

JERSEY / JUDGMENT

Between v An Advocate [2021] JRC 292 (19 November 2021)

[2021] JRC 292

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judgment

the deputy bailiff: 1. On 9 th November 2021 we heard and dismissed the appeal of the Law Society in this case. Nonetheless there were various matters of wider significance, particularly bearing in mind that this is only the second appeal from a hearing conducted in front of the Disciplinary Committee, and accordingly we provide a judgment in relation to certain of the issues that arose for our consideration. The facts 2. The facts that gave rise to the complaint against the advocate can be set out quite shortly. Various matters gave rise to a dispute between the advocate and his neighbours. It is not necessary to set out the circumstances of the dispute. Conversations between the advocate's wife and the complainants led her to believe that photographs of her children had been taken. These were relayed to the advocate and he believed them to be true. That the advocate had such a belief and held it honestly was a finding of fact made by the Disciplinary Committee. However, the response of the advocate to this dispute and, in particular, his belief that photographs had been taken, was inappropriate. He sent four letters, three dated 10 th August 2020 and one dated 30 th August 2020. They were written from his home address but on his law firm's headed notepaper and signed by him as an advocate. He claimed before the Disciplinary Committee that he used the firm's headed notepaper by mistake. This was rejected by the Committee which held that he wrote the letters on headed notepaper intentionally. The Committee rejected the suggestion that this was private correspondence written from one neighbour to another in a personal capacity. The Committee held that the letter was intended to have the "full weight and effect of a legal letter and the recipients must have seen it as exactly that" . 3. The letters conveyed serious allegations against the complainants including accusing them of "breach of privacy/data protection". The allegations included "Your actions cannot be seen as anything other than an utter breach of privacy and they also give rise for some very serious data protection issues, as well as child protection issues. As you are aware, I have adolescent daughters and a young son and I am disgusted by your admitted voyeurism. My wife and I do not give you consent to taking photos of our property, garden, children, our guests/workmen ...". The Committee found that by using the term "voyeurism" the advocate was alleging that photographs had been taken for sexual gratification. The advocate demanded that the recipients of his correspondence provide to him copies of all images, videos, audio files, together with confirmation that such images had been destroyed, together with an express undertaking to

the effect that they had indeed destroyed the images. He asked for a response by 15 th August 2010 and said that if he would be writing to the employers of his two neighbours. 4. The Disciplinary Committee found that the first letter (to the neighbours): (i) was clearly written by the advocate in his capacity as an advocate; (ii) made serious allegations against the complainants without further enquiry being made of the complainants as to whether they had such photographs; (iii) contained threats (which were carried out) regarding contacting the complainants' employers; and (iv) the allegations in relation to voyeurism, coupled with the continued reference to child protection issues was not only serious but "must be regarded as extremely distressing to anyone who reads it as these are clearly allegations of a sexual nature." 5. On the same day, the advocate wrote in similar terms to the employers of both complainants, summarising the allegations made against their employees and making a data subject request in relation to information that they might hold stored on their systems containing images of his garden, children, wife etc. 6. The final and fourth letter was sent to both complainants on 30 th August 2020 following up his letter of 10 th August 2020 and repeating the advocate's request for disclosure of images and confirmation that such images have been destroyed and so on. The letter asked for an express undertaking which he drafted for the complainants to provide and went on to allege that a workman at the advocate's home had been approached by one or both of the complainants; the workman felt as though the complainant was questioning his credentials, given his Polish nationality and concluded with the advocate saying "I will not tolerate any sort of intimidation of my workmen or any form of racism towards them". He added "I look forward to the disclosure requested within the time frame stated above and hope that my workmen do not face any more intimidation or racism from either of you". The complaints 7. The four letters were the subject of separate complaints/charges laid against the advocate by the Law Society. Further, each letter was the subject of seven individual complaints alleging various breaches of Principle 2, Principle 3, Principle 5, Rule 3.5, Rule 3.5(c), Rule 4.2(a), Rule 10.1(b) and Rule 10.1(c) of the Code of Conduct. An extract of the relevant Principles and Rules is attached to this judgment as an addendum. 8. In consequence the Disciplinary Committee had to deal with 28 separate allegations of misconduct arising from the sending of these four letters. The form in which charges are laid against a practitioner by the Law Society is a matter for the Law Society and not this Court. We do not criticise the Law Society delegate for adopting the approach that he did, but we can understand why it is that counsel for the advocate on appeal said that this was a case of "overloading the indictment". 9. Hearings before the Disciplinary Committee are intended to be relatively informal and the process is one that needs to be dealt with reasonably rapidly in the public interest. One of the complaints made by the Law Society on appeal is that the Disciplinary Committee failed to explain in sufficient detail why it was that certain of the complaints had been dismissed without adequate reasons given by the Disciplinary Committee. In our view, in circumstances where the Law Society chooses to charge a practitioner with 28 separate complaints, 12 of which were proved, it is not realistic to expect the Disciplinary Committee to particularise in detail why it was that certain allegations were not found to be proved - perhaps particularly in circumstances where the delegate for the Law Society, prosecuting the case on its behalf, repeatedly told the Committee that this was a "brief and simple" case. 10. The sending of the first letter was found to have breached Principle 2, Principle

5 and Rules 10.1(b) and 10.1(c); the sending of the second letter was found to have breached Principle 2 and Principle 5; the sending of the third letter was found to have breached Principle 2 and Principle 5; and the sending of the fourth letter was found to have breached Principle 2, Principle 5, Rule 10.1(b) and Rule 10.1(c) of the Code of Conduct. 11. There are three issues of wider interest that we need to consider for the purpose of this judgment as follows: (i) What is the correct test on appeal for an appeal from the Disciplinary Committee to the Royal Court? (ii) What is the scope and effect of Rule 3.5(c) of the Code of Conduct; and (iii) Was the Disciplinary Committee, on the evidence which it found, entitled to dismiss the allegations made under Rule 4.2(a) in relation to the first, second and third letters (i.e., the letters dated 10th August 2020)? The test on appeal 12. The starting point is the wording of the statute. Article 24 of The Law Society of Jersey Law 2005 provides: "Appeals against decision of a disciplinary committee (1) The following persons shall have a right of appeal to the Royal Court under this Law -

- (a) the President or the Attorney General, against a decision of a disciplinary committee either to dismiss the complaint or in respect of a penalty applied under Article 23(2); and
- (b) the practitioner or legal services body, against a decision of a disciplinary committee that the complaint is proved or in respect of a penalty applied under Article 23(2). (2) The appeal shall be lodged within one month after the disciplinary committee complies with Article 23(3), or within such further time as the Royal Court may allow. (3) On hearing the appeal, the Royal Court may - (a) reject or uphold the decision of the disciplinary committee; or
- (b) remit the matter to the disciplinary committee for re-determination, and make such order as to the costs of the proceedings before the Royal Court as it thinks fit. (4) If the Royal Court rejects the disciplinary committee's decision to dismiss a complaint because the Court is satisfied that the complaint is proved, it may deal with the practitioner or legal services body, as the case may be, by applying one of the following penalties - (a) by issuing a private rebuke or a public reprimand; (b) by imposing a fine of any amount;
- (c) by imposing a fine of any amount and issuing a public reprimand;
- (d) by imposing a fine of any amount and issuing a public reprimand;
- (e) by suspending the legal services body from operating as such for a specified period not exceeding 12 months;
- (f) by ordering that the practitioner's name be removed from the roll of advocates or solicitors, as the case may be; or
- (g) by ordering that the legal services body be removed from the register of legal services bodies (if any). (5) If the Royal Court upholds the disciplinary committee's finding that the complaint is proved but the Court is of the opinion that the penalty applied by the committee under Article 23(2) is not appropriate in the circumstances, the Court may, under paragraph (4), apply such penalty as it considers appropriate. (6) The practitioner or legal services body, as the case may be, and the Attorney General, shall have a right of appeal to the Court of Appeal against a decision or order of the Royal Court under this Article." 13.

Both parties were agreed that the appeal ought to take the form of a review and not a rehearing but otherwise were not agreed about the approach that the Royal Court should take on such a review. The Law Society took the view that on the facts of this case it would not be necessary or appropriate for the Court to remit the matter to the Disciplinary Committee for a redetermination, although, of course, this view would not be binding on the Court. 14. Article 24 gives no real assistance in respect of the test to be adopted on appeal as Article 24(3) merely says that on hearing the appeal, the Royal Court may "reject or uphold the decision of the disciplinary committee". 15. Under Article 24(4), if the Royal Court rejects the decision of the Disciplinary Committee to dismiss a complaint, then it may deal with the practitioner by applying one of the penalties set out in Article 24(4). 16. Article 24(5) deals with cases where the Royal Court does not disturb the Disciplinary Committee's findings that a complaint is proved but nonetheless wishes to interfere with the sanction. The Court may impose a different sanction if it is "of the opinion that the penalty applied by the committee under Article 23(2) is not appropriate in the circumstances". 17. Interestingly, this appeal gives rise to a scenario not envisaged by Article 24 in that it was a case where the Law Society was successful in pursuing some but not all of its complaints, but on appeal was arguing firstly that the Disciplinary Committee misdirected itself in respect of the law applicable to certain of the complaints and had it correctly directed itself then, bearing in mind the facts that it found, it would have held that additional complaints were proved and that in that scenario (and in any event) the Royal Court should substitute a public reprimand for the public rebuke that was issued in this case; and secondly, the Law Society argued that in any event the penalty imposed by the Disciplinary Committee was not appropriate. 18. We referred to certain case law from England and Wales which was of some assistance to us. The assistance was limited as the statutory framework is different. Section 49 of the Solicitors Act 1974 deals with the equivalent appeals and provides: "Appeals from Tribunal (1) An appeal from the Tribunal [the Solicitors Disciplinary Tribunal] shall lie to the High Court. ... (4) The High Court shall have power to make such order on an appeal under this section as it may think fit." 19. Clearly the words of the English statute do not indicate what test should be applied by the High Court. The test has been developed by case law and our attention was drawn to the various decisions, including the decision of Popplewell J in *Fuglers and Berens -v- Solicitors Regulatory Authority*

[2014] EWHC 179 (Admin) . In that case under the title "The Law" Popplewell J said: "13. The approach to appeals against sanction imposed by a Solicitors Disciplinary Tribunal has been considered in a number of cases including in particular *Bolton v The Law Society*

[1994] 1WLR 512 , *Salsbury v The Law Society*

[2009] 1 WLR 1286 , and *Solicitors Regulation Authority v Anderson*

[2013] EWHC 4021 (Admin) , from which the following principles may be derived:

- (1) On an appeal under Section 49 of the Solicitors Act 1974 the court should only interfere if there is an error of law, or a failure to take account of relevant evidence, or a failure to provide proper reasons (Anderson at [60] per Treacy LJ).
- (2) The Solicitors Disciplinary Tribunal, as an experienced body of solicitors, is best placed to weigh the seriousness of the professional misconduct and the effect which their findings and sanctions will have in promoting and maintaining the standards to be observed by individual members of the profession in the future, and the reputation and standing of the profession as a whole (see eg Bolton per Sir Thomas Bingham MR at 516). (3) Accordingly this court must pay considerable respect to the sentencing decisions of the Tribunal and in the absence of legal error will not interfere unless the sentencing decision was clearly inappropriate (Salsbury at [30] per Jackson LJ; Anderson at [64] per Treacy LJ). Although it is an overstatement to say that a very strong case is required before the court will interfere (Salsbury per Jackson LJ at [30]), nevertheless the test is a high hurdle (per Treacy LJ in Anderson at [65])." 20. We comment on these paragraphs as follows. First, we can see the force of the argument that the circumstances in which this Court should interfere with the decision of the Disciplinary Committee should be limited. Both parties, including counsel for the Law Society, accepted that the test for interfering with the decision below should be a "high hurdle" . However, as regards paragraph 13(2) of the judgment in Fuglers , although it may be the case in England and Wales that the Solicitors Disciplinary Tribunal is "best placed to weigh the seriousness of professional misconduct" , such considerations have no place in Jersey. 21. The Royal Court has a long history of considering and determining such matters and historically has been the principal tribunal for dealing with allegations of misconduct made against members of the legal profession. The Royal Court continues to have a substantial role in relation to such matters. However, the purpose of the statutory creation of the Disciplinary Committee, and the powers given to that Committee under Article 23 of the Law was in our view to ensure that complaints within the jurisdiction of the Committee would be finally resolved by the Committee, which would have the advantage of hearing evidence from the complainant and the practitioner. Accordingly, the Court should only interfere with a finding as to liability, i.e., as to whether or not a complaint is proved or disproved, in limited circumstances. We think that it is appropriate to adopt the principles pursuant to which the Court of Appeal interferes with a decision of the Royal Court after a trial. Accordingly, this Court should only interfere where the Disciplinary Committee has: (i) Made an error of law; or (ii) reached a decision on the facts which, on the evidence before it, is plainly wrong. 22. In the recent case of Financial Technology Ventures -v- ETFS Capital Limited and Tuckwell

[2021] JCA 176 , the Court of Appeal said at paragraph 37: "As to findings of primary fact, it is well established that:

- (a) in order for an appellate court to overturn a finding of primary fact in the court below, it must be satisfied that the decision was wrong and there was no evidence which could have supported it: ...

- (e) We also remind ourselves that a trial court is not required to deal with every piece of evidence or every argument presented to it.
38. In relation to appeals against the exercise of a discretion, or the exercise of an evaluative judgment, this court will only intervene if the court below has erred in law, or if it has failed to take into account a material factor or taken into account an immaterial factor, or if it has reached a decision which is plainly wrong (i.e. one that is irrational, in the sense that no reasonable decision maker could have reached it)." 23. We adopt this approach. 24. As to the Royal Court's power to interfere with the sanction imposed, the position is slightly different. The power to interfere with a sanction is, as set out above, contained within Article 24(4) and (5). If the Court rejects a Disciplinary Committee decision to dismiss a complaint, then the Court on appeal may deal with the practitioner afresh in respect of sanction. On the facts of this case, where 12 charges were proved but 16 were not proved, the position is different. 25. As to approach of the Court on appeal, we note that the Court may substitute its own opinion if it concludes that the penalty imposed by the Committee is "not appropriate in the circumstances" . In our view the use of the term "appropriate" requires the Court on appeal to form its own judgment of the appropriateness of the penalty imposed. This seems to us to be a natural consequence of the role of the Court in setting the penalty that should apply to breaches of the Code of Conduct. Naturally the Court will accord due consideration to the views of the Committee but must, that notwithstanding, form its own view of what is appropriate. There will be in any case a range of penalties which may be appropriate and accordingly the Court in most cases will not interfere with the penalty imposed by the Committee unless, in the exercise of its own judgment, it forms the view that the penalty imposed was outside of the appropriate range. 26. A point of construction arises as to whether or not the Court in the circumstances of this appeal has a power to interfere with the sanction imposed in any event. Under Article 25(4) the Royal Court may impose its own sanction if it overturns the Disciplinary Committee's decision to dismiss a complaint. That ultimately, as explained below, did not occur in this case. 27. The Royal Court's power to substitute a different penalty under Article 24(5) only arises in circumstances where the Court "upholds the Disciplinary Committee's finding that the complaint had proved" . However, in this case, there is no challenge by the advocate to the findings made by the Disciplinary Committee. Nonetheless, bearing in mind the general power of the Royal Court under Article 24(3) to reject or uphold the decision of the Disciplinary Committee, we take the view that we do have the power however, either under Article 24 or Article 32 - which preserves the Court's inherent jurisdiction - to, if appropriate, set aside the penalty imposed by the Disciplinary Committee and impose another penalty if, as we have said, we are satisfied that the penalty imposed was unreasonable in all the circumstances. Rule 3.5(c) of the Code of Conduct 28. In respect of all four letters, the Law Society laid a complaint that the correspondence breached Rule 3.5(c). Rule 3 is entitled "Duty to the Court". Rule 3.5 is titled "Not abusing their role as an advocate". The relevant provision is "Where a member is acting as an advocate, their duty not to abuse their rule includes the following obligations: Members must not: ...

- (c) make a serious allegation against any person, or suggest that a person is guilty of a crime with which their client is charged unless: (i) they have reasonable grounds for the allegation; and (ii) the allegation is relevant to their client's case or the credibility of a witness; and (iii) where the allegation relates to a third party, they avoid naming them in open court unless this is reasonably necessary ..." 29. The Disciplinary Committee in dismissing these particular complaints said: "The Committee does not accept that the Advocate was in breach of Rule 3.5 in general and in particular Rule 3.5(c) in that these Rules appear to apply more to Court proceedings and conduct than to the situation we have before us and even though there is a general duty not to make a serious allegation against a person or suggest that person is guilty of a crime, we do not accept that the Advocate has gone quite that far." 30. On appeal, the Law Society argue firstly that in view of the Committee's other findings, the advocate certainly had made a serious allegation against any person (which we accept) but also that the Disciplinary Committee was wrong to find that Rule 3.5(c) applied to conduct in court only. 31. We note from the transcript of the hearing that the Law Society delegate said that "In many ways the thrust of Rule 3.5 is or has in mind for the most part, when an advocate is on his or her hind legs, and in court and discharging their duties to the court ... but the one point that seems to be an exception outside of that general focus is, the idea or the principle that one should not make an allegation, against anybody else, unless you have reasonable grounds for making that allegation" . 32. We were initially attracted by this argument but having paid close regard to the terms of Rule 3.5, and particular to the fact that Rule 3.5(c) speaks of making a serious allegation against any person or suggesting that a person is guilty of a crime with which their client is charged, we were satisfied that the terms of Rule 3.5 are directed to the conduct of an advocate in Court. That was reinforced by the terms of Rule 3.5(c)(iii) which speaks of naming a third party in open court. Accordingly, the charge was not made out on the facts of this case. Rule 4.2(a) of the Code of Conduct 33. Rule 4 is titled "Honesty, integrity and independence". Rule 4.2 provides: "A member's duty to act with honesty and integrity under P.3 includes the following requirements: Members must:
- (a) not knowingly or recklessly mislead or attempt to mislead anyone." 34. As to the reference to P.3, that is a duty couched in the following terms: "Members must, at all times, act with honesty and integrity." 35. In relation to the first letter, the allegation that the advocate had breached Rule 4.2(a) was dismissed; in relation to the second and third letters, the allegation that the advocate had breached Principle 3 and Rule 4.2(a) was dismissed; and finally, in relation to the fourth letter, the allegation that the advocate had breached Principle 3 was dismissed. 36. The Disciplinary Committee's reasons for the decisions made in respect of Principle 3 and Rule 4.2(a) are as follows. In relation to Rule 4.2(a) the Committee said of the first letter "The Committee does not find that the advocate was in breach of Rule 4.2(a) in relation to this letter in that we have not reached a conclusion that the advocate has acted dishonestly as the evidence suggested to the Committee that he did have an honest belief that what he was saying was correct. Consequently, we conclude that he did not knowingly or recklessly mislead" . 37. It is argued that, notwithstanding the Committee's finding that

the advocate was acting honestly, the Committee ought to have directed itself that it could have found this charge proved on the footing that the advocate, although acting honestly, may have recklessly misled or attempted to mislead the complainants or their employers. We do not think there is any real merit in this point. Furthermore, it is not possible to determine, bearing in mind the Committee's other findings of fact whether the Committee, had it directed itself as it is contended that it should, would have found the particular allegations contrary to Rule 4.2(a) proved. 38. As to P.3, the Committee said of the second letter "The Committee did not conclude the advocate was in breach of Principle 3 in relation to this letter ... because the Committee was of the opinion that the advocate had an honest belief in what he was saying was true and was therefore not acting dishonestly..." Similar findings were made in relation to the other letters where allegations were made contrary to Rule 4.2(a) or Principle 3. 39. The point made on appeal by the Law Society is the finding that the advocate had an honest belief in what he was saying is no answer a charge under Principle 3 which requires members to act with "honesty and integrity". Unless a member is acting with honesty and integrity, then the charge should be found to be proved. It is said that the finding that the advocate was acting honestly is insufficient and the Law Society argues that honesty and integrity are separate concepts. This is correct, and the English Court of Appeal has held that "integrity" and "honesty" are separate and distinct concepts - Wingate -v- Solicitors Regulatory Authority

[2018] EWCA Civ 366. The Law Society observes that honesty and integrity are not synonymous, and it was not necessary for the Law Society to prove the advocate had been dishonest in order to prove a breach of Principle 3, as members of the Law Society have to act at all times with honesty and integrity. 40. As a matter of logic, it is argued that it is possible to act honestly but without integrity. It is said that the other findings made by the Committee as to the breaches of Principle 2, Principle 5 and Rule 10 are consistent with the advocate exhibiting an absence of integrity in his dealings with the recipients of the correspondence. Although these points are well made and might have been the subject of specific consideration by the Committee it is, again, not possible to say that having regard to the other findings made by the Committee that they would, if they had applied their mind directly to the question of "integrity" as well as "honesty" under Principle 3 have found the charge(s) proved. Accordingly, the various appeals against the decision of the Committee to dismiss certain of charges are dismissed. The sanction 41. The Law Society also challenged the sanction imposed and drew our attention to caselaw which in our view is helpful in identifying the purpose of sanctions in disciplinary cases. We refer to and adopt the following paragraphs from the decision in Fuglers and Berens -v- Solicitors Regulatory Authority which contains an extract from the well-known decision in Bolton -v- The Law Society

[1994] 1 WLR 512 : "Correct approach of a Solicitors' Disciplinary Tribunal to sanction

28. There are three stages to the approach which should be adopted by a Solicitors Disciplinary Tribunal in determining sanction. The first stage is to assess the seriousness of the misconduct. The second stage is to keep in mind the purpose for which sanctions are imposed by such a tribunal. The third stage is to choose the sanction which most appropriately fulfils that purpose for the seriousness of the conduct in question.
29. In assessing seriousness the most important factors will be (1) the culpability for the misconduct in question and (2) the harm caused by the misconduct. Such harm is not measured wholly, or even primarily, by financial loss caused to any individual or entity. A factor of the greatest importance is the impact of the misconduct upon the standing and reputation of the profession as a whole. Moreover the seriousness of the misconduct may lie in the risk of harm to which the misconduct gives rise, whether or not as things turn out the risk eventuates. The assessment of seriousness will also be informed by (3) aggravating factors (eg previous disciplinary matters) and (4) mitigating factors (eg admissions at an early stage or making good any loss). These considerations are reflected in The Solicitors Disciplinary Tribunal Guidance Note on Sanctions issued in August 2012 at paragraphs 13 to 17.
30. At the second stage, the tribunal must have in mind that by far the most important purpose of imposing disciplinary sanctions is addressed to other members of the profession, the reputation of the profession as a whole, and the general public who use the services of the profession, rather than the particular solicitors whose misconduct is being sanctioned. In *Bolton v The Law Society*
- [1994] 1WLR 512 Sir Thomas Bingham MR stated the guiding principles as follows, at pp 518-519: "it is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness.... 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. 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 readmission. If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his 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 profession's most valuable asset is its collective reputation and the confidence which that inspires. Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears likely, to be so the consequence for the individual and his family may be deeply unfortunate and

unintended. But it does not make suspension the wrong order if it is otherwise right. The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is part of the price." 42. The Committee, when considering the sanction to impose, was principally, or at least very substantially, concerned to give weight to matters of personal mitigation connected to the advocate and his family which we cannot set out in this judgment owing to the nature of that mitigation. However, even though that mitigation was plainly a matter that the Committee was entitled to take into account, the most important purpose of imposing disciplinary sanctions is to maintain public confidence in the legal community. This purpose is at least as important in this jurisdiction as it is in England and Wales. We have no doubt that had we been considering this matter then we would have imposed a public reprimand and not the private rebuke that was imposed by the Disciplinary Committee. We informed the advocate of this fact at the end of the oral hearing and he apologised to us for his conduct. 43. However, we do not regard the sanction imposed by the Committee in this case, namely a private rebuke, as being outside the range of appropriate penalties. It was a sanction that was reasonably available to the Committee in the circumstances, and accordingly we declined to interfere with it. Authorities The Law Society of Jersey Law 2005. Popplewell J in Fuglers and Berens -v- Solicitors Regulatory Authority

[2014] EWHC 179 (Admin) . Financial Technology Ventures -v- ETFS Capital Limited and Tuckwell

[2021] JCA 176 . Wingate -v- Solicitors Regulatory Authority

[2018] EWCA Civ 366. Bolton -v- The Law Society

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