

THE HIGH COURT

[2017 No. 5 SA]

IN THE MATTER OF DAVID HERLIHY SOLICITOR FORMERLY PRACTISING AS PRINCIPAL OF DAVID HERLIHY, SOLICITORS, LORD
EDWARD STREET, KILMALLOCK, CO. LIMERICK

AND

IN THE MATTER OF AN APPLICATION BY THE LAW SOCIETY OF IRELAND TO THE SOLICITORS DISCIPLINARY TRIBUNAL
AND IN THE MATTER OF THE SOLICITORS ACTS 1954-2011

BETWEEN

LAW SOCIETY OF IRELAND

APPLICANT

AND

DAVID HERLIHY

RESPONDENT

JUDGMENT of Mr. Justice Kelly, President of the High Court delivered on the 10th day of March, 2017

Introduction

1. The Law Society of Ireland ("the Society") seeks to have the name of the respondent solicitor, David Herlihy, struck from the Roll of Solicitors. It does so in circumstances where the Disciplinary Tribunal made findings of professional misconduct against the respondent in respect of numerous matters but did not recommend that sanction. Instead, it recommended that the respondent not be permitted to practise as a sole practitioner or in partnership and that he be permitted only to practise as an assistant solicitor under the direct control and supervision of another solicitor of at least 10 years standing to be approved in advance by the Society. In addition, it recommended that the respondent should pay the sum of €5,000 as a contribution towards the whole of the costs of the Society.

2. The Society takes the view that the sanction recommended by the Disciplinary Tribunal is inadequate.

Background

3. The respondent was admitted to the Roll of Solicitors on 30th March, 2001. He ceased practice on 26th June, 2013 and last held a practising certificate for the year ending 31st December, 2013.

4. In June 2015 the Society sought an inquiry into the conduct of the respondent on the grounds of alleged misconduct. That inquiry took place on 26th February, 2016. The respondent was not present before the Disciplinary Tribunal but was represented by junior counsel and solicitors. At the outset of the hearing before the Disciplinary Tribunal the respondent's legal representatives indicated that they were making admissions in respect of facts which had been set out in an affidavit sworn by Niamh O'Connell and which grounded the application for the inquiry at the behest of the Society.

5. Having considered the material before it and having received submissions the Disciplinary Tribunal made findings of professional misconduct which I now summarise.

6. The Disciplinary Tribunal found that the respondent was guilty of misconduct in that he made stamp duty returns which he knew to be false on six different occasions. It found misconduct on eight occasions when he failed to apply monies collected from one or more clients towards the discharge of stamp duty and or registration fees. The Disciplinary Tribunal also found him guilty of misconduct on five occasions when the respondent failed to take any or any adequate steps when he knew or ought to have known that documentation relating to a loan bore a purchase price in excess of that which appeared in the contract. It also found him guilty of misconduct in that he failed to comply either adequately or at all on one or more occasions with the requirements of s.68(1) of the Solicitors (Amendment) Act 1994; failed on one or more occasions to comply with the requirements of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010; failed to comply adequately or at all with the directions given by the relevant Society's committee made on 23rd May, 2013; failed to attend or arrange to be represented at a meeting of the relevant committee dated 26th June, 2013 when required to do so and failed to reply adequately to correspondence from the Society dated 30th April, 2013.

7. Having made those findings the Disciplinary Tribunal heard submissions in respect of sanction. The Society submitted that it would be appropriate for the Tribunal to recommend to this court that the respondent should have his name struck from the Roll of Solicitors. The Disciplinary Tribunal did not accede to that application but opted for the lesser sanction which I have outlined. In coming to that conclusion the Disciplinary Tribunal expressed itself as follows:-

"The Tribunal noted that the respondent solicitor, due to a number of issues, was overcome in his practice. He had farming interests, got over exposed in property transactions, and suffered from stress and anxiety. He ultimately left the country.

The respondent solicitor has admitted that while there was no loss to clients, he was involved in a series of cases which involved backdating deeds by up to six years. This involved a level of premeditation. In addition, he did not fulfil his obligations to his clients' banks when the values and the loan offers differed from the transferred (sic) deeds.

While the respondent solicitor has cooperated with the Law Society, his first response was not comprehensive and

ultimately he left the country, leaving his practice and his clients in difficulties."

The respondent's affidavit

8. The respondent swore an affidavit for the purposes of the hearing before me. In it he said that he accepted the findings of professional misconduct made by the Disciplinary Tribunal against him. He acknowledged that the conduct in which he engaged was serious professional misconduct "*which was, by any standard deplorable*".

9. He apologised to the court for his serious misconduct which he described as being completely out of character. He said:-

"I still find it difficult to comprehend just how I did what I did. I am genuinely remorseful and I am filled with regret and shame. I was not behaving rationally or in character when I senselessly made stamp duty returns which I knew to be false. I believe that my serious lapses of judgment resulted from the fact that I was overwhelmed by work and was distracted because I was under severe financial stress".

10. His affidavit then addressed the affairs of named clients and his misbehaviour in respect of them. He expressed contrition in respect of his misbehaviour concerning them and assured the court that he will not engage in such dishonest conduct again.

11. Insofar as false stamp duty returns were concerned he said:-

"I admit that I submitted stamp duty returns which I knew to be false. I submitted the false returns in circumstances where the clients had put me in funds to pay the stamp duty and registration fees. I should have discharged the stamp duty and registered the transfers promptly but I overlooked a number of files due to pressure of work. When I realised my error substantial interest and penalties had accrued through my fault. I reiterate that I would have paid the interest and penalties from my own resources if I had been in a position to do so. However, I was in serious financial difficulty because I had invested unwisely in property. I realise that I should not under any circumstances have engaged in this behaviour and I apologise sincerely to this honourable court for my serious misconduct".

12. The respondent's affidavit also admitted that he was guilty of misconduct in failing to apply monies collected from clients towards the discharge of stamp duty and registration fees. He said:-

"I was careful to ensure that clients paid stamp duty and registration fees to me to enable me to comply with my undertaking. However, I failed in a number of instances to comply with my obligation to discharge the stamp duty promptly. I apologise for my misconduct and I can assure this honourable court that I will, if I'm allowed to resume practice, ensure that such serious failings are not repeated by me."

13. The affidavit also admitted his failure to comply with the requirements of section 68(1). He said that his practice was to agree his fees with his client at the outset and to note the agreed fee on the client's file. He said that his fees were always reasonable and that no client ever alleged that his fees were excessive. Nevertheless, he understood the rationale behind s.68(1) and undertook under oath, if allowed to resume practice, that he will fully comply with those statutory requirements.

14. Insofar as he failed to attend or arrange to be represented at a meeting of the relevant committee on 26th June, 2013 he said the following:-

"I say that I believe that I suffered a breakdown following my attendance before the Committee on 23rd May, 2013. The gravity of my misconduct was made apparent to me during the hearing on 23rd May, 2013. The combination of my financial situation and the prospect of being struck off overwhelmed me and I could not see any option other than to flee the country. I abandoned my family and my practice and I emigrated to New Zealand. I realise with hindsight that I should have stayed and faced all of the consequences of my actions however unpalatable those consequences might have been. However, I was not thinking rationally and I panicked."

15. His affidavit concluded as follows.

"I say that my wife was extremely angry with me for abandoning both her and our children but she ultimately forgave me and my family joined me in New Zealand. I have been attempting to put my life together since I came to New Zealand and as part of that exercise I have been reflecting upon and acknowledging the errors of judgment which I made. I realise now that I am not suited to practising as a sole practitioner and I also realise that I took on too much. As a consequence of taking on too much I was unable to keep on top of things and to complete my work load in a timely fashion.

I admit that I engaged in fraud by making stamp duty returns which I knew to be false but I can assure this honourable court that I will never engage in such behaviour again if allowed to resume practice. My actions were not motivated by greed or avarice. I did not intend to cause loss or damage to any party.

I pray this honourable court for an order imposing the sanction recommended by the Tribunal. My parents are elderly and I may, in the not too distant future, have to return to Ireland to assist them. If I have to return I will need to earn my livelihood in Ireland and I would hope to be able to earn my livelihood as an assistant solicitor in the employment and under the direct control and supervision of another solicitor.

I appreciate that it is the duty of this honourable court to protect the public, to uphold the standards of the legal profession and to mark the disapprobation of the conduct of legal practitioners who engage in fraud of whatever kind. However, I say that in the circumstances of this case that the duty of the court can be met by the imposition of the sanction recommended by the Tribunal."

The Society's submissions

16. The Society submits that the six findings involving the making of false stamp duty returns constitute acts of dishonesty. They were done with a view to evading stamp duty thus giving rise to losses to the taxpayer. Dishonesty, it is said, strikes at the heart of the solicitor/client relationship.

17. Insofar as the eight findings of failure to apply monies collected from clients for the discharge of stamp duty and/or registration fees are concerned the Society points out that some of the monies were held for in excess of 10 years and involved sums of about €72,000. It contends that these amounted to serious breaches of trust on the part of the solicitor. Members of the public are entitled to repose complete trust in a solicitor when consulting him or her.

18. The Society contends that the failure on the part of the respondent to take steps when he knew or ought to have known that documents relating to a loan bore a purchase price in excess of that which appeared in the contract amounted to a grave breach of standards on the part of the respondent.

19. The Society also points out that the failure to comply with the various statutory provisions both of the solicitors legislation and the money laundering legislation as well as the failure to comply with directions of the relevant Law Society committees constitute a serious failure on the part of the respondent solicitor to abide by the standards which can be reasonably expected from a member of that profession.

20. The Society also relies upon the number and extent of the findings of professional misconduct which have been made against the respondent. Whilst it gives him credit for having admitted to these wrongdoings in full and not having appealed the decision of the Disciplinary Tribunal, nonetheless it submits that the only appropriate sanction in these circumstances is that the respondent should have his name struck off the Roll of Solicitors. In this regard it draws attention to a number of dicta from decisions in this jurisdiction and in England.

21. In *Bolton v. Law Society* [1994] 2 All E.R. 486 the Master of the Rolls, Sir Thomas Bingham M.R. 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, even after a passage of years, and even where the solicitor had made every effort to re-establish himself and redeem his reputation. If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking off order will not necessarily follow in such a case, but it may well. The decision whether to strike off or to suspend will often involve a fine and a difficult exercise of judgment, to be made by the Tribunal as an informed and expert body on all the facts of the case. Only in a very unusual and venial case of this kind will the Tribunal be likely to regard as appropriate any order less severe than one of suspension.

It is important that there should be full understanding of the reasons why the Tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way. Those are traditional objects of punishment. But often the order is not punitive in intention. Particularly is this so where a criminal penalty has been imposed and satisfied. The solicitor has paid his debt to society. There is no need, and it would be unjust, to punish him again. In most cases the order of the Tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standard. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order of striking off. The second purpose is the most fundamental of all: to maintain the reputation of the solicitors profession as one to 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 readmission. If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to a solicitor, pending reinvestment 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 professions' most valuable asset is its collective reputation and the confidence which that inspires".

22. That judgment was considered by the Supreme Court in the case of *Carroll v. Law Society of Ireland* [2016] IESC 49. That court, per McKechnie J., said of the decision in *Bolton*:-

"69. The learned Master of the Rolls identified proven dishonesty, whether attended by a criminal conviction or not, as the most serious such conduct. Where established, 'no matter how strong the mitigation is', a strike off will almost invariably follow. Furthermore, even where the solicitor in question has, over the following several years, made every effort to rehabilitate himself, and has even done so honourably and in a position of trust and responsibility, a restoration to the Roll will be very rare indeed. He described why this approach, which may seem harsh, was necessary: it was to maintain the reputation of the solicitors' profession in general, and to sustain unreserved public confidence in its integrity.

70. 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 practise 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."(My emphasis)

23. In my own decision in *Law Society of Ireland v. Enright* [2016] IEHC 151, I had to deal with a solicitor who had had a criminal penalty imposed upon him and had served a sentence of imprisonment. He had therefore paid his debt to society. I pointed out that it would be unjust to punish him again. I also regarded as highly unlikely any repetition of any offence of dishonesty on his part.

Nonetheless I still made an order that he be struck off because, as I said:-

"42. 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 Mr. Enright's name be struck from the Roll of Solicitors. A suspension from practice would not be adequate."

The sole purpose was 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 (per Bingham M.R.)."

The respondent's submissions

24. The respondent, like the Society, accepts that the decision as to sanction in this case is for the court and it alone.

25. The respondent submits that I ought to give effect to the recommendation of the Disciplinary Tribunal rather than that of the Law Society. He calls attention to the decision of the Supreme Court in *Law Society of Ireland v. Carroll & Colley* [2009] IESC 41. He points to a number of similarities between that case and this and suggests that in this case as in that one the court ought not to make an order that he be struck off the Roll of Solicitors. In *Carroll & Colley* the High Court Judge spoke of the breaches in their case as follows:-

"It is sufficient to say that there have been multiple and extremely serious breaches of the solicitors regulations over a period of time with such breaches having been committed in many and diverse respects for which both of these solicitors are responsible."

For a substantial part of the investigation at least probably over its most difficult section, they were not only uncooperative but in fact were downright misleading to the Law Society. Whilst that position eventually changed and whilst an affidavit was sworn by or on behalf of both of them, nonetheless the initial and sustained reaction was one of, in effect, deceit. Moreover, attempts, as I have said, were made in a deliberate and sustained manner to hinder and frustrate the continuing investigation conducted by Ms. Devereux on behalf of the Law Society."

The actual charges in respect of which the matter came before the Disciplinary Tribunal numbered at least 50 and virtually all of them, apart from very few, can only be described as involving a series of orchestrated, intentional and conscious acts of misconduct spreading over a period of time. Therefore, on any reading or interpretation or on any view of these allegations, one could only describe them in the manner which I have."

26. The behaviour of those two solicitors *inter alia* involved the conduct of client transactions through bank accounts which were not designated client accounts, the concealment of the existence of client accounts from both their reporting accountants and from the accountant appointed by the Society to investigate compliance with the Solicitors Accounts Regulations, and a failure to make returns to the Revenue Commissioners in respect of payments of rental income to a company which had been struck off the Companies Register while claiming such payments as an overhead. The conduct also included deliberate falsification of their books of account to evade payment of tax and deliberately trying to mislead the Society in producing fictitious books of account when a solicitors' accounts regulations inspection was initiated.

27. The Disciplinary Tribunal recommended suspension from practice for a period of twelve months and a further three years during which each solicitor would not be permitted to practise as a sole practitioner or as a partner in a solicitor's practice but only to practise as assistant solicitors under the direct control and supervision of another solicitor to be approved in advance by the Law Society. They were each ordered to pay a sum of €50,000 to the Compensation Fund as well as the costs of the Society.

28. The High Court and on appeal the Supreme Court followed the recommendation of the Disciplinary Tribunal rather than that of the Law Society.

29. In the course of his judgment in the Supreme Court, Geoghegan J. outlined the factors which the High Court Judge took into account in deciding as he did. They were as follows:-

"1. The ultimate full admissions of the allegations of misconduct with particular reference to the fact that these admissions were made a good deal earlier than the hearing before the Disciplinary Tribunal."

2. After the initial attempts to frustrate and deceive the Society the respondents made a decision that they would thereafter cooperate with the investigation and they engaged the assistance of professionals so as to unravel the events which had preceded the discovery of the misconduct charges in 2003."

3. They complied with the request to provide interim financial security which they did in the lodgement of €600,000."

4. They made full admissions to the Tribunal."

5. They owned up to their motive for indulging in the 'very grave practices' i.e., tax evasion but in that regard they made a full settlement with the Revenue Commissioners. As I have already mentioned, the judge was also satisfied that they had become and remained tax compliant."

6. Regard for the views of the Disciplinary Tribunal with special reference to the fact that the two solicitor members were very senior and experienced members of the profession, as already adverted to, together with the long history of both of them being involved with the Society and the solicitors' profession. In this connection, the judge went out of his way, however, to make it clear that this was merely a factor which he took into account, it was not a question of deciding whether they were or were not 'substantially wrong'."

7. The then position of the two respondents. As already mentioned the judge's belief was that there was not any likelihood of a repetition of the events. He pointed out that Mr. Carroll was about 57 or 58 and that Mr. Colley was 51 or thereabouts. In this connection, the judge had been aware that Mr. Carroll had resigned from practice some considerable time before the hearing. Mr. Colley was continuing in practice."

8. What the judge regarded as 'the most critical persuading factor' in his decision was that 'no monies have ever been found wanting in terms of the solicitors being unable to meet their liabilities. In other words, clients were not left without

funds'. Furthermore, the judge went on to point out that even though it was late in the day, barristers who were owed very substantial sums of money were paid and there was never a worry that the Compensation Fund would have to be called upon. He noted that the sum of €600,000 was released back some years ago and made it clear that if there had been any shortfall in the funds that he would have struck both solicitors off. But he was satisfied there was not.

Whilst the learned High Court judge was obviously entitled to have regard to the fact that no monies were ever found wanting and he was entitled to attach considerable significance to this factor in what he regarded as a finely balanced case, it must be emphasised that it is certainly not the situation that if the solicitor ignores the accountancy regulations thereby putting in jeopardy the position of clients, that he can with any confidence expect to avoid the ultimate sanction, because by good fortune, on the relevant day no client or other person owed money by the practice is at an actual loss.

9. The judge noted that a certain time had passed in particular between the decision of the Tribunal and the hearing in the High Court and that in that time Mr. Colley had been continuing practising with a practising certificate.

10. Finally, the judge said the following:-

'The ultimate test is whether or not, I feel, that if this court were to impose by way of final order and sanction the recommendations of the Disciplinary Tribunal, would that be sufficient in terms of maintaining public confidence in the solicitors' profession as well as doing justice to the solicitors in question and also upholding the good name of the Law Society. I think on balance it would.'

30. Geoghegan J. took the view that the decision of the High Court was one which was open to the judge to make and the Society's appeal seeking to disturb the order of the High Court was unsuccessful.

31. Counsel on behalf of the respondent points to a number of similarities between that case and this. First, full admissions were made by the respondent in this case when he was before the Disciplinary Tribunal. Second, no client has been at a loss as a result of the misbehaviour of the respondent nor has any claim been made upon the Compensation Fund. Third, the Disciplinary Tribunal in this case consisted of two very experienced solicitors and one lay person. The solicitors were the Chairman of the Disciplinary Tribunal, Mr. Farrell and Mr. Stephen Maher, a long standing solicitor of great experience. There is in this case no likelihood of a repetition of the conduct complained of having regard to the contrition expressed on affidavit and the undertaking given as to future behaviour.

32. In these circumstances I am urged not to give effect to the recommendation of the Law Society.

33. Counsel also drew my attention to two other decisions which were reported in the Law Society Gazette for January/February 2016. They were the cases of Kevin O'Keeffe and Raymond St. John O'Neill. In the case of Mr. O'Keeffe he misapplied stamp duty and outlay funds of €83,945 received in respect of a property purchased by a named client between February 2004 and August 2005 together with numerous other wrongdoings. In March 2015 the High Court gave effect to the Tribunal's recommendation that he not be permitted to practise as a sole practitioner but only under supervision and made other ancillary orders. In the case of Mr. O'Neill he was found guilty of numerous counts of misconduct one of which was that in the course of acting for a named client in the purchase of a property he caused or allowed an updated deed to be submitted to the Revenue Commissioners for stamping. Once again in that case he was not struck off but was not permitted to practise as a sole practitioner. That order was made in the High Court in July 2015.

34. In each of those cases the Law Society sought to have the solicitors struck off when the matter was before the High Court. In neither case were the reasons for the High Court decision made known to me.

35. In respect of these comparisons I share the views expressed by Moses L.J. in the course of his judgment in *Law Society v. Emeana & Others* [2013] EWHC 2130. I cited this passage in my own judgment in *Enright's* case and I do so again. He said:-

"24. This appeal took a familiar course. The respondents were able to show cases of at least as great a gravity where fines were imposed and the appellant authority was able to refer to cases where it appeared the failures were no more severe but at least suspension was ordered.

25. I did not find this process of assistance. Of course, the disciplinary tribunal must strive for consistency. But uniformity is not possible. The sentences imposed are not designed as precedents. The essential principle is that which was identified by Sir Thomas Bingham MR in Bolton v. Law Society [1994] 1 WLR 1286. The profession of solicitor requires complete integrity, probity and trustworthiness. Lapses less serious than dishonesty may nonetheless require striking off if the reputation of the solicitors' profession 'to be trusted to the ends of the earth' is to be maintained.

26. The principle identified in Bolton means that in cases where there has been a lapse of standards of integrity, probity and trustworthiness a solicitor should expect to be struck off. Such cases will vary in severity. It is commonplace, in mitigation, either at first instance or on appeal, whether the forum is a criminal court or a disciplinary body, for the defendant to contend that his case is not as serious as others. That may well be true. But the submission is of little assistance. If a solicitor has shown lack of integrity, probity or trustworthiness, he cannot resist striking off by pointing out that there are others who have been struck off, who were guilty of far more serious offences. The very fact that an absence of integrity, probity or trustworthiness may well result in striking off, even though dishonesty is not proved, explains why the range of those who should be struck off will be wide. Their offences will vary in gravity. Striking off is the most serious sanction but it is not reserved for offences of dishonesty."

Conclusion

36. I have given all due weight to the submissions made by both sides. I give full credit to the respondent for the fact that he admitted his wrongdoing, has under oath expressed contrition and has undertaken that there will never be any repetition of such professional misconduct. I bear in mind that the recommendation from an experienced Disciplinary Tribunal is that he should not be struck off. By the same token the Society takes a very different view. I also take account of the fact there was no loss of monies to clients and that the Compensation Fund will not have any liabilities visited upon it as a result of the respondent's misconduct.

37. But I also have regard to the fact that where dishonesty is established on the part of a solicitor then no matter how strong the

mitigation is a strike off will almost invariably follow. In this regard it is of significance that the Supreme Court in *Carroll's* case has endorsed, subject to the caveat as to proportionality, the views of Bingham M.R. to this effect in *Bolton's* case. I have emphasised the relevant sentences in the passages cited by me from the judgment in *Carroll's* case. The decision in *Carroll* post dated the decisions in the cases of Kevin O'Keeffe and Raymond St. John O'Neill.

38. The crucial issue is whether it can be said that the lesser penalty recommended by the Disciplinary Tribunal is one which would be sufficient to maintain public confidence in the solicitors' profession whilst at the same time doing justice to the respondent and upholding the good name of the Society.

39. In the present case there have been lapses of standards of integrity, probity and trustworthiness. There have been multiple such instances and as the Disciplinary Tribunal itself recorded there was a level of premeditation involved in the respondent's conduct.

40. In these circumstances I conclude that this is a case in which the ultimate sanction of the respondent being struck off is necessary if the reputation of the solicitors' profession "*to be trusted to the ends of the earth*" is to be maintained.

41. I will therefore direct that the respondent be struck off the Roll of Solicitors.