

APPROVED

[2023] IEHC 389

THE HIGH COURT

[2023 No. 26 S.A.]

SOLICITORS DISCIPLINARY TRIBUNAL

[2021/DT08]

**IN THE MATTER OF RODY KELLY CORRIGAN, A SOLICITOR PREVIOUSLY
PRACTISING AS RODY KELLY CORRIGAN SOLICITORS AT THE GLASS
HOUSE, 11 COKE STREET, SMITHFIELD, DUBLIN 7
AND IN THE MATTER OF THE SOLICITORS ACTS 1984 – 2015**

BETWEEN

LAW SOCIETY OF IRELAND

APPLICANT

AND

RODY KELLY CORRIGAN

RESPONDENT

**JUDGMENT of Mr. Justice David Barniville, President of the High Court, delivered on
the 26th June, 2023**

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1. Introduction

1. This is my judgment on an application by the Law Society of Ireland (the “Society”) for various orders in relation to the respondent solicitor (the “Solicitor”) pursuant to s. 8 of the Solicitors (Amendment) Act 1960, as substituted by s. 18 of the Solicitors (Amendment) Act 1994, and as amended by s. 10 of the Solicitors (Amendment) Act 2002 (the “1960 Act (as amended)”).
2. At issue in this application is whether, in the case of admitted misconduct and dishonesty by the Solicitor, the court should impose the sanction recommended by the Solicitors’ Disciplinary Tribunal (the “Tribunal”) in its report in relation to the Solicitor or that sought by the Society.
3. The Tribunal recommended that the following sanctions should be imposed on the Solicitor:
 - (i) That he not be permitted to practise as a sole practitioner or in partnership, that he be permitted only to practise as an assistant solicitor, in the employment and under the direct control and supervision of another solicitor of at least ten years’ standing to be approved in advance by the Society;
 - (ii) That he not be permitted to have access to client funds; and
 - (iii) That he pay the sum of €1,152.00 as a contribution towards the Society’s costs before the Tribunal.
4. The Tribunal did not recommend that the Solicitor’s name be struck off the Roll of Solicitors. The Society has contended on this application that the Solicitor is not a fit person to be on the Roll of Solicitors and that his name should be struck off the Roll. That is the only issue between the parties on this application.

5. The Solicitor has agreed to pay the sum which the Tribunal directed that he pay by way of contribution towards the Society's costs before the Tribunal (€1,152.00) as well as the measured costs of the Society in respect of its application to the High Court (€3,554.00 (to include stamp duty)).

2. Summary of Decision

6. Having heard the respective submissions made on behalf of the Society and on behalf of the Solicitor at a hearing on 12th June, 2023, and being satisfied that it is open to me to depart from the sanctions recommended by the Tribunal and to impose a sanction falling short of that proposed by the Society, I indicated that, because of the very particular circumstances of this case (upon which I will elaborate later), I was inclined to impose a sanction which would involve a period of suspension of the Solicitor from the Roll combined with restrictions thereafter of the type recommended by the Tribunal. However, I decided to reserve judgment as I required some time to decide on the appropriate level of suspension.
7. Having now had that opportunity, I am satisfied that the appropriate period of suspension is twelve months from the date the Society's application was issued, on 27th April, 2023. The period the Solicitor's name will be suspended from the Roll will, therefore, expire on 24th April, 2024. In the event that the Solicitor wishes to practise as a solicitor following that period of suspension, he will need to apply for a practising certificate. The last practising certificate held by the Solicitor was for the practice year ending 31st December, 2019. The restrictions recommended by the Tribunal will apply if and when the Solicitor resumes practice after the period of suspension. Those restrictions will apply to every practising certificate obtained by the Solicitor after the period of suspension.

8. I have also decided that it would be appropriate to include in the order that I propose to make, a provision that the Society would have liberty immediately to re-enter the proceedings to seek to have the Solicitor's name struck off the Roll in the event of any breach of the restrictions or any further act of dishonesty.
9. I am satisfied that these sanctions fully take into account the required legal principles set out in the case law and that they are proportionate. In deciding on these sanctions, I have taken into account the very particular circumstances of the case. While acts of dishonesty, such as those admitted by the Solicitor in this case, will almost invariably lead to a strike off, I am satisfied that, due to the very exceptional circumstances in this case, a strike off would not be a proportionate sanction to impose.

3. Factual Background

10. The Solicitor qualified and was admitted to and enrolled on the Roll of Solicitors in 2004. Having practised as a solicitor in partnership with another solicitor for a number of years, he worked for a short time as a consultant in another firm before setting up his own practice.
11. On 10th July, 2019, the Society appointed Rory O'Neill, Chartered Accountant, as an authorised person, within the meaning of s.76(10) of the Solicitors (Amendment) Act 1994, for the purposes of carrying out an investigation into whether the Solicitor was in compliance with the Solicitors Accounts Regulations 2014 (S.I. No. 516 of 2014) (the "Regulations") and with provisions of s. 66 of the Solicitors Act 1954 (as substituted by s. 76 of the Solicitors (Amendment) Act 1994).
12. The Solicitor was informed, by letter dated 10th July, 2019, that Mr. O'Neill would commence his examination at 9:30am the following morning (11th July, 2019). The Solicitor was requested to ensure that certain matters were attended to for the purposes of the examination to be carried out by Mr. O'Neill.

- 13.** The investigation was commenced following receipt of a complaint by the Society on the morning of 10th July, 2019, from a client of the Solicitor (“Client A”) who had engaged the Solicitor to act for him in the purchase of an apartment in Dublin.

Although Client A had provided the balance of purchase monies to the Solicitor in order to close the sale of the apartment, the monies paid over by the Solicitor to the vendor’s solicitors were €50,000 less than the sum due.
- 14.** The Solicitor met with Mr. O’Neill early the following morning of 11th July, 2019. He immediately disclosed to Mr. O’Neill that there was a deficit on his client account and he explained how that deficit had arisen. He had taken the proceeds of settlement of a case for another client (“Client B”) (€17,500) in order to pay mounting debts, including his professional indemnity insurance premium and professional and domestic expenses. In addition, the Solicitor wrongfully withheld €7,380 in fees due to senior counsel which were included in the costs paid in respect of the settlement of Client B’s case. He then used the monies given by Client A for the purposes of closing the sale on the Dublin apartment (including stamp duty, registration fees and search fees) for the unauthorised purpose of repaying the €17,500 taken from Client B. In total, the Solicitor admitted a deficit of €64,742.50, including the monies misappropriated from Client A, and withheld from senior counsel.
- 15.** The Solicitor disclosed all of these matters to Mr. O’Neill on the morning of 11th July, 2019. He explained that he did not have a gambling addiction or anything of that nature, and that the monies were taken to pay debts. He expected that he would be able to reimburse the monies. The Solicitor handed over Client A’s file to Mr. O’Neill who agreed to make contact with him to arrange for another solicitor to take up the file and close the sale. He agreed to pass over ongoing files relating to personal injury cases and files for immigration cases to another solicitor.

16. The Solicitor was extremely apologetic for what had occurred. He explained he had significant arrears on his mortgage and outlined his family issues. He was the sole earner in his family. His wife had been diagnosed with a life limiting serious neurodegenerative disease. He and his wife have five male children, ranging in ages from 12 to 30, the eldest of which is married. One of his sons has cerebral palsy and has increased care needs. He explained that things were very difficult financially at home. He felt that, with mounting debts, he had nowhere to turn and initially took the monies from the settlement of Client B's case and that, in turn, led to him taking funds from Client A to reimburse Client B. The Solicitor agreed immediately to close his client account, to obtain all outstanding bank statements, to return his practising certificate, and to provide Mr. O'Neill with a copy of the correspondence he had exchanged with senior counsel in relation to the outstanding fees. He also agreed to consider and to attempt to arrange the sourcing of monies to clear the shortfall, but noted that he did not personally have the resources to do so as of that time. He also agreed to arrange for the transfer of his files to another solicitor. The Solicitor fully complied with all of Mr. O'Neill's requirements at that stage. He also disclosed, at a meeting of the Society's Regulation of Practice Committee, that he was so distressed that he took certain initial steps with a view to taking his life but, fortunately, he called the Gardaí and, due to their intervention, agreed to return home.

4. Report of Authorised Person

17. Mr. O'Neill prepared a report on his investigation dated 22nd July, 2019, which was then provided to the Society's Regulation of Practice Committee. The report noted that the Solicitor had provided all of the documentation which had been requested by Mr. O'Neill, and that he had met with the manager of the Society's Practice Closure Section with a view to discussing the orderly wind-down of his practice. By the time

of the report, Client A had obtained a personal loan and the purchase of the apartment had closed. That, in turn led to a claim on the Society's Compensation Fund in the sum of €58,466.43 which was paid by the Fund to Client A. This sum was subsequently reimbursed by the Solicitor to the Society from the proceeds of sale of his father's family home. The balance of the sum due to the Society in respect of monies paid by the Compensation Fund to Client A was repaid by the Solicitor in December 2020. The fees outstanding to the senior counsel were paid by the Solicitor prior to December 2019.

18. The Solicitor was provided a copy of Mr. O'Neill's report by way of letter from Mr. John Elliot, Registrar of Solicitors and Director of Regulation, dated 25th July, 2019. In that letter Mr. Elliot informed him that the report would be considered at a meeting of the Regulation of Practice Committee (the "Committee") on 4th September, 2019, and it was requested that the Solicitor attend that meeting. He also informed the Solicitor that the matters outlined in the report were of a "*very serious nature*", and that the Committee would require an update on the clearance of the deficit in the client account of €64,472.50 and the source of funds used. It was also noted that Client A had submitted a claim on the Society's Compensation Fund.

5. Meeting of the Society's Regulation of Practice Committee

19. The Solicitor did attend the Committee's meeting on 4th September, 2019, and was accompanied by a friend. He provided a full explanation for what had occurred and outlined the particularly difficult personal and family circumstances I have touched on earlier. He was extremely remorseful and ashamed at what he had done and explained again the pressure which he was under at the time. He outlined that he was receiving counselling. While noting that he was in financial difficulty, the Solicitor confirmed that it was his intention to pay back every cent which had been taken. The Committee

decided to defer the matter to its meeting on 4th December, 2019, in order to afford the Solicitor the opportunity of regularising matters and to give him time to reduce the deficit.

- 20.** The Solicitor attended the Committee's meeting on 4th December, 2019. He updated the Committee on his personal circumstances. By that stage, the senior counsel had been paid his outstanding fees. The Solicitor informed the Committee that his father had agreed to sell his house and, with the agreement of his father and that of his siblings, he would be in a position to reimburse the Compensation Fund with €25,000 by 1st February, 2020 and with the balance of approximately €42,000 by 1st July, 2020. The Committee decided to put the matter back to its meeting on 22nd January, 2020. The Solicitor had indicated a wish to return to practice as an assistant solicitor, having surrendered his practising certificate in July 2019. The Committee was receptive to the idea of the Solicitor returning to practice but needed more information as to his intentions. In adjourning consideration of the case, the Committee directed the Solicitor to make the first payment of €25,000 to the Compensation Fund on or before 15th January, 2020.
- 21.** The Solicitor attended the Committee meeting on 22nd January, 2020, at which he informed the Committee that, unfortunately, he was unable to raise €25,000 by 15th January, 2020. However, with his father's assistance, he could pay the Society €16,5000 to be applied to the Compensation Fund. He provided a letter from his father which confirmed that the balance owing to the Compensation Fund would be paid out of the proceeds of sale of his father's house, on or before 1st July, 2020. The Committee also considered a proposal from the Solicitor that he might be taken on by another solicitor as an assistant solicitor and permitted to work in that capacity. However, the solicitor proposed had less than ten years' standing as a qualified

solicitor, which is generally a minimum requirement of the Society. In light of the fact that the balance due to the Compensation Fund had not been paid, the Committee directed that the matter be adjourned to 24th June, 202, to enable the Solicitor's father to sell this house.

- 22.** The Solicitor attended the meeting of the Committee on 24th June, 2020. By that stage, the Solicitor's father's house was on the market but had not been sold. The Committee adjourned the matter to its meeting on 14th October, 2020. By the time of that meeting, the house was "*sale agreed*" and the matter was adjourned to the Committee's meeting on 9th December, 2020. In advance of that meeting, the balance owing to the Compensation Fund (€41,966.43) was paid by the Solicitor from the proceeds of sale of his father's house. The Committee adjourned the matter to its next meeting on 20th January, 2021, so that it could make a final decision in relation to the Solicitor.
- 23.** The Solicitor attended the Committee's meeting on 20th January, 2021. He outlined again the difficult personal and family circumstances which had led to his misconduct. He was deeply apologetic and ashamed at his conduct. He explained that he continued to be in a very poor financial position with a large family to support. He informed the Committee that he was now the full time carer for his wife which had taken some pressure off him. However, he informed the Committee that he thinks about what he did every day and has had to live with the shame of it. His wish was to be able to return to work part-time as a solicitor. He asked the Committee not to refer the matter to the Tribunal. However, the Committee concluded that it was obliged to do so given the extremely serious breach of the Regulations and the entirely unauthorised interference by the Solicitor with the client account. The Solicitor was informed that all of the mitigating circumstances which he had outlined to the

Committee could be raised by him before the Tribunal and taken into consideration by it. The Committee confirmed that it had received full cooperation from the Solicitor, that the client concerned (Client A) had been fully repaid (and the Compensation Fund reimbursed) and that the only person at a loss was the Solicitor himself. The Chairperson of the Committee informed the Solicitor that the Committee had been impressed at how the Solicitor had dealt with the matter, and that he had shown “*great personal strength*” in dealing with his personal difficulties, and that the Tribunal would be likely to take that into account. The matter was, therefore, referred by the Committee to the Tribunal.

6. Inquiry by the Solicitors’ Disciplinary Tribunal

24. The Society applied to the Tribunal for an inquiry into the conduct of the Solicitor on the grounds of alleged misconduct. That application was grounded on an affidavit sworn by Mr. O’Neill on 4th October, 2021. In that affidavit, Mr. O’Neill set out the background as I have just summarised. He noted (at para. 11 of his affidavit) that at the meeting of the Society’s Regulation of Practice Committee on 4th December, 2019, the Chairperson of the Committee indicated that the Committee was “*receptive to the idea of the Solicitor going back into practice*”. However, the Solicitor was told that if he was serious about going back into practice, it would be on a limited basis and that any potential employer would be required to attend at the next meeting and to “*know chapter and verse of the Solicitor’s problems*”. Any such person would be required to employ and supervise the Solicitor for an indefinite period and he would have no access to client monies along with normal conditions that apply to a limited practising certificate. Mr. O’Neill then referred to developments thereafter, including the reimbursement by the Solicitor of the sum paid out by the Compensation Fund in respect of Client A, and the proposal that the Solicitor would be supervised by a

particular solicitor (who did not satisfy the Society's general requirement that a supervisor should be a solicitor of at least ten years' standing). Mr. O'Neill noted that, at the Committee's meeting on 20th January, 2021, the Committee concluded that there had been a serious breach of the Regulations and that it was obliged to refer the matter to the Tribunal "*given the extremely serious breach of the Solicitors Accounts Regulations and the entirely unauthorised interference with the client account*". Mr. O'Neill noted, however, that the Chairperson of the Committee had stated that that would not prevent the Solicitor obtaining a practising certificate and obtaining work in the future. The Solicitor had also been informed that all mitigating circumstances could be raised before the Tribunal.

- 25.** In bringing the matter before the Tribunal, Mr. O'Neill contended that the Solicitor was guilty of misconduct in that he:
- (a) Allowed a deficit of €64,472.50 in client funds as of 11th July, 2019 by:
 - (i) Misappropriating the sum of €50,000 from the purchase money furnished to him by a client;
 - (ii) Misappropriating the sum of €6,300 in respect of stamp duty and €1,062.50 in respect of registration fees in relation to the same purchase;
 - (iii) Misappropriating the sum of €7,380 due to senior counsel in respect of a claim settled;
 - (b) Misappropriated the sum of €17,500 from the settlement in Client B's case which was subsequently repaid from monies received in Client A's conveyancing matter; and
 - (c) Caused a claim of €58,466.43 to be paid from the Compensation Fund in respect of his former client (Client A) whose funds he had misappropriated.

- 26.** The Society's application, dated 7th October, 2021, for an inquiry into the Solicitor's conduct was received by the Tribunal on 7th October, 2021. It considered certain documentation (including Mr. O'Neill's affidavit and the documents exhibited to that affidavit) on 1st March, 2022, and found that there was a *prima facie* case of misconduct on the part of the Solicitor for inquiry by the Tribunal in respect of the grounds set out by Mr. O'Neill in his affidavit.
- 27.** A separate division of the Tribunal then held an inquiry pursuant to s. 7 of the 1960 Act (as amended) which commenced on 26th July, 2022 and concluded on 17th October, 2022. The Solicitor was represented at the inquiry. Prior to the commencement of the inquiry, the Solicitor accepted all of the allegations and the misconduct alleged. It was accepted on behalf of the Society that the Solicitor had engaged and cooperated fully and promptly with the investigation carried out by Mr. O'Neill and that he had done everything he could to deal with the matter. In light of the admissions made by the Solicitor, the Tribunal proceeded to find that the Solicitor guilty of the misconduct alleged. The Tribunal adjourned consideration of the question of sanction to 17th October, 2022.
- 28.** Submissions on sanction were made, on that date, on behalf of the Society and on behalf of the Solicitor. Reference was again made to the Solicitor's difficult personal and family circumstances. He was deeply regretful, ashamed and apologetic for his actions. Reliance was placed by way of mitigation on the fact that he had fully cooperated with all aspects of the investigation and that full restitution had been made to the Compensation Fund, and that no client had been left out of pocket. Reliance was also placed on the fact that he had fifteen years of unblemished practice. Reference was made to a medical report and several testimonials.

- 29.** The medical report from the Solicitor's general practitioner, dated 14th October, 2022, confirmed that the Solicitor's wife's diagnosis of primary lateral sclerosis (a life limiting serious neurodegenerative condition) in 2016 came as a devastating blow to the Solicitor and his family. The Solicitor presented to his general practitioner in July 2022 with a history of acute reactive anxiety and depression which was precipitated by the extremely stressful situation in which he found himself over the past number of years caring for both his sick wife and his young family (one of his sons suffers from cerebral palsy and has increased care needs). The Solicitor was started on antidepressant medication and referred for counselling which he had been engaging in on a weekly basis. His general practitioner was satisfied that the Solicitor was working through the events of the past few years with his counsellor in a very frank and open fashion. She felt that he had full insight into the error of judgement he made in his practice and was genuinely remorseful. She expressed the opinion that the extent of the family health crisis which the Solicitor had lived through over the past six years could not be underestimated. She felt that it was very plausible that these extreme circumstances would have impacted on the Solicitor's clarity of thought and decision-making over that time.
- 30.** A report, dated 13th October, 2022, was also received from a counsellor involved in counselling the Solicitor since July 2022. She confirmed that he was fully engaged in the process of therapy which was continuing on a weekly basis.
- 31.** A testimonial was received from the principal of a solicitors' firm in Dublin who confirmed that he had known the Solicitor for approximately 25 years as a friend and, on occasion, on a professional basis and found him to be a "*bright warm individual*". He explained that if the Solicitor did consider returning to practice as a solicitor, he

would be happy to provide him with whatever support he needed, including the possibility of a full time position in the principal's firm.

- 32.** Testimonials were also received from a barrister and from two senior counsel, all of which spoke in very positive terms about the Solicitor and the difficulties he had been going through. Included among the testimonials was one from the senior counsel whose fees had initially been taken by the Solicitor. He confirmed that the Solicitor informed him of the position in relation to the payment of his fees. He explained that the Solicitor informed of his financial problems which affected the payment of the fees owing to him. He then recorded *“without the slightest hesitation, that the issue was resolved honourably, and in its entirety, albeit after some delay”*. He explained that during that time, he was kept fully informed by the Solicitor of the difficulties which had arisen which he knew were due, in no small part, to the pressures and strains associated with the serious illness suffered by the Solicitor's wife. He explained that the Solicitor had faced up squarely to a difficult challenge and that, to the senior counsel's knowledge, the Solicitor was *“completely frank and honest in his handling of those difficulties”*. He wished the Solicitor well and said, *“without question [...] he is a decent and compassionate individual deserving of every support and encouragement in his future professional life”*.
- 33.** It was submitted on behalf of the Solicitor that the Tribunal should not recommend that the ultimate sanction of strike off the Solicitor from the Roll be imposed by the court and that the Tribunal should leave open the possibility of the Solicitor being in a position to practise, albeit subject to restrictive conditions. Counsel for the Solicitor also emphasised that the relevant misconduct was not part of a pattern of behaviour, but was a discrete event arising from a very specific set of circumstances. He highlighted that, once the matter had come to light, he had dealt with it in a very

straightforward manner, and made every effort to cooperate with the Committee, the Disciplinary Tribunal, and the Society, making the process as smooth as possible for everyone concerned.

- 34.** While acknowledging that the case was a sad one, it was submitted on behalf of the Society that the Tribunal should send the matter forward to the President of the High Court with a recommendation that the Solicitor is not a fit person to remain on the Roll of Solicitors and that his name should be struck off the Roll. While the Society appreciated that the Solicitor has and had very difficult and sad family circumstances, he had admitted the allegations and that they constituted misconduct. They were serious allegations involving the misappropriation of clients' monies and permitting a deficit in his client account of almost €65,000. He had, therefore, been dishonest in his dealings with clients and their funds.
- 35.** It was submitted that the reason why the Society was seeking to have the Solicitor struck off the Roll was because it was a privilege of solicitors to be in a position to handle client monies and they must adhere to the highest standard of honesty, probity and trustworthiness. The Solicitor in this case did not maintain those standards but rather, he succumbed to the pressures he was under (the illness of his wife and other outside factors) and took some clients' monies. It was accepted that the Solicitor made good the deficit, thanks to the support of the members of his family and the sale of his father's property. However, having regard to the principles and factors to be taken into account, including the protection of the public, the maintenance of the reputation of the solicitors' profession, the punishment of wrongdoers for their wrongdoing, the discouragement of other members of the profession who might be tempted to engage in similar behaviour, and the principle of proportionality, it was submitted on behalf of the Society that the ultimate sanction would be appropriate in this case, and that the

Tribunal should make a recommendation in those terms. Irrespective of the family and other pressures to which the Solicitor was subject, the Society was not in a position to condone the conduct in this case. Its position was that a person cannot remain as a member of the profession if that person succumbs to such pressures and puts his or her clients' funds at risk. That would make it impossible to maintain the reputation of the solicitors' profession. While accepting that the case was a hard case and a sad case, the Society requested the Tribunal to recommend that the Solicitor's name should be struck off the Roll.

7. The Tribunal's Decision and Recommended Sanctions

36. The Tribunal gave its decision at the end of the hearing on 17th October, 2022. Its decision was then recorded in a report which was signed by the Chairperson of the Tribunal on 11th November, 2022. The report accompanied the order of the Tribunal which the Chairperson signed on that same date.
37. The Tribunal decided that it would not be appropriate to make an order pursuant to s. 7(9) of the 1960 Act (as amended) and instead directed the Society to bring the Tribunal's report before the High Court.
38. With respect to the Tribunal's opinion as to the fitness or otherwise of the Solicitor to be a member of the solicitors' profession and its recommendations as to the sanction which should be imposed, the Tribunal expressed the following opinion:
 - (i) The Solicitor should not be permitted to practise as a sole practitioner or in partnership, that he should be permitted only to practise as an assistant solicitor, in the employment and under the direct control and supervision of another solicitor of, at least, ten years' standing to be approved in advance by the Society;
 - (ii) The Solicitor should not be permitted to have access to client funds;

(iii) The Solicitor should pay the sum of €1,152.00 as a contribution towards the Society's costs of the proceedings before the Tribunal.

39. The Tribunal set out in its report the fact that it had made a finding of misconduct in respect of the Solicitor. In making its recommendation, the Tribunal acknowledged the very serious considerations in play where client monies had been misappropriated. It accepted the factors which the Society submitted had to be taken into account by the Tribunal in coming to its decision. The Tribunal also noted the submissions made on behalf of the Solicitor and that the matters giving rise to the inquiry involved a "*discrete event*" at a time when the Solicitor was "*under enormous personal pressures*". It noted that the Solicitor had no prior disciplinary history and that he had addressed the difficulties which he had created and had arranged for restitution to be made to the parties affected. The Tribunal also took into account the "*very powerful testimonials*" provided by the four professionals referred to earlier, a solicitor, a junior counsel and two senior counsel, including the senior counsel who was personally affected by the Solicitor's misconduct. The Tribunal quoted from a number of those testimonials in its report. It noted that the principal of the firm who had provided a testimonial, was prepared to offer the possibility of a position in the firm to the Solicitor.

8. The Society's Application to the Court

40. The Tribunal's report was brought before the court by the Society pursuant to s. 7(3) of the 1960 Act (as amended).

41. In a notice of motion issued on behalf of the Society on 27th April, 2023, the Society sought an order declaring that the Solicitor is not a fit person to be on the Roll of Solicitors and that his name be struck off the Roll. It also sought an order that the

Solicitor pay the sum of €1,152 in respect of its costs before the Tribunal and the Society's costs of the application to the High Court.

42. The Solicitor agreed to pay the sum of €1,152 as a contribution to the Society's costs of the proceedings before the Tribunal and an agreed measured amount in respect of the Society's costs of the application to the High Court in the sum of €3,554 (to include stamp duty).
43. The only issue, therefore, which the court had to decide was whether or not the Solicitor should be found not to be a fit person to be on the Roll of Solicitors and whether his name should be struck off the Roll, as the Society contended, or whether the court should accept the Tribunal's recommendation that he should be permitted to practise under the strict conditions set out in its report which would not permit him to practise as a sole practitioner or in partnership but only as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of, at least, ten years' standing (who would have to be approved in advance by the Society) and that he would not be permitted to have access to client funds.
44. In its application to the court, the Society relied on the evidence which was before the Tribunal as well as the order and report of the Tribunal. Its application was grounded on an affidavit sworn by Mary Fenelon, a solicitor employed in the Society's Regulatory Legal Services Section. Ms. Fenelon set out in full the background to the case and the proceedings and evidence before the Tribunal. She addressed the Tribunal's recommendation and the reasons set out in its report in support of that recommendation. She explained that the Society was asking the court not to follow the Tribunal's recommendation and instead to order that the name of the Solicitor be struck off the Roll of Solicitors. She submitted that a strike off would be the appropriate sanction in the case as it would properly protect the public and maintain

public confidence in the solicitors' profession as one which can be trusted "*to the ends of the earth*". She stated that the findings of admitted misconduct reveal elements of professional dishonesty, concealment and issues of deceit combined with the Solicitor's reckless disregard for his responsibility as a solicitor and his responsibilities in relation to client monies as well as his obligations under the Solicitors Acts and the Solicitors Accounts Regulations. She explained that even if the court were to be satisfied that the Solicitor was unlikely to repeat the conduct or to be subject to such pressure in the future, the sanction imposed by the court must maintain the reputation of the profession and discourage other members of the profession engaging in such conduct.

45. The Society accepted that there were mitigating circumstances to be considered in the case, including the admissions made by the Solicitor, the restitution made, and the Solicitor's difficult family and personal circumstances. However, it was submitted that this case was not a case like *Law Society of Ireland v. D'Alton* [2019] IEHC 177, where the misconduct at issue was committed while the solicitor the subject of that case was going through a period of ill health. Ms. Fenelon relied on the statement of Kelly P. therein that where a solicitor is found guilty of dishonesty or of wrongfully taking funds from a client account, it will "*almost invariably*" result in an order striking off the name of the solicitor from the Roll of Solicitors.
46. In her oral submissions to the court on the hearing of the Society's application, Ms. Fenelon pressed for a strike off order. She relied on the principles and factors set out by Kelly P. in the *D'Alton* case. In that regard, in imposing sanction, the court has to have regard to the following factors:
- (a) the protection of the public;
 - (b) the maintenance of the reputation of the solicitors' profession;

- (c) the punishment of the wrongdoer;
- (d) the discouragement of other members of the profession who might be tempted to engage in similar behaviour; and
- (e) the concept of proportionality.

47. Ms. Fenelon noted that Kelly P. in *D'Alton* did not accept the Tribunal's recommendation which was that the solicitor in that case be struck off. I would add here that Kelly P. imposed a different sanction which was that the solicitor be suspended from the Roll for just over one year (26th March, 2019 - 1st April, 2020) and that upon the cessation of that suspension, the solicitor could be issued with a practising certificate subject to a number of conditions, namely that:

- (a) He would not be permitted to practice as a sole practitioner or in partnership but only as an employed solicitor;
- (b) He would only act under the control and supervision of a solicitor to be approved in writing in advance by the Law Society;
- (c) He would not be permitted to give undertakings of any sort save with the written consent obtained in advance from the supervising solicitor;
- (d) He would not be permitted to have any drawing rights on the client or other accounts of the practice in which he may be employed.

48. Kelly P. directed that those conditions would apply to every practising certificate granted to the solicitor for a period of seven years following his restoration to the Roll in 2020 and directed that, in the event of the solicitor breaching any of those conditions, the proceedings could be re-entered at short notice with a view to the court making an immediate order striking the solicitor off the Roll of Solicitors.

49. Ms. Fenelon stressed the very privileged position the Solicitor was in by having access to client monies and the need to ensure honesty, trustworthiness and probity on

the part of the Solicitor. She described this as being a “*very hard case*” and noted that the Solicitor was “*very remorseful*”. Nonetheless, it was necessary for various reasons, including to need to discourage other members of the profession from similar misconduct, that he be struck off. She said that, if he were not struck off, it would send out a bad message to other members of the profession. She also argued that such an order was proportionate and referred to the possibility that the Solicitor could apply to be restored to the roll after a period, as in *Enright v. Law Society of Ireland* [2018] IEHC 440, where the solicitor obtained an order that he be restored to the Roll of Solicitors having been struck off some two years previously.

- 50.** Ms. Fenelon relied on the admitted dishonesty on the part of the Solicitor, and the findings of fact made by the Tribunal, namely that monies had been taken from the client account, leading to a claim being made on the Compensation Fund by Client A, and that the Compensation Fund was only reimbursed after the Solicitor’s father sold his property and applied the proceeds of sale to that purpose.
- 51.** The Solicitor was represented on the Society’s application by senior and junior counsel and by M.E. Hanahoe Solicitors.
- 52.** Counsel accepted that the case law and principles relied on by the Society were the correct ones for the court to apply in this case. He outlined in some considerable detail the remorse and shame which the Solicitor has experienced as a result of his actions. He outlined again to the court the particular circumstances which led the Solicitor to engage in the relevant acts of dishonesty. Counsel reminded the court of the Solicitor’s difficult personal and family situation, outlined previously in this judgment. Counsel referred to the very powerful testimonials provided by colleagues and members of the Bar in support of the Solicitor.

53. The principal in the firm of solicitors who provided the testimonial was present in court and confirmed that he would be in a position to act as his supervising solicitor and would be prepared to take on the Solicitor in his firm.
54. Counsel asked the court to accept the recommendation as to sanction made by the Tribunal. He confirmed that the Solicitor is in a position now to take up work if permitted. He also submitted that, if the Tribunal's recommendations were accepted by the court, the misconduct would not, and could not, arise again as the Solicitor would not have access to client monies.
55. Counsel also drew attention to the fact that the Solicitor is the only earner in the household (which consists of his wife and four of his five children). He also submitted that the Solicitor's recourse to client monies was not a "*lifestyle issue*" but was a "*one off*" situation and was completely out of character. Counsel drew attention to the ongoing stress to which the Solicitor has been subject as a result of his misconduct and the proceedings. He reminded the court that the Solicitor was taking full responsibility for his conduct, that he had cooperated from the very start with the investigation, and had immediately ceased practise. He then became full time carer for his wife and had ensured, with the assistance of family members, including his father, that all monies were reimbursed both to the relevant client and to the Compensation Fund as well as ensuring that senior counsel's outstanding fee was discharged.
56. Counsel offered to call the Solicitor to confirm these various matters. However, having read all of the evidence before the Tribunal and the evidence before the court, I did not feel that it was necessary for the Solicitor to be called to give evidence. There was no factual issue between the parties and I was satisfied that the Solicitor was truly ashamed and remorseful and sincerely apologetic for his misconduct for which he had taken responsibility for it from the outset.

57. I asked both parties as to whether there was a middle course between the sanctions sought by the Society and that recommended by the Tribunal. Both agreed that a period of suspension with restrictions on practice after the suspension period, as imposed in *D'Alton*, could provide that middle course. As an alternative, Ms. Fenelon on behalf of the Society reminded me that if the Solicitor were struck off, an application could subsequently be made to restore him to the register (as in the 2018 *Enright* case).

9. Decision on Sanction

(a) Relevant Legal Principles

58. There are a number of relevant principles which I must apply in forming my decision on the appropriate sanction to be imposed on the Solicitor in this case. These principles are not in dispute between the parties.
59. First, I am not bound either by the Tribunal's recommendations on sanction or by the Society's decision that an even more serious sanction should be imposed on the Solicitor. The decision is entirely a matter for the court. As McKechnie J. stated in the Supreme Court in *Law Society of Ireland v. Coleman* [2018] IESC 80, there is "*no question of [this Court] being bound by an opinion expressed or by a recommendation made by the Tribunal*" and "*in all cases the ultimate arbiter is the court*" (at para. 61). See also the dicta of Irvine P. in the High Court in *Law Society of Ireland v. Doocey* [2020] IEHC 581 (at paras. 23 and 24); those of Collins J. in the Court of Appeal in *Doocey* [2022] IECA 2 (at para. 3); and my own recent observations in *Law Society of Ireland v. Walsh* [2023] IEHC 165 (at paras. 34 – 39).
60. Second, the High Court has the power under s. 8(1)(a)(i) of the 1960 Act (as amended), having considered the report of the Tribunal in relation to the conduct of the solicitor, to impose one or more of the following sanctions on a solicitor:

- “(I) *strike the name of the solicitor off the roll;*
- (II) *suspend the solicitor from practice for such specified period and on such terms as the court thinks fit;*
- (III) *prohibit the solicitor from practising on his own account as a sole practitioner or in partnership for such period, and subject to such further limitation as to the nature of his employment, as the court may provide;*
- (IV) *restrict the solicitor practising in a particular are of work for such period as the court may provide;*
- (V) *censure the solicitor or censure him and require him to pay a money penalty...”*

- 61.** Consequently, I have jurisdiction on the Society’s application to make an order striking the name of the Solicitor off the Roll or suspending him from practise for a specified period and on terms, as well as imposing various other prohibitions and restrictions on the Solicitor and censuring him with or without a money penalty.
- 62.** Third, the approach to be taken, and the principles to be applied, by the court in determining the appropriate sanction to be imposed on a solicitor who has been found guilty of misconduct were listed by Kelly P. in the *D’Alton* case. There, Kelly P. said:
- “In approaching the question of penalty I have to have regard to:*
- (a) the protection of the public;*
 - (b) the maintenance of the reputation of the solicitors’ profession ‘as one in which every member of whatever standing, may be trusted to the ends of the earth (per Bingham M.R.)’; [in Bolton v. Law Society [1994] 1 W.L.R. 512]*
 - (c) the punishment of the wrongdoer;*

(d) the discouragement of other members of the profession who might be tempted to emulate the behaviour of the wrongdoer; and

(e) the concept of proportionality. The sanction must be proportionate and appropriate.” (per Kelly P. at para. 33)

- 63.** I recently endorsed and applied those principles in the *Walsh* case (at paras. 48-49).
- 64.** I must determine the appropriate sanction to be imposed on the Solicitor in this case by reference to those guiding principles. Even more fundamentally, however, and as was made clear by Irvine P. in her judgment in the High Court in *Doocey* (at para. 24), I must have regard to all of the facts which gave rise to the admitted findings of misconduct. In determining the appropriate sanctions, I must take into account and give appropriate weight to all of the factors offered on behalf of the Solicitor by way of mitigation.
- 65.** An example of a mitigating circumstance to be taken into account is the serious and chronic health condition from which the respondent solicitor was suffering in the *D’Alton* case at the time of the relevant misconduct. It would, of course, be pointless to attempt to identify exhaustively the types of factors which might be taken into account by way of mitigation in any particular case. The range of those factors is endless. I have no doubt, however, that the difficult personal and family circumstances relied on by the Solicitor in this case amounts to a significant mitigating factor which must be taken into account in determining the appropriate sanction to be imposed on the Solicitor.
- 66.** Fourth, misconduct involving dishonesty, such as interfering with or misappropriating client funds will generally, and properly, attract a very serious sanction. This is clear from all of the authorities. It was put most pithily by Kelly P. in *D’Alton*, referred to earlier, where the President said that the application of the relevant principles on

sanctioning “to a case where a solicitor is found guilty of dishonesty or wrongfully taking funds from a client account will almost invariably result in an order that his or her name be struck from the Roll of Solicitors” (at para. 34). However, because of the presence of significant mitigating factors in that case, principally (but not only) the respondent solicitor’s serious and chronic ill health at the time of the misconduct, which also involved the taking of client monies and allowing a deficit on the client account, Kelly P. came to the conclusion that the “usual sanction” of a strike off would be disproportionate and inappropriate in the case. Instead, he fashioned a proportionate sanction which would protect the public, maintain the reputation of the solicitors’ profession, punish the respondent solicitor and discourage other solicitors from behaving as he had done.

67. Fifth, as one might expect, the case law is replete with references to the fundamental importance of complete and absolute honesty on the part of a solicitor. It is necessary only to refer to a few examples of where the Irish courts have made that crystal clear.
68. In *In Re Burke* [2001] 4 I.R. 445, which concerned an application to restore the name of a solicitor to the Roll under s. 10 of the 1960 Act (as amended), Keane C.J. considered the terms of s. 10(4). That subsection applies where the circumstances which gave rise to the solicitor’s name being struck off the Roll involved dishonesty in his or her former practise as a solicitor or where the solicitor was convicted of a criminal offence. In such a case, the High Court is not entitled to restore the solicitor’s name to the Roll unless satisfied that the solicitor is “*a fit and proper person to practise as a solicitor and that the restoration of the applicant to the roll would not adversely affect public confidence in the solicitors’ profession as a whole or in the administration of justice*”.

69. In considering that subsection, Keane C.J. outlined the importance of honesty in the legal profession. He said:

“A member of either branch of the legal profession enjoys rights and privileges in representing and advising members of the public denied to others. The public are, accordingly, entitled to repose a high degree of trust in both barristers and solicitors in the conduct of their respective professions. Unlike barristers, solicitors are regularly entrusted with the custody of monies belonging to their clients and, 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. Viewed in that context, the range of cases in which a solicitor who has been struck off because of dishonesty can properly be restored to the register pursuant to subsection (4) is, of necessity, significantly limited.” (as per Keane C.J. at 451)

70. In *Carroll v. Law Society of Ireland* [2016] IESC 49, [2016] 1 I.R. 676, the Supreme Court considered the judgment of Sir Thomas Bingham M.R. in *Bolton v. Law Society* [1994] 1 W.L.R. 512. In that case, the Master of the Rolls said:

“Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors. Only infrequently, particularly in recent years, has it

been willing to order the restoration to the Roll of a solicitor against whom serious dishonesty had been established...” (per Bingham M.R. at 518)

71. Later in his judgment, the Master of the Rolls considered some of the reasons why the Solicitors Disciplinary Tribunal in England and Wales makes orders which might otherwise seem harsh. He explained that there is a punitive element in some of those orders. However, he made clear that the order is not punitive by intention. He said that in most cases the order of the Tribunal will primarily be directed to one or both of two other purposes. The first is that the offender should not have the opportunity to repeat the offence. That purpose would be achieved, for a limited period, by an order of suspension and, for a longer period, by a strike off order. The second such purpose, described by the Master of the Rolls as *“the most fundamental of all”*, is:

“to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires.” (per Bingham M.R. at 518 – 519)

72. In commenting on that judgment, McKechnie J. in *Carroll*, said:

“There can be little doubt about the general correctness of these and the other remarks made by Bingham M.R. in Bolton. There is therefore placed on the

regulatory body, at first instance, a high level of public responsibility to this end. Equally so, however, there is a corresponding obligation on that body to be ever so discerning in its evaluation of the facts and in the findings arrived at. In all cases the sanction imposed, if any, must be proportionate as determined by the principles of Irish law, which, perhaps unlike in England, contain a constitutional dimension. This is because any sanction akin to a disqualification or a suspension will impact upon one's declared but qualified right to practice his or her profession. Therefore the strictness of the presumptive approach, as evident in Bolton, may not be altogether appropriate in this jurisdiction. Consequently, until the issue directly arises, I would prefer to offer no definitive opinion on the circumstances, limited as they may be, in which an individual who has been struck off could properly be readmitted to the Roll.” (per McKechnie J. at para. 70, p. 39)

- 73.** The latter issue does not, of course, directly arise in this case. However, it is undoubtedly true that, when deciding on the appropriate level of sanction in a case, even where dishonesty is involved, the court must carefully consider all of the facts, including those put forward by way of mitigation and must ultimately decide on a sanction which is proportionate in all the circumstances.
- 74.** Later in his judgment, in various passages which were referred to by Collins J. in his concurring judgment in the Court of Appeal in *Doocey*, McKechnie J., in considering the requirement that in order to be admitted to the solicitors' profession, a person must show that he or she is a “*fit and proper person to be admitted as a solicitor*”, explained that critical to the concept of being a fit and proper person to be admitted to the profession “*are matters such as honesty, integrity and trustworthiness: a person of principled standards, of honest nature and of ethical disposition; a person who*

understands, appreciates and takes seriously his responsibilities to the public, to the administration of justice, to individual colleagues and to the profession as a whole” (per McKechnie J. at para. 66, p. 37).

75. McKechnie J. observed (at para. 71(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”*.
76. Later, (at para. 73), he stated *“that common thread of honesty has no boundary and can never be stood down”*. Finally, he said:
- “[w]here 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.”* (para. 71(vii), p. 41)
77. McKechnie J. confirmed, however, that given the constitutional considerations involved, the penalty in any case *“must be proportionate both to the misconduct as established and to the considerations as mentioned”* (para. 71(ix), p. 41).
78. Shortly before the Supreme Court gave judgment in *Carroll*, Kelly P. gave judgment in *Law Society of Ireland v. Enright* [2016] IEHC 151. That case concerned a solicitor who had a criminal penalty imposed on him for which he served a period of imprisonment. While the solicitor had, therefore, paid his debts to society and the President was of the view that it would be unjust to punish him again and also that it was highly unlikely that there would be any repetition of any offence of dishonesty on his part, nonetheless he made an order that the solicitor be struck off the Roll. He explained why that order was made:

“Echoing the words of Sir Thomas Bingham M.R., the purpose of the sanction sought by the Law Society appears to be ‘the most fundamental of all’. In order to maintain the reputation of the solicitors' profession and to sustain public confidence in the integrity of that profession, I share its opinion that it is necessary that [the solicitor’s] name be struck from the Roll of Solicitors. A suspension from practice would not be adequate.” (per Kelly P. at para. 42)

- 79.** Two years later, Kelly P. restored the solicitor the subject of that case to the Roll of Solicitors for reasons which he set out in a judgment delivered on 31st May, 2018: *Enright v. Law Society of Ireland* [2018] IEHC 440. In the course of that judgment, Kelly P. stated:

“Clients coming in to a solicitor don't ask for testimonials or Garda reports or Garda vetting. They simply assume, and they are entitled to assume, that when a person legitimately holds himself out as a solicitor then that is sufficient for them to be assured that anything that he says will be truthful and will be honest and that no further enquiry is necessary. That is the whole basis upon which the order to strike-off was made, in order to ensure that maintenance of the reputation of the solicitors profession was sustained and that public confidence in the integrity of that profession could likewise be sustained.” (per Kelly P. at para. 11)

- 80.** In his recent concurring judgment in the Court of Appeal in *Doocey*, Collins J. cited extensively from *Burke* and *Carroll* in the context of a consideration as to whether the findings of misconduct against the solicitor at issue in the case disclosed acts of dishonesty. The Court of Appeal upheld the decision of Irvine P. that the appropriate sanction in the case was a strike off having regard to the seriousness of the allegations. The solicitor in the case, who had two prior findings of misconduct

against her, had admitted 24 allegations of misconduct which included the movement and use of client funds and permitting a significant deficit in the client account.

81. At the outset of his concurring judgment, Collins J. said:

“Honesty is, of course, a fundamental attribute required of all legal professionals in practice in the State. Members of the Bar of Ireland have a duty to ‘act at all times with honesty and integrity’ (Rule 2.3(b) of the Code of Conduct for the Bar of Ireland). [...] As regards solicitors, the Law Society’s Guide to Good Professional Practice identifies honesty as one of the ‘core values’ of the profession which ‘a solicitor should at all times observe and promote’ and avoid ‘any conduct or activities inconsistent with those values.’ A solicitor, the Guide says simply, ‘must be honest in his practice as a solicitor in all his dealings with others’ (section 1.3). Because solicitors handle client monies, their adherence to the standards of honest conduct is, of course, of particular importance. The need for absolute honesty — and the serious consequences for solicitors of any departure from honest conduct — is emphasised time and again in the authorities.” (per Collins J. at para. 5)

82. Collins J. also referred (in a footnote to para. 5) to the fact that the Society’s *Guide to Good Professional Practice* also gives clear advice on the need to ensure compliance with all accounts regulations and emphasises the requirement that *“solicitors handling clients’ monies must act with integrity in the client’s best interests and in the interests of the good reputation of solicitors, and the solicitors’ profession”*.

83. At the end of his judgment, Collins J. said the following:

“However, as Sir Thomas Bingham MR noted in Bolton v Law Society [...] while membership of the solicitors’ profession may bring many benefits, those benefits come at the price of being held to exacting standards of honesty,

integrity and trustworthiness. The continuing vitality of such standards is essential to the maintenance of trust and confidence in the solicitor's profession, which is an essential component in the administration of justice and the rule of law. In my view, the admitted misconduct of the Solicitor here involved such a serious departure from those standards that she has, regrettably, forfeited her entitlement to remain on the roll of solicitors.” (per Collins J. at para. 23)

- 84.** As noted above, there were significant differences between the conduct of the solicitor in *Doocey* and that of the Solicitor in the present case. There were a far greater number of allegations against the solicitor in *Doocey*, the amounts were significantly higher (the deficit in the client account was almost €170,000) and the solicitor had two previous findings of misconduct against her. The Tribunal had recommended restrictions on practise, and the Society advocated for a strike off. Irvine P. decided that strike off was the appropriate sanction. Her decision was upheld by the Court of Appeal.
- 85.** These cases show the fundamental importance of honesty on the part of a solicitor and the *almost* invariable, but not invariable, sanction which would be imposed by the High Court (and upheld on appeal) in the case of a solicitor against whom a finding of misconduct involving dishonesty has been made. Notwithstanding that fundamental principle, it is clear from the cases that there may be very exceptional circumstances in which a sanction short of strike off may be both appropriate and proportionate, in the particular circumstances of the case. In my view, this is such a case.

(b) Application of Applicable Principles and Decision

- 86.** The Tribunal did not recommend that the Solicitor's name be struck off the Roll but rather recommended that, if the Solicitor is to continue in practice, he should be

subject to strict conditions and restrictions. The Society is pressing for an order striking off the name of the Solicitor from the Roll of Solicitors. I can well understand why the Society has taken the view that even more serious sanctions than those recommended by the Tribunal should be imposed by the court. I agree with the Society in that respect. Ordinarily, in my view, more severe sanctions than those recommended by the Tribunal would be imposed on the Solicitor because of the dishonest conduct on his part which led to the admitted findings of misconduct before the Tribunal.

- 87.** However, having regard to the unusual and indeed exceptional circumstances of this case, I do not agree that a strike off order should be made. Having carefully reflected on the evidence, including the nature and extent of the very serious misconduct admitted by the Solicitor, and the mitigating circumstances relied on by him, I am of the view that a strike off order would not be a proportionate or appropriate sanction.
- 88.** It goes without saying that the admitted misconduct in this case is extremely serious and involves dishonesty on the part of the Solicitor. The Solicitor took monies from one client and used monies from another to reimburse the former. He permitted a significant deficit on his client account, and wrongfully withheld fees received by him which were due to senior counsel for work done in a case which was settled. Almost invariably, that type of misconduct would lead to a strike off order being made by the court in accordance with the principles and factors listed by Kelly P. in the *D'Alton* case. However, as the case law also makes clear, I must have regard, and give appropriate weight, to the factors relied on by the Solicitor by way of mitigation.
- 89.** In this case, I particularly take into account the following matters relied on by way of mitigation:

- (i) The Solicitor's very difficult personal and family circumstances. In particular, I regard as significant in this respect the very sad life limiting serious neurodegenerative condition with which Solicitor's wife was diagnosed in 2016, which was a devastating event for the Solicitor and his family as well as the fact that one of his five children has cerebral palsy and increased care needs. The Solicitor was, and continues to be, the sole earner in his household. He has, since his misconduct came to light in the summer of 2019, been the sole carer for his wife. The Solicitor was under severe financial pressure at the time of the misconduct and used the funds taken by him to discharge household and other debts, including his professional indemnity insurance. This is by no means an excuse for his dishonest conduct but it is relevant as a mitigating factor.
- (ii) The Solicitor was and remains genuinely ashamed, remorseful and deeply apologetic for his actions.
- (iii) The conduct involved was very much out of character and was part of a "*one off*" transaction or series of transactions when the financial pressure got too much for him.
- (iv) The Solicitor has been seriously personally and mentally affected as a result of his conduct and the subsequent investigation and disciplinary proceedings. He has been diagnosed with acute reactive anxiety and depression for which he has received, and is continuing to receive, treatment and counselling.
- (v) The Solicitor cooperated fully with the Society from the very start of the investigation and did everything asked of him by Mr. O'Neill, the authorised person appointed by the Society to conduct the investigation. This cooperation

included immediately closing his client account, handing over his practising certificate and arranging for the transfer of his files to another solicitor.

- (vi) The Solicitor took responsibility for his conduct from the outset and admitted the allegations against him at a very early stage of the investigation. Those admissions were made, on the first day of the investigation, to Mr. O'Neill. The Solicitor repeated those admissions to the Society's Regulation of Practice Committee and to the Tribunal.
- (vii) The Solicitor committed to the Society's Regulation of Practice Committee that he would reimburse the Compensation Fund in respect of the monies paid out by the Fund to Client A and did so with the generous assistance of members of his family and, in particular, his father, who sold his house and applied the proceeds of sale to that purpose.
- (viii) The Solicitor ensured that the senior counsel's outstanding fees were paid, albeit with some delay.
- (ix) The Solicitor attended all of the meetings of the Society's Regulation of Practice Committee which was considering Mr. O'Neill's report and the allegations made against the Solicitor. He also attended and was represented before the Tribunal. He maintained his admissions before the Committee and before the Tribunal and did not attempt to shirk his responsibility for his conduct.
- (x) Testimonials were provided by the Solicitor to the Tribunal which were found to be "*very powerful testimonials*" by the Tribunal. Those testimonials came from a number of counsel (including the senior counsel whose fees had been wrongfully withheld by the Solicitor) and from the principal of the firm of solicitors who was and is agreeable to acting as the Solicitor's supervisor and

to consider offering the Solicitor a position in his firm. All of those who provided testimonials spoke in very positive and understanding terms about the Solicitor.

(xi) There have been no previous disciplinary proceedings against the Solicitor.

- 90.** In all the circumstances, notwithstanding the undoubtedly very serious misconduct on the part of the Solicitor, I am just about persuaded, by a fine margin, that a strike off would not be a proportionate sanction in this case. Nor, however, do I think that the imposition of the restrictions and conditions on the Solicitor's practice, as recommended by the Tribunal, would be proportionate or give sufficient respect and effect to the factors, identified by Kelly P. in *D'Alton*, which must be taken into account in determining the appropriate sanction to be imposed. The sanctions recommended by the Tribunal would, in my view, fall short of what is required in the circumstances.
- 91.** I must, therefore, seek to identify a sanction which would properly take into account and give effect to the principles and factors identified by Kelly P. in *D'Alton*, including the principle of proportionality.
- 92.** As noted earlier, it is open to me to impose one or more of a number of different sanctions. Those sanctions include a strike off order. However, they also include suspension with or without other conditions or restrictions on practice. It is open to me, in determining the appropriate sanction in this case, to impose more than one of the sanctions set out in s. 8(1)(a)(i) of the 1960 Act (as amended), as was done by Kelly P. in *D'Alton*.
- 93.** In my view, having regard to all of the factors and considerations which I have discussed in this judgment, the appropriate sanctions to be imposed on the Solicitor in this case are:

- (i) An order suspending the Solicitor from practice for period of twelve months from the date on which the Society's application to the court was issued on 27th April, 2023. The suspension would, therefore, expire on 24th April, 2024.
 - (ii) An order that, in the event that the Solicitor wishes to practise as a solicitor following that period of suspension:
 - (a) the Solicitor will not be permitted to practise as a sole practitioner or in partnership,
 - (b) the Solicitor will be permitted only to practise as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of at least ten years' standing to be approved in advance by the Society, and
 - (c) the Solicitor will not be permitted to have access to client funds.
 - (iii) An order that the restrictions referred to at (ii) above will apply to every practising certificate obtaining by the Solicitor in the event of a resumption of practise after the period of suspension referred to at para. (i) above.
 - (iv) An order that the Society will have liberty immediately to re-enter the proceedings to seek to have the Solicitor's name struck off the Roll of Solicitors in the event of any breach of the restrictions on his practice or any further act of dishonesty.
- 94.** In addition to these orders, I will also order the Solicitor to pay (i) the sum of sum of €1,152.00 by way of contribution towards the Society's costs before the Tribunal, and (ii) the sum of €3,554.00 (to include stamp duty), being the measured costs of the Society in respect of its application to this Court.

- 95.** I am satisfied that these sanctions and orders fully take into account the required legal principles set out in the case law and that they are proportionate in all the circumstances.
- 96.** As this judgment is being delivered electronically on 26th June, 2023, I will list the matter for mention at 2pm on Monday, 3rd July, 2023, for the purpose of confirming the final orders to be made in the proceedings.

A handwritten signature in black ink, consisting of a stylized initial 'D' followed by a horizontal line that ends in a small hook.