and chaotic fashion.

96. The first submission deals with Ms. Doocey's claim that a system had been put in place for the protection of clients was a submission in mitigation of sanction. As the foregoing case law indicates, the President was obliged to form an independent view on the sanctions and the mitigation offered. She assessed the evidence of the system herself. It is worth pausing and noting for the avoidance of doubt that it is not accepted, as Ms. Doocey suggests, that the Tribunal had accepted that this was a watertight system. There was a comment to that effect by a member during the course of the evidence, but that evidence had shown that the reliability

had depended on the honesty and integrity of Ms. Doocey. She herself had acknowledged in evidence that that indeed was the position as it all depended on the representations she made. The President was entitled to view the evidence of the system as not being watertight. I therefore reject that there was an error of law on the part of Irvine P. in her assessment of the sanction evidence.

97. Ms. Doocey relied significantly in her submission to the Court on what she said was a mischaracterisation by Irvine P. of her submission that no client had suffered loss. In Ms. Doocey's submission this was an acceptable ground of mitigation but instead had been turned against her and "bore heavily" on the President's decision to strike her off. This was an error in principle, it was submitted, because to hold otherwise would mean that solicitors would not take steps if it was to be held against them in submissions.

98. The entire report of the Tribunal was before the President which included all the evidence and submissions made on her behalf. It was indeed striking in the evidence, even of the professional called by Ms. Doocey, that there was a view that this was not money taken for personal gain and that the "money was replaced by her own funds, family funds". The Chairman of the Tribunal had queried the issue of lack of personal gain because as he said the money "didn't disappear into thin air so it got used up somewhere". It was only after that questioning of the professional witness that Ms. Doocey gave evidence in an effort to explain what happened to the money. Ms. Doocey gave long explanations of what she was spending money on and then said the following "I understand the point that's being made about personal gain, if it is going into office and I am being paid out of office or I am living out of office then it is personal gain to an extent, but it wasn't like that per se. There was a lot money being wasted here because I wasn't engaged fully with what I was doing." The evidence referred to above was also given in explanation.

99. This was all evidence that the President was bound to consider and she was entitled to find that this evidence *"demonstrates a complete lack of understanding concerning [Ms. Doocey's] obligations to her client, her profession and the administration of justice."* Ms. Doocey's submission about no client having suffered was all premised on her own lack of understanding of the importance of having clients' money available to them instantaneously through strict compliance with rules regarding dealings with clients' money. Irvine P. was also entitled to take the view that the nature of the harm was the non-compliance with the accountancy regulations and that clients must be able to trust that their funds will not be subject to misuse even if the misuse if later rectified. She was entitled to take the view that it was not open to a solicitor to seek to undermine that very serious harm by making the point that money moved around in deceitful circumstances was later replaced. In my view the President was drawing a clear and permissible line between a plea in mitigation which acknowledged wrongdoing but sought to make amends by repayment of monies and a plea in mitigation which sought to diminish the nature of the offending itself by reference to the subsequent replacement of the money from other funding sources.

100. The President of the High Court was fully entitled to take the view she did of the evidence and in holding that it was a cardinal and basic rule that solicitors must never touch clients' monies, and in considering the appropriate sanction. Irvine P. considered all appropriate matters and was entitled to come to the view that this was a case of dishonesty and:-

> *"the severity of the sanction cannot be mitigated, or even contextualised…by [Ms. Doocey's] relative inexperience or the fact that she was practicing unsupported in a rural area. […] [Her] conduct comes on the back of [her] two prior disciplinary infringements both of which related to management of accounts and in the course of*

which she [had been[warned about the importance of strict compliance with the Solicitors Accounts Regulations."

In the circumstances of this case, there was no error in principle for the President to hold that the fact that the shortfall on the client account was later made good by loans obtained from Ms. Doocey's family did not mitigate against the underlying issue of the extensive and deliberate manipulation of accounts and the mismanagement of client funds.

101. There was no error in principle in the decision of the President of the High Court to strike Ms. Doocey off the roll of solicitors.

Conclusion

102. Ms. Doocey admitted to misconduct before the Tribunal. The misconduct found against her on the basis of those admissions was of misconduct set out in the complaints and in the facts set out in the affidavit filed before the Tribunal on behalf of the Law Society. Ms. Doocey was admitting to conduct that was objectively dishonest based upon facts of which she had actual knowledge. Irvine P. was therefore entitled to find that the misconduct findings amounted to proven dishonesty.

103. In the exercise of her independent role in the disciplinary regime for solicitors, the President was entitled to come to her own conclusion on the appropriate sanction and not to follow the recommendation by the Tribunal. She took into account all relevant factors. She was entitled to find that the system put in place for the protection of Ms. Doocey's present and future clients was not watertight. The President was also entitled to find that the respondent was minimising the significance of her actions by seeking to rely upon the fact that no client suffered financial loss as a result of her actions and that she demonstrated a complete lack of understanding concerning her obligations to her client, her profession and the administration of justice. She was entitled to find that the making up of the shortfall did not mitigate against the systematic dishonest practice of Ms. Doocey.

104. For the reasons set out in this judgment, the appeal of Ms. Doocey is dismissed.

As regards costs, given that Ms. Doocey's appeal has failed, it would appear to follow that the Law Society is entitled to the costs of this appeal, to be adjudicated in default of agreement. If Ms. Doocey wishes to contend for a different form of order on this appeal (including the order for costs), she will have liberty to apply to the Court of Appeal Office within 14 days for a brief supplemental hearing. If such hearing is requested and results in an order in the terms I have provisionally indicated above, Ms. Doocey may be liable for the additional costs of such hearing. In default of receipt of such application, an order in the terms proposed will be made.

As this judgment is being delivered electronically, Haughton J. has indicated his agreement with this judgment and the orders proposed.