

THE HIGH COURT

[2023] IEHC 165

[2023 No. 3 S.A.]

(FROM SOLICITORS DISCIPLINARY TRIBUNAL)

[2021 No. DT06]

IN THE MATTER OF CHRISTOPHER B. WALSH, A SOLICITOR OF CHRISTOPHER B.
WALSH SOLICITORS 90 PARK DRIVE AVENUE, CASTLEKNOCK, DUBLIN 15

AND IN THE MATTER OF THE SOLICITORS ACTS 1954 - 2015

BETWEEN

LAW SOCIETY OF IRELAND

APPLICANT

AND

CHRISTOPHER B. WALSH

RESPONDENT

**JUDGMENT of Mr. Justice David Barniville, President of the High Court, delivered on
the 30th Day of March, 2023**

1. Introduction

1. This is my judgment on an application by the Law Society of Ireland (the “Society”) for various orders against the Respondent Solicitor, Christopher B. Walsh (“Mr. Walsh”).
2. The Society has brought before the court a Report of the Disciplinary Tribunal (“the Tribunal”) under s. 7 of the Solicitors (Amendment) Act 1960 (as substituted by s. 17 of the Solicitors (Amendment) Act 1994, and as further amended by s. 9 of the Solicitors (Amendment) Act 2002 and s. 186 of the Legal Services Regulation Act 2015 (“the 2015 Act”). The Tribunal held an inquiry into the conduct of Mr. Walsh

and prepared a Report which was signed on behalf of the Tribunal on 29th November, 2022, by its Chairperson (the “Report”).

3. By a notice of motion issued on 17th January, 2023, the Society brought the Report before the court and sought the following orders and reliefs:
 - (1) An order that the Respondent Solicitor not be permitted to practise as a sole practitioner or in partnership, that he permitted only to practise as an assistant solicitor, in the employment and under the direct control and supervision of another solicitor of at least ten years’ standing to be approved in advance by the Law Society of Ireland;
 - (2) That the Respondent Solicitor pay a sum of €7,551.50 as a contribution towards the costs of the applicant in the Solicitors Disciplinary Tribunal proceedings;
 - (3) An order that the Respondent Solicitor pay a sum of €2,000 to the Compensation Fund;
 - (4) An order that the Respondent Solicitor pay the costs of the within application with legal costs to be adjudicated in default of agreement.
4. In the event that the court was to make an order imposing a limited practising certificate on Mr. Walsh, further ancillary orders were sought in the notice of motion.
5. The Society’s application was grounded on an affidavit sworn by David Irwin, a solicitor employed in the Society’s Regulatory Legal Services Section, on 17th January, 2023.
6. The background to the Society’s application is set out in some detail in Mr. Irwin’s affidavit. The relevant facts are not in dispute and no replying affidavit was sworn by Mr. Walsh in response to the Society’s application. While Mr. Walsh admitted the professional misconduct found by the Tribunal and while he has agreed to pay the

various sums referred to above in respect of the Society's costs of the proceedings before the Tribunal, as well as the sum which the Tribunal ordered Mr. Walsh to pay to the Compensation Fund and the agreed costs in respect of the Society's application to the High Court (which were agreed at €3,700.50), Mr. Walsh asks the court not to make the orders restricting his practice as a solicitor, which was the sanction recommended by the Tribunal. Instead, he submits that the court should impose a lesser sanction, such as a censure.

7. Mr. Walsh was admitted and enrolled on the Roll of Solicitors in July 1984 and practised as the principal of Christopher B. Walsh Solicitors in Castleknock, Dublin 15. A complaint was made against Mr. Walsh to the Society in April 2019 by a firm of solicitors in Northern Ireland acting for AIB Group (UK) Plc. The complainant firm advised that it acted for AIB which had advanced facilities to a Mr. McCormack in relation to the purchase of an apartment property in Dublin. Security for the loan facilities was to be a charge over the property. However, funds were drawn down on the strength of an undertaking given by Mr. Walsh on 28th March, 2003 (the "undertaking"). In the undertaking, Mr. Walsh agreed on behalf of his client Mr. McCormack (the borrower), to complete the legal formalities in relation to the contract for sale of the property so as to ensure that his client would obtain good marketable title to the property free from encumbrances save for AIB's mortgage/charge and, pending completion of the transaction and the receipt of the documents of title, to hold the documents of title on trust for AIB and to its order and to deliver them to AIB. The complainant submitted that Mr. Walsh had failed to comply with the undertaking.
8. In August 2021, the Society applied to the Tribunal for an inquiry into Mr. Walsh's conduct. On 9th December, 2021, the Tribunal considered the documentation which

had been submitted to it and found that there was a *prima facie* case of misconduct on the part of Mr. Walsh for inquiry by the Tribunal in respect of (a) the failure by Mr. Walsh to comply with the undertaking, and (b) the failure by Mr. Walsh to reply adequately, or at all, to ten letters written to him by the Society between May 2019 and July 2021.

- 9.** A separate division of the Tribunal held an inquiry into those two matters pursuant to s. 7 of the 1960 Act (as substituted by s. 17 of the 1994 Act and as amended by s. 9 of the 2002 Act and s. 186 of the 2015 Act), commencing on 5th May, 2022. The inquiry continued on 27th September, 2022, and concluded on 3rd November, 2022. Mr. Irwin represented the Society at the inquiry. Mr. Walsh represented himself.
- 10.** A few days prior to the commencement of the inquiry on 5th May, 2022, Mr. Walsh wrote to the Society on 28th April, 2022, stating that he admitted the facts set out in the Society's application (as contained in a grounding affidavit sworn by Eamon Maguire) and also admitted that the allegations, the subject of the inquiry, and referred to in that affidavit, constituted professional misconduct on his part. Mr. Walsh expressed his regret in the letter and confirmed that he would not be objecting to the case made by the Society at the inquiry. Mr. Irwin drew that letter to the attention of the Tribunal on 5th May, 2022.
- 11.** The Tribunal sought to ascertain from Mr. Walsh whether any progress had been made on his part in complying with the undertaking. Mr. Walsh sought to explain how his breach of the undertaking had arisen and, in that context, referred to a difficult personal situation which had arisen for him. He explained that he had mistakenly sought to register the deeds with the Property Registration Authority rather than with the Registry of Deeds. He admitted that it was his mistake and he apologised for it. He sought an adjournment of two months to enable him to complete

the outstanding matters necessary to ensure compliance with the undertaking. He also stated that, as he was 70 years old, it was his intention to retire at the end of 2022, that he was taking on no new clients and that he was “*just trying to tidy up all the bits and pieces*”. The Tribunal made a formal finding of professional misconduct in the terms of the allegations made by the Society and adjourned the inquiry to 27th September, 2022, to afford Mr. Walsh more time to sort out the title of the apartment in Dublin and to comply with the undertaking. While some progress had apparently been made in the period between 5th May and 27th September, 2022, the issue was not resolved and Mr. Walsh had still not complied with the undertaking. The Tribunal decided to give Mr. Walsh one final and last adjournment to 3rd November, 2022. The Chairperson explained that this was a “*final opportunity*” for Mr. Walsh to resolve the matter and to demonstrate to the Tribunal that the title was in order and was acceptable to AIB.

- 12.** Unfortunately, while certain steps were taken by Mr. Walsh in the intervening period, the issue was not resolved by 3rd November, 2022. AIB was not in a position to confirm that Mr. Walsh had, by that stage, complied with his undertaking as certain matters were still outstanding. However, a witness from AIB’s solicitors confirmed that if certain further steps were taken, it should lead to AIB releasing Mr. Walsh from his undertaking. The Tribunal was concerned that, due to what was said by Mr. Walsh on 27th September, 2022, it was under the misapprehension that Mr. Walsh had, at that stage, already lodged the relevant deed of mortgage with the Registry of Deeds. Mr. Walsh apologised for any misunderstanding.
- 13.** Having heard submissions from Mr. Irwin which made reference to a number of previous findings of professional misconduct against Mr. Walsh, a pattern of non-compliance with undertakings and a failure to respond to correspondence from the

Law Society, the Tribunal decided to adopt the approach proposed by the Society and send the matter forward to the President of the High Court with certain recommendations as to sanction, including that Mr. Walsh would be permitted only to practise on a restricted basis. Mr. Walsh submitted that such a recommendation should not be made and repeated that his intention was to retire in light of his age and that he was in the process of “*trying to make sure everything is wound up*”. He asked that the Tribunal deal with the matter not by way of a recommendation that he be restricted in his practise but that it impose a censure or a fine or some lesser form of sanction.

14. The Chairperson of the Tribunal announced its decision on 3rd November, 2022, after a short adjournment. The Chairperson indicated that while “*a lot had been achieved*”, the matter had not by that stage been resolved. The Chairperson referred to Mr. Walsh’s “*significant prior history*” and stated that the Tribunal had decided to refer the matter to the President with the recommendations requested by the Society. The Chairperson then stated:

“But what we would stress to you, Mr. Walsh, is that that does give you one further opportunity to mend your hand and get this matter across the line. And the only difference is, that instead of asking us to measure your penalty we are leaving that in the hands of the President. He will measure your penalty, but he will take into account, he will hear an update from the Law Society. He will hear any update you have to give him, and if you can give him, and if you can give him a letter from Ms. McCammon (solicitor acting for AIB) saying that everything is in order, that will be taken into account. So that is what we have decided to do, as I said reluctantly, but we have given you our reasons.” (Transcript, 3rd November, 2022, p. 33)

15. The Chairperson then delivered the formal decision of the Tribunal providing the Tribunal's recommendations as to sanction to the President of the High Court.

Having recorded the formal decision of the Tribunal, the Chairperson then stated:

“And we do hope, Mr. Walsh, that you will be able to mend your hand further before the matter comes before the President.” (Transcript, 3rd November, 2022, p. 35)

2. Tribunal's Order and Report

16. The Tribunal's order dated 29th November, 2022, made clear that it found that Mr. Walsh was guilty of misconduct on the grounds that he (a) failed to comply with the undertaking, and (b) failed to reply adequately or at all to the Society's correspondence.
17. The order stated that the Tribunal was not itself making an order under s. 7(9) of the 1960 Act (as substituted by s. 17 of the 1994 Act and as amended by s. 9 of the 2002 Act). Rather, the Tribunal ordered that the Society bring the matter before the High Court and to furnish the court with the Tribunal's Report setting out its findings of professional misconduct, its opinion as to the fitness to practise or otherwise of Mr. Walsh to be a member of the solicitors' profession in light of those findings, and its recommendations as to sanction having regard to those findings and the findings of professional misconduct made by the Tribunal on six previous occasions between November 1996 and June 2015.
18. The Tribunal's Report to the High Court dated 29th November, 2022, set out the procedural history and noted that the Tribunal had found that there had been misconduct on the part of Mr. Walsh in respect of (a) his failure to comply with the undertaking, and (b) his failure to respond to the Society's correspondence. The Report and Tribunal's order further noted that instead of making its own order under

s. 7(9) of the 1960 Act, as amended, the Tribunal directed the Society to bring the Report before the High Court. With respect to the Tribunal's opinion as to the fitness or otherwise of Mr. Walsh to be a member of the solicitors' profession and the Tribunal recommendations as to the sanction which should be imposed, the Tribunal stated in the Report:

- (1) That Mr. Walsh should not be permitted to practise as a sole practitioner or in partnership, that he be permitted only to practise as an assistant solicitor, in the employment and under the direct control and supervision of another solicitor of, at least, 10 years standing to be approved in advance by the Society;
- (2) That Mr. Walsh should pay the sum of €7,551.50 as a contribution towards the Society's costs of the proceedings before the Tribunal; and
- (3) That Mr. Walsh should pay the sum of €2,000 to the Compensation Fund.

19. The Report further stated that in making those recommendations as to sanction, the Tribunal had had regard to the findings of misconduct previously made by it in respect of Mr. Walsh (which were not rescinded by the High Court) in six previous disciplinary proceedings before the Tribunal between November 1996 and June 2015.

3. The Society's Application

20. The Society has now sought various orders from the court on foot of the Tribunal's Report. Those orders are sought under s. 8 of the 1960 Act (as substituted by s. 18 of the 1994 Act and as amended by ss. 10 and 22(1)(f) of the 2002 Act and by s.37 of the Civil Law (Miscellaneous Provisions) Act 2008 (the "2008 Act")). Section 8(1) provides that where, after holding an inquiry into the conduct of a solicitor, the

Tribunal makes a Report to the High Court under s. 7 of the 1960 Act (as amended) which is brought before the court by the Society, the High Court is empowered to make various orders which are set out in section 8(1)(a) to (c). Among the orders which the court can make, after it has considered the Report of the Tribunal, are orders striking the name of the solicitor off the Roll, suspending the solicitor from practice, prohibiting the solicitor from practising on his own account as a sole practitioner or in partnership for a particular period, restricting the solicitor from practising in a particular area of work for a particular period and censuring the solicitor or censuring him and requiring him to pay a money penalty. The court can also make a range of further orders, including an order remitting the case to the Tribunal. The amendments made to s. 8 by ss. 10 and 22(1)(f) of the 2002 Act and s. 37 of the 2008 Act make clear that in making any order under the section, the court must take into account any finding of misconduct on the part of the Respondent Solicitor previously made by the Tribunal (or by its predecessor, the Disciplinary Committee) and not rescinded by the court and any order made by the court under the Solicitors Acts 1954 – 2008 in respect of the Respondent Solicitor .

- 21.** The Society's application first came before the court on 30th January, 2023. The issues in relation to Mr. Walsh's compliance with the undertaking had still not been resolved at that stage although Mr. Walsh was continuing to attempt to resolve matters with AIB's solicitors. The Society contended that the court should there and then proceed to follow the Tribunal's recommendations on sanction and to make the orders set out in its notice of motion. Mr. Walsh, who represented himself, sought an adjournment of the Society's application so that he could attempt to finalise matters with AIB. Somewhat reluctantly, I acceded to Mr. Walsh's application for an adjournment and adjourned the Society's application to Monday, 13th March, 2023.

- 22.** On 10th March, 2023, the Society informed the court's registrar that it had just received confirmation from the complainant, the solicitors acting for AIB, that Mr. Walsh had been discharged from his undertaking. The relevant assignment and charge had, by that stage, been registered in the Registry of Deeds and the complainant- solicitors' firm now held the original title deeds which were delivered to Ms. McCammon, a solicitor acting on behalf of AIB, by Mr. Walsh in October 2022. Confirmation to that effect was provided to the court in the form of an email from Ms. McCammon to Mr. Walsh and to Mr. Irwin dated 10th March, 2023, in which Ms. McCammon confirmed that AIB had released Mr. Walsh from his undertaking. She also confirmed that the relevant assignment and charge had been registered at the Registry of Deeds and that she held the original title deeds which had been delivered to her by Mr. Walsh in October 2022. In addition, I was informed by Mr. Irwin on 13th March 2023 that Mr. Walsh had agreed an increased figure for the costs of the Society's application to the court of €3,700.50.
- 23.** At the resumed hearing on 13th March, 2023, the Society pressed for the orders sought in its notice of motion. The Society relied on the matters set out in Mr. Irwin's affidavit of 17th January, 2023. Mr. Irwin made the point that, when I adjourned the Society's application on 30th January, 2023, to enable Mr. Walsh to take further steps to comply with his undertaking, I made clear that I was giving no assurance that his compliance with the undertaking between then and the adjourned date would necessarily mean that I would not make the orders sought by the Society.
- 24.** In pressing for the orders sought in its notice of motion and for the court to adopt the Tribunal's recommendation on sanction, the Society placed considerable reliance on the fact that the undertaking dates back to 2003, almost 20 years ago. The Society also relied on Mr. Walsh's professional disciplinary history. As pointed out in Mr.

Irwin's affidavit, there were six previous separate sets of disciplinary proceedings brought against Mr. Walsh which led to sixteen separate findings of professional misconduct over the period between 1996 and June 2015. The findings of professional misconduct in those cases demonstrate, according to the Society, a common pattern of non-compliance by Mr. Walsh with undertakings and a failure to respond to complaints and to the Society's correspondence. I am satisfied that the evidence provided by the Society for the purpose of the application clearly supports that contention. There is a history of non-compliance by Mr. Walsh with undertakings and a failure by him to respond in a timely manner to correspondence emanating from the Society. In addition to the findings of misconduct, findings were also made in other applications against Mr. Walsh arising from his failure to file reporting accountant's reports on four separate occasions in breach of the Solicitors Accounts Regulations 2001 (S.I. No. 421 of 2001). The Society contended that not only was there a history of non-compliance by Mr. Walsh with undertakings and a failure on his part to correspond with complainants and with the Society but also that Mr. Walsh displayed a "*cavalier attitude*" to his obligations to comply with the Solicitors Accounts Regulations. The Society pointed out that that was a "*very significant matter as the Society attaches great importance to these annual Reports as an effective monitoring tool for financial regulation of solicitors*" (para. 9 of Mr. Irwin's affidavit).

25. The Society also relied on the submissions made by Mr. Irwin to the Tribunal in relation to Mr. Walsh's "*track record*". In those submissions, Mr. Irwin described Mr. Walsh as a "*recidivist who had demonstrated a 'similar pattern of behaviour now over a 26-year period'*". He stressed that the undertaking with which Mr. Walsh had failed to comply was almost 20 years old. He also relied on judicial dicta stressing

the central importance of undertakings to the solicitors' profession. At the time the Society's application was brought, the undertaking had not been discharged and remained outstanding.

26. The Society argued that, irrespective of whether Mr. Walsh did ultimately comply with his undertaking and was released from it, that "*of itself should not serve to exonerate his behaviour or significantly mitigate against the recommendation*" of the Tribunal. The Society argued that the court should follow the Tribunal's recommendation in respect of the imposition of a limited practising certificate on Mr. Walsh for the following reasons:

- (1) Mr. Walsh had a long and chequered disciplinary history which had resulted in six separate sets of disciplinary proceedings between 1996 and 2015 which resulted in sixteen findings of professional misconduct. Combined with the two findings of misconduct in the present case, that amounted to eighteen findings of misconduct against him over a 26-year period of practise.
- (2) The Society contended that it was clear that if the complaint had not been made and the matter brought before the Tribunal, the undertaking and the registration of the complainant's interest in the property in question would not have been advanced. The Society noted that despite the disciplinary proceedings before the Tribunal and despite the number of years which had elapsed since the undertaking was given by Mr. Walsh, it remained outstanding and Mr. Walsh had not been released from it, at the time the Society's application was brought before the court.
- (3) The Society contended that the protection of the public and the maintenance of the reputation of the solicitors' profession required that Mr. Walsh's practising certificate be restricted and that he not be allowed continue in practise as a

sole practitioner or in partnership but only as a supervised and employed solicitor. It was explained that the Society had no confidence in Mr. Walsh continuing to run his practise in a manner which complied with his regulatory obligations and which served and safeguarded the interests of his clients. The Society contended that a lesser sanction would not offer Mr. Walsh's clients, the public and the reputation of the solicitors' profession, the protection they required and to which they were entitled. It was argued that a limited practising certificate was the only sanction that would provide proper protection to the public and to the reputation of the solicitors' profession. The Society acknowledged that that would effectively close Mr. Walsh's practise. However, it maintained that given Mr. Walsh's disciplinary record over a period of more than 25 years coupled with his failure to engage with complainants and with the Society, the sanction recommended by the Tribunal was the appropriate one. The Society argued that allowing Mr. Walsh to continue in practise without restriction would constitute "*a real and present danger to the public*" and to his clients and would continue to have an adverse impact on the reputation of the solicitors' profession.

27. In opposing the Society's application, Mr. Walsh relied on the fact that he had finally dealt with matters and was now released from the undertaking. He apologised again for his failure to properly address matters. He acknowledged that he had made a "*mess*" of things and explained again how he had thought that the relevant deed had to be registered with the Land Registry/Property Registration Authority. He referred again to the personal issue which had arisen at some point in the process which had prevented him from properly addressing the issue and to the fact that the solicitor who had been dealing with the matter within his firm had left and gone to work elsewhere.

He made clear, however, that he was not seeking to absolve himself from responsibility and that he accepted responsibility for what occurred. When asked what his plans were in relation to retirement, he explained that he wanted to finish out the work he was doing and that involved work on mortgages which would entail “*monies coming in and going out*”. He contended that if the court were to make the order sought by the Society, it would have a devastating effect on him. He said that it would effectively prevent him from working with effect from the date of the order. He stressed that at no point had money gone missing from any of his accounts and that that was not what was involved here at all.

4. Decision on Society’s Application

28. I indicated at the conclusion of the hearing of the Society’s application on 13th March, 2023, that I wished to reflect on the application further in light of the fact that Mr. Walsh had now been released from his undertaking and that certain comments made by the Chairperson of the Tribunal might have given the impression that, if matters were resolved, that might affect the approach which the court would take in terms of the sanction to be imposed on Mr. Walsh. Mr. Irwin made clear on behalf of the Society that the Society accepted that it was entirely a matter for the court to determine what the appropriate sanction to be imposed on Mr. Walsh should be. The court was not, at all, bound by the Tribunal’s recommended sanction. That is, of course, correct.
29. The judgment of McKechnie J. in the Supreme Court in *Law Society of Ireland v. Daniel Coleman* [2018] IESC 71, contains a detailed explanation of the role of the Tribunal and that of the High Court in the disciplinary regime which exists in respect of solicitors. McKechnie J. noted at para. 46 that the courts have an inherent

jurisdiction to discipline solicitors by reason of the fact that they are officers of the court. He observed that that inherent jurisdiction might be regarded generally (but not in all respects) as residual to the legislative regime under the 1960 Act (as amended). McKechnie J. closely analysed the provisions of ss. 7 and 8 of the 1960 Act (as amended). As appears from those provisions and from McKechnie J's analysis of them, where the Tribunal finds misconduct on the part of the solicitor, the Tribunal has the power itself to impose certain sanctions under s. 7(9) of the 1960 Act (as amended). Those sanctions include the power to advise and admonish or censure the solicitor, to direct payment of a sum (not exceeding €15,000) to be paid by the solicitor to the Compensation Fund, to direct that the solicitor pay a sum (not exceeding €15,000) as restitution or part restitution to any aggrieved party (without prejudice to any legal right of such party) and to direct that the whole or part of the Society's costs or the costs of any other person appearing before the Tribunal be paid by the solicitor. The Tribunal does not have the power to impose more severe sanctions on the solicitor against whom findings of misconduct have been made. If the Tribunal believes that more serious sanctions should be imposed, it must refer the matter to the High Court. The Tribunal does this by way of a Report which the Tribunal is required to make to the High Court on completion of the inquiry (under s. 7(3)(c) of the 1960 Act (as amended)). The requirements in respect of such a Report are set out in section 7(3)(c). In a case where the Tribunal finds that there has been misconduct on the part of the solicitor and where it does not make any order imposing one of the less severe sanctions which are contained in s. 7(9), the Tribunal must set out in its Report (a) its opinion as to the fitness or otherwise of the solicitor to be a member of the solicitors' profession, having regard to its findings, and (b) its recommendations as to the sanction which, in its opinion, should be imposed, having

regard to those findings, to any finding of misconduct on the part of the solicitor previously made by the Tribunal (or by its predecessor) and not rescinded by the court and to any order made by the court under the Solicitors Acts 1954 – 2008, in respect of the solicitor. The Society is required to bring the Report before the court.

- 30.** Section 8 of the 1960 Act (as amended) entitled, “*Proceedings before High Court*”, contains the powers of the court when considering a Report of the Tribunal and having heard submissions in relation to the Report. Those powers include the power by order to strike the name of the solicitor off the Roll, to suspend the solicitor from practice “*for such specified period and on such terms as the court thinks fit*”, to 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 this employment, as the court may provide*”, to restrict the solicitor practising in a particular area of work “*for such period as the court may provide*” and to censure the solicitor or censure him and require him to pay a money penalty (s. 8(1)(a) of the 1960 Act (as amended)). Further sanctions are set out and further powers of the court are provided for in section 8.
- 31.** In the course of his judgment in *Coleman*, McKechnie J. noted that, in our system for disciplining solicitors, the Society is obliged to bring the Report and order of the Tribunal and its findings together with the material on which those findings were made before the High Court. McKechnie observed that:
- “The legislature so ordained in order to ensure that the judicial arm and not the administrative agency would ultimately be responsible for any findings of misconduct and the resulting sanction which followed.”* (para. 58)
- 32.** He noted that otherwise, as was clear from the decision of the Supreme Court in *In Re Solicitors Act 1954* [1960] I.R. 239, the entire disciplinary regime “*could be*

constitutionally impaired.” He stated: “*Therefore, the role of the court in this overall process is fundamental*” (para. 58).

33. McKechnie J. then stated that the solicitor appearing before the High Court, where the Report of the Tribunal has been brought before the court by the Society, must be afforded fair procedures. There is no dispute about that and no suggestion that in the present case that there has been any absence of fair procedures in terms of the manner in which the court has considered the Society’s application.
34. McKechnie J. further noted in *Coleman*, that the court must be satisfied that the Tribunal was entitled, as a matter of law, to reach the findings which it did. Having referred to the opinion as to the relevant solicitor’s fitness to be a member of the profession and to the Tribunal’s recommendation as to sanction, both of which must be included in the Report of the Tribunal when it was not itself intended to make an order under s. 7(9), McKechnie J. stressed that the court is not bound by any opinion expressed or by any recommendation made by the Tribunal. He further commented that, in addition to the Tribunal expressing its opinion and making its recommendation, the Society is also expressly entitled to make submissions as to what the sanction should be as is the Respondent Solicitor. He further noted that the case law demonstrates that the High Court has, on several occasions, departed from the recommendations made by the Tribunal and refused to grant the reliefs sought by the Society. He observed that “*even where granting such relief however, it is clear that in all cases the ultimate arbiter is the court*” (para. 61).
35. There is no doubt but that that is the case. These dicta of McKechnie J. in *Coleman* were endorsed by Irvine P. in *Law Society v. Doocey* [2020] IEHC 581. Having quoted with approval what McKechnie J. stated at para. 61 of his judgment in *Coleman*, Irvine P. went on to state (at para. 23 of her judgment) as follows:

“It is clear from the authorities that whilst the views of the Tribunal and indeed those of the Society carry considerable weight, the Court itself is obliged to embark upon an examination of the issues arising and after due consideration declare its own position. After all, what is at stake for the solicitor is, as McKechnie J. pointed out in Law Society v. Coleman, extremely high.”

36. Irvine P. continued (at para. 24):

“When it comes to considering the sanction to be imposed, the Court must have regard to all of the facts that gave rise to the findings of misconduct as it must weigh all of the factors offered in mitigation, assuming such factors exist. Cases such [Law Society of Ireland v D’Alton [2019] IEHC 177] provide an example of the type of circumstances that might be relied upon by way of mitigation. In that case, particular weight was attached to the fact that the Respondent Solicitor had a chronic health condition at the time the disciplinary offences occurred.”

37. It should be noted that the misconduct at issue in *Doocey* involved dishonest behaviour which led to the solicitor being struck off the Roll. It is very important to record that there is no suggestion in this case that Mr. Walsh was engaged in dishonest behaviour and no such finding was made by the Tribunal.

38. The solicitor in *Doocey* appealed to the Court of Appeal. That court dismissed the appeal in judgments delivered by Donnelly J. and Collins J. on 11th January, 2022 ([2022] IECA 2). In the course of her judgment (at para. 33), Donnelly J. quoted with approval from that part of the judgment of Irvine P. which concerned the role of the court on an application such as that now brought by the Society in this case and the principles to be applied (see para. 43 of the judgment of Donnelly J.).

39. The position is clear, therefore, that the court is the ultimate arbiter as to the appropriate sanction to be imposed on Mr. Walsh for the misconduct which he admitted before the Tribunal and the two findings of misconduct made by the Tribunal.
40. My initial instinct was that I should, without hesitation, adopt the Tribunal's recommendation and make the orders sought by the Society in the notice of motion including the orders permitting Mr. Walsh only to practise under supervision. That was my initial view during the course of the hearing having regard to the long-lasting failure by Mr. Walsh to comply with the undertaking coupled with his very poor disciplinary record, including six previous sets of disciplinary proceedings which resulted in sixteen findings of misconduct against him as well as findings that he had breached the Solicitors Accounts Regulations on four separate occasions by reason of his failure to file four separate reporting accountant's reports.
41. I was particularly conscious of the fundamental importance of undertakings in the solicitors' profession. This has been stressed recently in the Solicitor's Guide to Professional Conduct (4th Ed.) issued by the Society's Guidance and Ethics Committee (the "Guide"). The Guide reproduces (at p. 80), the following dicta from the judgment of Peart J. in the Court of Appeal in *Law Society v. Tobin* [2017] IECA 215 where he stated at para 26:

"The solicitor's 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 Court. His/her word must be his/her bond. If a solicitor undertakes to do something it must be done.”

42. Similarly, in *Law Society of Ireland v. Lambert* [2015] IEHC 453, Kearns P. observed at page 14 that:

“Undertakings are critical to the proper functioning of the solicitors’ profession. They are outward manifestations of its probity, honesty and reliability. They are the currency of the professions 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.”

43. I should again make clear that the facts of *Lambert* were quite different and involved a solicitor who was found guilty of misconduct by (amongst other things) failing to ensure compliance with an undertaking on foot of which monies were loaned personally to the solicitor for his own benefit. That is not the case here. The Tribunal had, in that case, recommended a similar sanction to that recommended in the present case in relation to Mr. Walsh. However, the Society successfully argued before the High Court that the solicitor should be struck off of the Roll of Solicitors. As outlined earlier, Mr. Walsh was not the personal borrower of funds in this case but acted on behalf of the borrower when giving the undertaking for the benefit of AIB.
44. I was struck by the pattern of non-compliance by Mr. Walsh with undertakings previously given by him as well as his failure to respond to correspondence from complainants and from the Society itself (as recorded in a number of the previous findings of misconduct made by the Tribunal against Mr. Walsh dating back to November 1996). In the case of the undertaking at issue in this case, it must be noted that Mr. Walsh was given several opportunities to resolve the issue both before and during the disciplinary proceedings before the Tribunal. He obtained an adjournment

from the Tribunal on 5th May, 2022, to allow steps to be taken to enable him to be discharged from his undertaking. That did not happen by 27th September, 2022, and the matter was adjourned on a peremptory basis to 3rd November, 2022. It was still not resolved by that date and the Tribunal made its decision containing the recommendation as to sanction referred to earlier. The Society was then required to bring this application before the court. On the first return date of the application, the issue had still not been resolved and, somewhat reluctantly, I adjourned the application for six weeks in the hope that the issue could be resolved in that period. I made clear, however, that I was giving no assurance that if the issue was resolved it would not necessarily mean that I should not make the orders sought by the Society.

- 45.** What caused me to hesitate in making the orders sought by the Society is the fact that it appears to have been the view of the Tribunal that Mr. Walsh would have a further opportunity to “*mend his hand*” and “*get this matter across the line*” before the Society’s application came before the court. I referred earlier to those comments made by the Chairperson at the end of the hearing on 3rd November, 2022. However, having reflected further on the matter, it seems to me that the Chairperson was simply indicating to Mr. Walsh that if he did manage to rectify the situation, that might be a factor which the court would consider relevant in deciding on the appropriate sanction. I do not think that the Chairperson was saying that if Mr. Walsh managed to take steps to persuade AIB to release him from his undertaking, the court would not or might not adopt the recommendations made by the Tribunal. It is certainly the case, as the Society submitted, that the court is not in any way bound by the recommendations made by the Tribunal.
- 46.** In deciding on the appropriate sanction in light of the findings of misconduct made against Mr. Walsh, I am required under the amendment made to s. 8 of the 1960 Act

(as substituted by s. 18 of the 1994 Act) by ss. 10 and 22(1)(f) of the 2002 Act and by s. 37 of the 2008 Act to take account of findings of misconduct on the part of Mr. Walsh previously made by the Tribunal. As I have indicated, before the findings in the present case, there were sixteen previous findings of professional misconduct against him which were made in six separate sets of professional disciplinary proceedings. A number of those involved failures by Mr. Walsh to comply with undertakings and to respond to correspondence from the Society and from complainants: See, for example, the order and Report of the Tribunal dated 18th November, 1996, in relation to Mr. Walsh (4940/DT33), the order and Report of the Tribunal in relation to Mr. Walsh dated 15th January, 2002 (4940/DT246), and the order of the Tribunal dated 24th June, 2015 (4940/DT107/14). Adding the two findings of misconduct by the Tribunal in the present case means that there are now eighteen findings of misconduct against him, a number of which are of a similar nature to the findings of misconduct made by the Tribunal in this case, and extending over the period between 1996 and 2022/2023.

- 47.** I must bear in mind that in addition to the matters which I am required to take into account by statute (and, in particular, previous findings of misconduct), I am required to have regard to various other matters in deciding on the appropriate sanction to be imposed on a solicitor in the case of misconduct. Those other matters were first identified (in a Medical Council case) by Finlay P. in a *Medical Council v. Murphy* (Unreported, High Court, Finlay P., 29th June 1984). Those matters are: first, the sanction must reflect the serious view that must be taken of the nature and extent of the misconduct concerned in order that Mr. Walsh be deterred from engaging in similar misconduct in the future; Second, the sanction should be of an order which makes clear to other members of the profession, the gravity of the misconduct concerned, in

this case the failure to comply with an undertaking; Third, the sanction must ensure the protection of the public and, in the present case, of clients and opposing parties in a transaction with whom Mr. Walsh would be dealing as a solicitor; Fourth, the court should consider whether it is possible to afford leniency to Mr. Walsh in the particular circumstances of the case. While the *Murphy* case concerned a medical practitioner, the matters or factors to be taken into account in determining the appropriate sanction have also been referred to in cases involving solicitors (see, for example: *Law Society of Ireland v. Lambert* [2015] IEHC 453).

- 48.** With specific reference to the approach to be taken in determining the appropriate sanction to be applied against a solicitor found guilty of misconduct, these factors were listed by Kelly P. in *Law Society v. D’Alton* [2019] IEHC 177, where he said:

“In approaching the question of penalty, I have to have regard to:

- (a) the protection of the public;*
- (b) the maintenance of the reputation of the solicitors’ profession ‘as one in which every member of whatever standing, may be trusted to the ends of the earth’ (per Bingham M.R. [in Bolton v. Law Society [1994] 1 W.L.R. 512]);*
- (c) the punishment of the wrongdoer;*
- (d) the discouragement of other members of the profession who might be tempted to emulate the behaviour of the wrongdoer; and*
- (e) the concept of proportionality. The sanction must be proportionate and appropriate.” (per Kelly P. at para 33)*

- 49.** Irvine P. in *Doocey* agreed that these were the relevant factors or matters which the court had to take into account in determining the appropriate sanction.

- 50.** I have taken into account each of these matters or factors as well as Mr. Walsh's previous poor disciplinary history. I have concluded that, notwithstanding the fact that Mr. Walsh did ultimately take steps to ensure that AIB was satisfied with the title and was happy to release Mr. Walsh from his undertaking, and, notwithstanding the comments made by the Chairperson of the Tribunal at the time of its decision on 3rd November, 2022, I should, nonetheless, accept the Tribunal's recommendation in terms of sanction.
- 51.** In reaching that conclusion, I have had regard to several matters. First, I am required by statute to take account of his poor disciplinary history and, in particular, the previous findings of misconduct made against him in similar circumstances in six separate sets of disciplinary proceedings before the Tribunal.
- 52.** Second, I must bear in mind the importance of undertakings in the solicitors' profession. The comments of Peart J. in *Tobin*, and of Kearns P. in *Lambert* are relevant here. A solicitor and party on one side of a transaction must be able to rely on a undertaking provided by a solicitor on the opposing side of the transaction. It is completely unacceptable that, in the present case, the solicitor for AIB had to wait for almost 20 years for Mr. Walsh to take the necessary steps to ensure that he could be discharged from his undertaking. On any view, that is a very serious matter which requires a serious sanction. That is particularly so when seen in the context of the previous similar findings of misconduct against Mr. Walsh.
- 53.** Third, I agree with the Society that were it not for the disciplinary proceedings against him and, subsequently, the Society's application to court, it is unlikely that Mr. Walsh would have taken the necessary steps to enable AIB to release him from his undertaking. The failure to take the necessary steps to ensure that this could happen over the course of the several months during which the disciplinary proceedings were

before the Tribunal and while the proceedings were before the court, persuades me that, without such proceedings and this application to the court, the undertaking would most likely have never been complied with. That is an unacceptable situation.

- 54.** Fourth, it is important that the sanction imposed by the court has a sufficient deterrent effect on Mr. Walsh. The sanctions imposed in the previous disciplinary proceedings clearly did not have that effect. In the previous cases in which Mr. Walsh was found guilty of misconduct for failing to comply with an undertaking and for failing to respond to correspondence from the Society and others, the Tribunal either ordered that Mr. Walsh stand censured and directed him to pay the Society's costs or directed him to pay the Society's costs plus a sum of money to the Compensation Fund. For example, in the order of the Tribunal of 18th November, 1996, Mr. Walsh was ordered to pay a fine of £500 to the Compensation Fund and to pay the Society's costs in the sum of £525. In the order of 15th January, 2002, the Tribunal ordered that Mr. Walsh stand censured and directed him to pay to the Society its taxed costs of the disciplinary proceedings. In the order of 24th June, 2015, the Tribunal ordered that Mr. Walsh stand censured and that he pay a sum of €500 to the Compensation Fund as well as the Society's taxed costs of the proceedings. None of these previous sanctions appeared to have had the necessary deterrent effect and did not prevent Mr. Walsh from failing to comply with the undertaking at issue in this case over a period of almost 20 years. Something more is now required.
- 55.** Fifth, the sanction to be imposed should also make clear to other members of the profession, the importance of complying with undertakings (should there be any doubt about that). That is particularly so in the case of repeated failures to comply with undertakings as in Mr. Walsh's case.

56. Sixth, the sanction imposed by the court must be such as to provide appropriate protection to clients and opposing parties in a transaction. In light of Mr. Walsh's pattern of repeatedly failing to comply with undertakings, it seems to me that the sanction recommended by the Tribunal is appropriate.
57. Seventh, I have considered the various matters relied on by Mr. Walsh in mitigation to see whether it might be appropriate that a more lenient or less severe sanction could be imposed. I have taken into account the personal matter referred to by Mr. Walsh and also the fact that, if the sanction recommended by the Tribunal is to be imposed by the court, it is very likely that Mr. Walsh will have to cease practise. He has stated on a number of occasions that it is his wish to retire from practise and that he was not taking on any new clients but completing outstanding work, apparently much of it involving mortgages and dealings with financial institutions. Mr. Walsh's pattern of non-compliance with undertakings does not inspire confidence, even in the context of his intention to cease practise when he is finished his outstanding work. While I have sympathy on a personal level for Mr. Walsh, I have concluded that a lesser sanction than that recommended by the Tribunal would be excessively lenient and would not adequately reflect the seriousness of the findings of misconduct made against him in the present proceedings, particularly when considered with Mr. Walsh's very poor disciplinary record. I regret to say that, while I do have sympathy for Mr. Walsh on a personal level, I have concluded that the sanctions recommended by the Tribunal, while undoubtedly severe, are proportionate and would appropriately take account of the various matters which the court must consider in determining the appropriate sanction.

5. Conclusions

- 58.** For the reasons set out in the previous section of this judgment, I am satisfied that I should adopt the recommendation as to sanction made by the Tribunal in its order and Report dated 29th November, 2022, and that I should, therefore, make the orders sought by the Society in its notice of motion. I will, therefore, make an order in terms of para. (1) of the notice of motion that Mr. Walsh not be permitted to practise as a sole practitioner or in partnership, that he be permitted only to practise as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of at least ten years' standing to be approved in advance by the Society.
- 59.** Mr. Walsh has consented to the orders sought at paras. (2) and (3) of the notice of motion and I will, therefore, make orders in terms of those paragraphs. Mr. Walsh has also agreed to an order that he pay measured costs in the sum of €3,700.50 in respect of the Society's costs of the proceedings before the court and I will so order.
- 60.** The Society also seeks a number of ancillary orders. While it would appear to follow from the order that I am making under para. (1) of the notice of motion that I should also make the ancillary orders sought at paras. (a) to (i) of the notice of motion, I will defer making those orders until the parties have had the chance to consider this judgment following its electronic delivery. I will direct that no order be drawn up on foot of this judgment until the parties have had the opportunity of considering it. I will list the matter for any further submissions and for the purpose of finalising the orders to be made on 17th April, 2023.