



THE HIGH COURT

[2018] IEHC 160

[2015 No. 6SA]

BETWEEN

THE LAW SOCIETY OF IRELAND

APPLICANT

AND

PATRICK E. CALLANAN

RESPONDENT

JUDGMENT of Mr. Justice Kelly, President of the High Court delivered on the 11th day of April, 2018

Introduction

1. The respondent (Mr. Callanan) was admitted to the Roll of Solicitors on 31st March, 1995. He was a partner in the firm of Wells & O'Carroll at Main Street, Carrickmacross, Co. Monaghan from 2001 until March 2009. After ceasing to be a partner he remained in employment as a solicitor in that firm until 6th November, 2009. Shortly thereafter a complaint was made by his former partner in that firm Enda P. O'Carroll concerning Mr. Callanan's conduct. That complaint resulted in an application for an inquiry and a hearing before the Solicitors Disciplinary Tribunal (SDT).

2. Following a hearing by the SDT Mr. Callanan was found guilty of five counts of professional misconduct. They were that he:-

(1) Provided a certificate of earnings in respect of his sister, N. to Permanent TSB dated 15th September, 2004 knowing the contents of the certificate to be false;

(2) Provided a certificate of earnings in respect of his sister, N. to ICS Building Society dated 14th September, 2004 knowing the contents of the certificate to be false;

(3) Provided a certificate of earnings in respect of his sister, N. to IIB Home Loans Ltd. dated 15th September, 2004 knowing the contents of the certificate to be false;

(4) Provided a certificate to Permanent TSB and IIB Home Loans representing that his sister, N. was employed as a law clerk with the firm of Wells & O'Carroll, solicitors when she had never been employed by that firm;

(5) Gave or caused to be given multiple undertakings to named lending institutions to register a first charge in their favour in respect of the property at 8, Carraig Brooke, Ivy Lane, Carrickmacross, Co. Monaghan.

3. Mr. Callanan issued the certificates the subject of misconduct findings 1 – 4 to enable his sister who had recently returned from the United States to obtain a mortgage on a home which she intended to purchase. The certificates were false in all material respects and his sister had never been employed in Mr. Callanan's firm.

4. The fifth finding arose in circumstances where Mr. Callanan purchased a property in 2004 and granted a mortgage of it in favour of the Ulster Bank. Mr. Callanan was advised of investment opportunities to purchase property in China. On three separate occasions in 2005, 2006 and 2007 respectively he placed undertakings before his partner, all of them in respect of the property which he had purchased in 2004 and had his partner sign those undertakings. The undertakings were to register a first charge in favour of the lending institutions in respect of the relevant property. These undertakings were false and could never be met because a first charge had already been registered on the property at the time of its purchase.

5. When the SDT first convened on 22nd March, 2011 a letter was handed in from Mr. Callanan accepting that the facts alleged against him were correct and that they amounted to professional misconduct on his part. Mr. Callanan proposed to the SDT that he would sell two of his properties in China and give over the proceeds so that no liability would arise for his partner on foot of the undertakings. As a result the hearing was adjourned until later in 2011 and then until dates in 2012, 2013 and 2014. It was not until 2014 that the second of the Chinese properties was sold and the amounts realised were sufficient to discharge the liabilities and thus rendered his partner free from potential liability. In the event no loss was incurred on foot of the wrongdoing of Mr. Callanan.

6. Insofar as his sister's affairs were concerned she succeeded in obtaining a mortgage and that mortgage has been serviced by her throughout. Thus, no loss has been incurred in respect of those letters either.

7. The Society urged the SDT, in considering the question of penalty, to recommend that Mr. Callanan's name be struck off the Roll of Solicitors. It did so because his acts amounted to egregious dishonest misconduct. In such circumstances it was argued that no other sanction was appropriate.

8. Mr. Callanan urged the SDT to take a different course. He contended that he was under extreme emotional pressure to assist his sister in purchasing a property upon her return to this country from America. He pointed out that with the sale of the Chinese property the undertakings wrongfully given were ultimately honoured notwithstanding the fact that the whole affair caused considerable distress and inconvenience to his partner for a substantial number of years. He also apologised for his behaviour and accepted that it was a complete breach of trust.

SDT's recommendation

9. In formulating its recommendation the SDT said as follows:-

"From the authorities furnished it appears to the Tribunal, therefore, that in considering what penalty to impose on a solicitor found guilty of misconduct it should consider the following:-

- 1) First and most importantly it must protect the good name of the profession.
- 2) It must consider how the public can be best protected.
- 3) There may be a punitive element in the penalty.
- 4) Will the decision or recommendation cause real injustice to the solicitor concerned? This also relates to the principle of proportionality canvassed by Mr. Gavagan in his submissions.

In addition, one further essential question the Tribunal has to consider is whether credit should be given to the respondent solicitor for his early admissions of guilt. The fact that he cooperated fully with the Law Society and his partner in attempting to reverse the position in which his partner found himself and indeed succeeded in doing so. The Tribunal recognised that the question of the sister's mortgage is still an issue but given that the mortgage has now been extant for almost 10 years and is fully serviced there appears to be little or no financial risk to any person in respect of that particular issue.

The Tribunal is of the view that credit should be given to solicitors, who despite having committed egregious acts of misconduct do cooperate fully upon those acts being discovered and at no cost to any other person remedy the situation. The Tribunal does not wish to state that there may not be instances where despite all attempts at amelioration, the conduct is so outrageous that the only possible recommendation is to strike off the respondent solicitor but the Tribunal does not believe that this is one of these cases. The Tribunal fully recognises the absolute distress that the respondent solicitor's partner has suffered as a result of the respondent solicitor's actions but is of the view that, if the respondent solicitor had not fully cooperated and/or remedied the damage his actions had caused his partner and the Law Society's distress would have been ultimately far greater and therefore the respondent solicitor must be given credit for his actions in remedying the misconduct.

Accordingly, this Tribunal does not propose to recommend to the President of the High Court that the name of the respondent solicitor be struck off the Roll of Solicitors but not without considerable misgiving. Placing his partner in the invidious position in which he found himself was misconduct of the most serious kind and deserves severe punishment.

However, the Tribunal is of the view that this punishment can be achieved without resorting to the ultimate sanction, thus encouraging solicitors in similar circumstances to cooperate fully with the Law Society and other complainants to ensure that their misconduct is remedied insofar as it can be.

The Tribunal therefore recommends that:-

- 1) *The respondent solicitor be given a limited practising certificate to practise as an assistant solicitor with a solicitor of not less than 10 years standing;*
- 2) *The respondent solicitor must never be given cheque signing rights over any client account; and*
- 3) *The respondent solicitor when seeking employment as a solicitor must furnish any prospective solicitor/employer with a copy of these findings.*

In imposing these sanctions the Tribunal has taken account of the principles set out in O'Carroll & Colley, and the necessity for the decision to be proportionate and appropriate."

10. In addition to these sanctions the SDT also directed Mr. Callanan to pay the sum of €5,000 to the Compensation Fund and a sum not in excess of €8,000 as a contribution towards the whole of the costs of the Law Society. In addition, it required him to pay the measured expenses of €2,000 to Mr. Enda P. O'Connell in respect of his attendances before that Tribunal.

The High Court hearing

11. The report of the SDT was brought before Kearns P. for consideration. The Society urged him to depart from the SDT's recommendations and to strike Mr. Callanan's name off the Roll of Solicitors. Mr. Callanan, in the course of a replying affidavit which he swore for that hearing, fully acknowledged his guilt and pointed to his level of cooperation in order to ensure that there was no financial loss to any party. He acknowledged the distress caused to his former partner and expressed his ongoing shame for his conduct. He urged that the sanctions in the circumstances were proportionate although he acknowledged that his misconduct merited a severe sanction. He concluded his affidavit by stating:

"15. Even though it is not my intention to practise as a solicitor, any decision to strike me off as a solicitor is likely to have an impact on my future employment prospects and expose me to significant public opprobrium. In that regard I say that I am prepared and do so undertake to this honourable court, that I will not act as a solicitor in any capacity, whether by a limited practising certificate or otherwise pending further order of the court. I say that my solicitor did by letter dated 11th March, 2015 write to the Law Society informing the Society that I was prepared to give the aforementioned undertaking ... in the circumstances I would respectfully urge the court to resist acceding to the application imposing the ultimate sanction."

12. Mr. Callanan's solicitor's letter which was exhibited in the affidavit further provided that any application made to vacate his proposed undertaking would be made on notice to the Society and any supervising solicitor employing Mr. Callanan and would be subject to the approval of the Regulation of Practice Committee of the Society.

13. In the event, Kearns P. did not follow either course. Instead he made an order restraining Mr. Callanan from practising as a solicitor for ten years and further provided that at the expiration of that ten year period he would have to apply to the court should he wish to resume practice as a solicitor.

The Appeal

14. Mr. Callanan appealed that order of Kearns P. on two bases. First, he contended that having regard to the statutory regime applicable Kearns P. had no jurisdiction to make such an order. Second, he alleged that Kearns P. gave inadequate reasons for the decision in question. Mr. Callanan's appeal was successful on both grounds. The case was remitted by the Court of Appeal for a fresh decision to be made by this court.

15. It is in these circumstances that the matter has come before me.

The statutory disciplinary regime

16. The disciplinary regime for solicitors is a statutory one and is set out in the Solicitors Act 1954 (as amended). It involves the SDT conducting an inquiry into the conduct of a solicitor following a complaint being made. Should the Tribunal find that there has been such misconduct then, except in the case of certain minor sanctions, it must set out those findings in a report for this court. The report must include an opinion from the SDT as to the fitness of the solicitor to be a member of the profession. It must also make its recommendation as to the sanction which should be imposed by this court.

17. Section 8(1) of the Act stipulates the powers of the court on an application such as this. The court may do one or more of the following things namely:-

- 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 area 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.*

The findings

18. At paragraph 2, I have set forth the findings of professional misconduct made against Mr. Callanan. I now look at them in some little detail.

19. The certificates of earnings and employment wrongfully provided by Mr. Callanan were very detailed. They certified that Mr. Callanan's sister was employed as a law clerk with his firm at an annual salary of €45,000. They also certified the payment of commission payments of €3,000 per annum and either overtime or bonus of a similar sum. The most detailed certificate was the one provided to the ICS Building Society. It informed that entity that N.'s employment was permanent, was subject to an annual review and anticipated that she would remain in the service of Mr. Callanan's firm. Each certificate was authenticated by Mr. Callanan's signature, his description as "partner" and the rubber stamp of Wells & O'Carroll Solicitors, Carrickmacross, Co. Monaghan.

20. As to the undertakings given to lending institutions the following was the position. The premises at Carraig Brooke had been purchased with the assistance of funds made available by Ulster Bank. Mr. Callanan furnished an undertaking of 19th July, 2004 to that bank. No question arises concerning that undertaking. On 11th August, 2005 an undertaking was given to ACC concerning the grant of what was described as a first legal charge over the same premises.

21. On 10th March, 2006 a further undertaking concerning the grant of a first legal charge over the same premises was furnished to Ulster Bank to secure funds. He also proffered a charge on a property in Manchester to support this borrowing.

22. On 25th July, 2007 a further undertaking purporting to grant a first legal charge over the same premises in favour of Bank of Ireland was furnished in order to acquire a further sum. Thus, many hundreds of thousands of euros were acquired on foot of undertakings which Mr. Callanan knew were false.

The legal position

23. In *Carroll v. Law Society of Ireland* [2016] IESC the Supreme Court considered an appeal by an apprentice solicitor against the decision of Finnegan P. that he was not a fit and proper person to be admitted to the Roll of Solicitors. That judgment is of relevance to this case for two reasons. First, it considered the consequences of dishonesty on the part of a solicitor. Second, it commented on the leading case in England on this topic namely *Bolton v. Law Society* [1994] 1 WLR 512.

24. In *Carroll's* case McKechnie J. speaking for the Supreme Court said:-

"66. In broad terms, 'fitness', which covers the necessary academic qualifications and practical experience, also relates to matters such as knowledge, skill, understanding, expertise, competence and the like, all of which impact on one's capacity to appropriately discharge the obligations which the practice of his profession imposes. The second aspect of the term 'being a proper person' is much more directly related to character and suitability. Critical in this respect 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.

67. It is neither possible nor desirable to try and outline the acts, omissions and conduct by which such a standard should be judged: these range on the vertical scale from the trivial, negligible and inconsequential to the grave, appalling and deplorable. On many occasions the regulatory body, and on review the court, will have little difficulty in appropriately positioning the conduct established. On other occasions, however, a fine line and narrow call may have to be made; when that difficulty occurs the decision will be a matter of degree. Whichever may be the situation, each case will be circumstance specific, and must be individually assessed at all levels of the adjudicative process.

68. In a judgment quoted by the President in the instant case, Bolton v. Law Society [1994] 2 All E.R. 486, Bingham M.R. analysed some aspects of the range of conduct which might call for regulatory intervention in respect of a solicitor. Every solicitor and all intending solicitors should take time to engage with it. Whilst some of what is stated is echoed in Burke, what emerges from the overall decision are the unforgiving consequences which would most likely follow from any proven misconduct, save that at the lowest level of the scale.

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."

25. Later in that judgment McKechnie J. summarised the appropriate principles applicable to a determination as to whether a person is fit and proper to gain entry to the Roll of Solicitors and to maintain his or her name on that Roll. In the course of that summary he said:-

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

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

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

26. Those quotations demonstrate an approval by the Supreme Court of the approach of Sir Thomas Bingham M.R. in *Bolton's* case with the proviso that the strictness of his presumptive approach may not be altogether appropriate in this jurisdiction because of the existence of a constitutional dimension. It is appropriate to remind oneself of what Sir Thomas Bingham M.R. said:-

"14. 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 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 would the Tribunal be likely to regard as appropriate any order less severe than one of suspension."

27. It is important to understand the rationale behind this approach as explained by the Master of the Rolls. This is what he said:-

"15. 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 standards. 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 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."

28. I followed the approach of *Bolton's* case in my own decision in *Law Society v. Enright* [2016] IEHC 151 which was decided prior to judgment being delivered by the Supreme Court in *Carroll's* case.

29. These Irish authorities approve of the approach of the Court of Appeal in *Bolton's* case subject to the caveat concerning the constitutional dimension which is applicable in this jurisdiction. That aspect of the matter is, I believe, accurately identified by

Geoghegan J. in the decision of the Supreme Court in *Law Society v. Carroll & Colley* [2009] IESC 41. In that case the solicitors had engaged in a deliberate scheme of tax evasion and in order to do so had operated accounts which were concealed from the Law Society. They had also deliberately falsified their books of account. The High Court declined to strike their names off the Roll of Solicitors. The Supreme Court upheld the order noting that its role on appeal was solely to determine whether as a matter of law it was open to the High Court judge to arrive at the decision made by him. It found that the decision of the judge was one which was open to him albeit that if he had decided to strike their names off the Roll it would not be "easy to see how that decision could be overturned". In his judgment Geoghegan J. noted that the trial judge had concurred with a view expressed by Morris J. in an unreported decision in *Burke v. Burke* delivered on 12th October, 1999 agreeing with a passage from a judgment of Sir John Donaldson M.R. in the English Court of Appeal but not with that judge's addendum to it. He said:-

"The passage in question was:

'The striking off of a solicitor can have a punitive element, it can have an element of protection for the public but it always has an element of protecting the good name of the solicitors' profession and the good name of the profession must be paramount.'

The addendum, however, was that if by the application of those principles, some injustice should be unavoidable and thus sustained that that matter must regretfully be accepted. It is clearly the law in this jurisdiction therefore that in considering the question of striking a solicitor off the Roll, there must be put into the balance, among the other factors, any question of real potential injustice being caused to the solicitor in question."

30. These decisions appear to me to establish the proposition that a solicitor who is guilty of proven dishonesty, whether attended by a criminal conviction or not is guilty of serious professional misconduct. 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 frontline consideration". (per McKechnie J. in *Carroll v. Law Society* [2016] IESC 49)

The misconduct in suit

31. All of the findings of misconduct against Mr. Callanan involve dishonesty on his part. Given the nature of the acts of dishonesty and the duration of time over which they were committed it cannot be said but that they were other than premeditated. This was not a case involving a dishonest act carried out in, to quote the Law Society's counsel, "a moment of madness". These were repeated acts of dishonesty and all with a common aim namely to persuade financial institutions to provide funds in one instance for his sister and in the other for himself. This conduct can only be characterised as being seriously dishonest.

32. The SDT identified the conduct involving the furnishing of undertakings as being "undoubtedly the more serious of the breaches". I agree. In this regard it is apposite to recall what was said by the Court of Appeal in *Law Society of Ireland v. Tobin* [2017] IECA 215 on the topic of solicitors' undertakings. There Peart J. said:-

"The solicitors undertaking is part of the hard currency of the solicitors' profession. The trust and faith reposed in such undertakings are an indispensable part of the conduct of legal business and transactions, without which the profession and the public it serves would be the poorer. The undertaking is based upon the absolute honesty and integrity expected of a solicitor in his dealings with his clients, other parties to a transaction, and the courts. A solicitor is an officer of the courts. His/her word must be his/her bond. If a solicitor undertakes to do something it must be done. If there is any tolerance allowed for slippage in the traditional approach to such undertakings and the respect to be accorded to them, the hard currency of the profession is irreparably damaged to the point where other solicitors will not – indeed, should not – accept an undertaking. It should not be thought that the serial failure to honour undertakings such as occurred in this case may not be considered to be at the same level of seriousness as misconduct that results in a financial loss to clients or third parties. This is particularly so where as yet some of the undertakings are still outstanding even though serious efforts have been made to rectify the problems involved.

On the significance of undertakings Kearns P. expressed it thus in Law Society v. Lambert [2015] IEHC 453:-

'They (undertakings) are outward manifestations of its probity, honesty and reliability. They are the currency of the profession's integrity. For this reason the court regards breaches of undertakings as being matters of the utmost gravity, as they put public trust in the solicitors' profession at serious risk.'

I entirely agree with that statement."

33. Sometimes undertakings are given negligently but not dishonestly. That is not the case here. Mr. Callanan must have known that these undertakings were incapable of performance when they were given.

34. A further feature of the misconduct concerning the undertakings is the fact that he embroiled his partner in them in a twofold fashion. First, he placed the offending undertakings before his partner for signature by him. The partner, trusting Mr. Callanan, unwittingly signed them. Second, he placed Mr. O'Carroll at what the Tribunal described as "an extremely substantial financial risk". The Tribunal found, in my view correctly having regard to the evidence that was given by Mr. O'Carroll, that Mr. Callanan's actions had caused him "considerable distress and inconvenience for a substantial number of years".

35. Having regard to these matters I am satisfied that the misconduct on the part of Mr. Callanan is at the highest level of the vertical scale referred to by McKechnie J. It was premeditated dishonesty engaged in with a view to financial gain and his abuse of undertakings strikes at the heart of the solicitors' profession.

Mitigating factors

36. Mr. Callanan calls my attention to a number of mitigating factors.

37. First, he at no stage contested the allegations before the SDT. In fact he furnished a letter to that Tribunal in advance of the first day of the hearing accepting the allegations made and that they amounted to professional misconduct. He is undoubtedly entitled to credit for this but as against that it has to be said that the evidence against him was very clear and the prospects of him not being found guilty were remote.

38. Second, nobody suffered any financial loss as a result of his activities. This is undoubtedly so. This state of affairs was brought

about by the matter being adjourned on multiple occasions before the SDT so as to enable him to effect a sale of the Chinese property. This he did. Thus Mr. O'Carroll ultimately was not called upon on foot of the undertakings nor was the Compensation Fund.

39. Third, Mr. Callanan points out that he has already been before this court on one occasion and the Court of Appeal twice. The first appeal was in respect of an extension of time and the second was the substantive appeal. He succeeded on that appeal and the order made by Kearns P. in 2015 was discharged and a new hearing directed. During that period he was subject to the order made by Kearns P. which suspended him from practice as a solicitor. Thus, he has now had three years of being subject to the restriction directed by Kearns P. He asks me to take that into account which I do.

40. Mr. Callanan contends that I ought to uphold the decision of the Tribunal and not accede to the Law Society's application to strike him off the Roll. If I do not follow the recommendation of the SDT he nonetheless asks me not to proceed to strike him off on the basis that he will give an irrevocable undertaking to the court never to reapply for a practising certificate. He does not have a practising certificate at present and the effect of this undertaking would ensure that he would never practise the profession of solicitor again although he would remain on the Roll of Solicitors. In an affidavit sworn on 26th January, 2018 he sets out some of his personal circumstances. He recounts that he has not practised as a solicitor since November 2009 and has not held such a certificate since the end of that year.

41. In July 2013 he commenced an internship with a company and in turn went on to become a senior associate with it. He was not employed as a solicitor nor did he act as a solicitor in that company. In August 2014 the human resources department of the company was made aware of his issues with the Law Society and he was informed that they were considering terminating his employment. He deemed it prudent to resign and that he did in September 2014.

42. In September 2015 he commenced a twelve month programme organised through a third level college and whilst completing that he was awarded a full time position assisting a government department to organise a new programme. He expresses a real and genuine concern that in the event that he is struck off the Roll of Solicitors his current employment "*might come under threat or that it will cause me great difficulties in advancing my career*". He points out that there is a particular stigma attached to being a "struck-off solicitor" which will inevitably interfere with his employment prospects and any possible promotion opportunities which might present themselves to him at a later date. He describes his primary position as being one where the recommendations of the SDT should be upheld. He expresses the belief on affidavit that the sanctions recommended by the SDT are sufficient to maintain public confidence in the solicitors' profession and the upholding of the good name of the Law Society.

The SDT

43. This court is not bound by the decision of the SDT but Mr. Callanan contends correctly that the court should attach a good deal of weight to its recommendations. It is a specialist tribunal well placed to make an informed decision. Nevertheless if this court, despite paying such respect to it, is satisfied that the penalty recommended by it was clearly inappropriate then it should not follow it.

44. It is to be noted that the tribunal in deciding not to recommend that Mr. Callanan should be struck off did so "*but not without considerable misgiving*". It said: "*placing his partner in the invidious position in which he found himself was misconduct of the most serious kind and deserves severe punishment*". It then went on to say that that punishment could be achieved without resorting to the ultimate sanction, thus encouraging solicitors in similar circumstances to cooperate fully with the Law Society and other complainants to ensure that their misconduct is remedied insofar as it can be. The Law Society contends that the SDT was simply wrong to conclude as it did.

Decision

45. This case involves serious serial acts of dishonesty on the part of Mr. Callanan. They were premeditated and protracted over a number of years. The ones involving certificates concerning his sister might be explained by a misplaced sense of loyalty to her. Nonetheless they were dishonest. The SDT was correct in characterising the misuse of undertakings as the more serious matter. They were created with a view to persuading financial institutions to advance large sums of money in the mistaken belief that their lending was secured. Abuse of the undertaking system strikes at the heart of the solicitors' profession. Whilst ultimately there was no financial loss to anybody in the present case to quote Peart J. "*it should not be thought that such conduct may not be considered to be at the same level of seriousness as misconduct that results in a financial loss*".

46. A solicitor who engages in such dishonesty may expect that invariably, though not necessarily always, the penalty of being struck off will be appropriate. The SDT in this case decided not to make such a recommendation. It said the case was a difficult one to decide and in not recommending a strike-off did so "*but not without considerable misgiving*".

47. I have come to the conclusion that the recommendation of the SDT in this case ought not to be followed. I am of opinion that it attached too much weight to the plea of guilty when the case was really an open and shut one. Furthermore, I hold that notwithstanding the cooperation of the respondent, his efforts which ensured that nobody suffered a financial loss and the SDT's desire to encourage such an approach generally, nonetheless the scale and extent of the dishonesty was such as to make this a case where the ultimate sanction was the only possible one to recommend so as 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.). I do not accept that the SDT was correct in concluding that this was not a case where the "*conduct was so outrageous that the only possible recommendation is to strike off the respondent solicitor*". Neither do I accept that the SDT was correct in concluding that it was not necessary to resort to the "ultimate sanction". Despite Mr. Callanan's successful attempts at amelioration, this is a case where in order to maintain the reputation of the profession as described by Bingham M.R. a strike off is necessary. In coming to the conclusion that this is the order which I ought to make, I take into account all that has been said on behalf of Mr. Callanan. I take into account that I should afford him as much leniency as possible in the circumstances, his admission of guilt, his cooperation, the steps which he took to remedy the situation, that nobody lost money, that he is now 53 years of age and has not practised as a solicitor for almost 10 years, that he had no prior disciplinary record with the Law Society, that he has not come to the attention of the Law Society since the events and his suspension since the order made by Kearns P. in 2015. I also take into consideration the possible effects on his future career should he be struck off.

48. I have also given anxious consideration to the perpetual undertaking which was proffered. On one view it might be said that such an undertaking is more protective of the public interest than the order to strike-off. A strike-off order may be the subject of an application for reinstatement. A perpetual undertaking would last for the remainder of Mr. Callanan's life and would ensure that he would never practise law again. Despite this, I accept the Law Society's contentions that such a course would be inappropriate. First, it says that in reality there is little prospect of a reinstatement order being made and that any solicitor found guilty of such dishonesty would have a mountain to climb in order to be reinstated to the Roll of Solicitors. Second, it contends that the protection of the public and the integrity of the solicitors' profession can only be met if solicitors are aware that acts of dishonesty will

invariably, though not always, result in an order that they be struck-off. To permit them to avoid such a consequence by giving an undertaking of the type sought would be to remove the ultimate sanction and would do a disservice to the solicitors' profession as a whole and the protection of the public. I accept the Law Society's contention that the signal that a strike-off order will, save in exceptional circumstances, be made in respect of solicitors guilty of serious dishonesty is a reassurance to the public that they may continue to have trust in the solicitors' profession and the probity of its members.

49. I am fully conscious of the necessity to ensure that the penalty to be imposed is proportionate and appropriate but notwithstanding the able arguments made on behalf of Mr. Callanan, I am unable to conclude that he should not be struck off. To refuse to strike off would be to endorse the notion that he is a fit and proper person to remain on the Roll. How could such a course 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. in *Bolton*)? On the contrary given the behaviour of Mr. Callanan and notwithstanding his personal circumstances it would do a disservice to the solicitors' profession and be a blow to its most valuable asset namely its collective reputation and the confidence which it inspires were his name to remain on the Roll.

50. I direct that Mr. Callanan's name be struck off the Roll of Solicitors. I will not direct him to pay any sum to the Compensation Fund. It suffered no loss. He must however pay €5,000 as a contribution towards the costs of the Law Society before the SDT and €2,000 to Mr. Enda P. O'Carroll in respect of his attendances before the SDT.