

IN THE MATTER OF ANDREW DERRICK JOHN FARMILOE, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Miss T. Cullen (in the chair)
Miss N. Lucking
Mrs C Pickering

Date of Hearing: 2nd February 2010

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority (SRA) by Jonathan Richard Goodwin of Jonathan Goodwin Solicitor Advocate of 17E Telford Court, Dunkirk Lea, Chester Gates, Chester CH1 6LT on 15th May 2009 that Andrew Derrick John Farmiloe (the Respondent) of 46 Greenway Close, London N20 8EN might be required to answer the allegations contained in the statement that accompanied the application and that such Order should be made as the Tribunal should consider appropriate.

The allegations against the Respondent were that he had:

1. Breached the terms of Rule 1 (a), (c), (d) and (e) of the Solicitors Practice Rules 1990 (SPR) and/or Rule 1 of the Solicitors Code of Conduct 2007 (SCC), in that he had acted contrary to the terms of a Trust, of which he was a trustee.
2. Breached the terms of Rule 1 (c), (d) and (e) of SPR and/or Rule 1 of SCC in that he had signed cheques in excess of funds held.
3. Breached the terms of Rule 1 (a), (c), (d) and (e) of SPR and/or Rule 1 of SCC in that he had assured and/or had given comfort to clients and/or investors, that there had

been no or little risk in the Scheme with which he had been involved, when he had not understood how the Scheme worked, and in particular at the time the assurances and/or comfort had been given, there had been less money available to withdraw than had originally been deposited.

4. Breached the terms of Rule 1 (a), (c), (d) and (e) of SPR and/or Rule 1 of SCC, by virtue of his failure to properly advise clients and/or investors as to the status and merits of the Scheme.
5. Breached the terms of Rule 1 (a), (c), (d) and (e) of SPR and/or Rule 1 of SCC by virtue of his failure to send letters to clients and/or investors advising them of their rights pursuant to Section 26 of the Financial Services and Markets Act 2000.
6. Breached the terms of Rule 1 (a), and (d) of SPR and/or Rule 1 of SCC by virtue of his failure to account to the LLP of which he had been a member, for £5,000 paid on account to him, contrary to the terms of his membership.
7. Breached the terms of Rule 1 (a), (c), (d) and (e) of SPR and/or Rule 1 of SCC in that he had acted and/or had involved himself in a Scheme which had exhibited characteristics of fraudulent transactions.
8. Breached the terms of Rule 1 (d) of SPR and/or Rule 1 of SCC, in that he had failed and/or delayed in notifying his fellow members of a claim, of which he had become aware.

The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Jonathan Goodwin appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included a statement by the Respondent dated 22nd January 2010 and handed to the Tribunal on the day of the hearing.

At the conclusion of the hearing the Tribunal made the following Order:

The Tribunal Orders that the respondent, ANDREW DERRICK JOHN FARMILOE of 46 Greenway Close, London, N20 8EN, solicitor, be Struck off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £22,000, such costs not to be enforced without the consent of the Tribunal.

The facts are set out in paragraphs 1 - 143 hereunder:

1. The Respondent, born in 1951, was admitted as a solicitor in 1975. As at the date of the hearing his name remained on the Roll of Solicitors.
2. At all relevant times the Respondent had carried on practice in partnership under the style of Dawsons, between 3rd October 2005 and 8th November 2007 from offices at 2 New Square, Lincolns Inn, London WC2A 3RZ. The Respondent had become a member of Dawsons LLP on 1st May 2007. He was expelled from the LLP on 7th November 2007.

3. The Forensic Investigation Unit had carried out an inspection of the books of account of Dawsons LLP, commencing on 26th March 2008.
4. Mr Matthew Rea, of Dawsons LLP, had contacted the SRA to report the conduct of the Respondent. Mr Rea had indicated that the Respondent had been dismissed from the partnership in October 2007 and the Respondent's conduct, relating to the matter of "Optimum Returns (BFIG) Scheme" (the Scheme) had been referred to the firm's insurers. The Forensic Investigation Report dated 31st July 2008 (the Report) dealt with matters arising from the Respondents involvement in the Scheme.

Relevant Principles

5. In July 2001 The Law Society had issued the profession with the yellow card, entitled "Warning Banking Instrument Fraud" which set out a warning to practitioners of examples of fraudulent investment schemes.

6. Rule 1 of the Solicitors Practice Rule 1990, states:-

"A solicitor shall not do anything in the course of practising as a solicitor, or permit another person to do anything on his or her behalf, which compromises or impairs or is likely to compromise or impair any of the following:-

- (a) *The solicitors independence or integrity;*
- (b) *The solicitors duty to act in the best interests of the client;*
- (c) *The good repute of the solicitor, or of the solicitors profession;*
- (d) *The solicitors proper standard of work;....."*

7. Rule 1 of the Solicitors Code of Conduct 2007, provides:-

"Core duties....

1.2 – integrity – you must act with integrity

1.3 – independence – you must not allow your independence to be compromised

1.06 – public confidence – you must not behave in a way which is likely to diminish the trust the public places in you or the profession".

The Scheme

8. The Investigation Officer (IO) had been provided with the files relating to the Scheme and had considered that the various papers and documents relating to the transaction had been redolent of a high yield investment fraud. The Respondent had agreed with that assessment during an interview with Mr Cassini (The Investigation Officer) on 20th June 2008.

9. The Respondent had been asked to explain the background to the matter by the firm's managing partner, Mr Rea. The Respondent had produced a memorandum dated 10th October 2007 in which he had provided a summary of the facts relating to the Scheme.
10. In short, the Respondent had been a trustee in an investment scheme. The basis of the Scheme had been that a number of investors would pool their money together, the monies would then be used to trade in the inter-bank market to generate a minimum return of 6% after 6 weeks, with a further return of 2% after 52 weeks (being the fixed period of investment).
11. The Respondent had been appointed as co-trustee by a Trust Deed dated 18th January 2006, prior to receipt of instructions (the IO had ascertained that the matter had been opened on 6th March 2006). The Respondent had remained as co-trustee until May 2008.
12. The Respondent's involvement had started in 2005 when a Mr Marlow of Bridford Financial Solutions Ltd (BFSL) an existing client, had contacted the Respondent regarding the Scheme.
13. BFSL had been regulated by the Financial Services Authority (FSA) with its sponsor being City Gate Money Managers Ltd. The Respondent had provided advice as to the structure of the Scheme in November 2005, and the interpretation and restrictions imposed by the FSA regarding Collective Investment Schemes (CIS) which the Scheme had appeared to be.
14. If a CIS, the Scheme would have been restricted, in its promotion, and only capable of being marketed to sophisticated and professional investors.
15. The advice provided by the Respondent had been that in his view the FSA would not consider the Scheme to be a CIS. However that had not subsequently proved to be the case.
16. The promotional literature sought to explain the background and purpose of the Scheme. The key features had been as follows:-
 - (i) If a suitable bank could not be found to provide the required return then all funds were to be refunded within 6 weeks, with interest.
 - (ii) 52 week investment period.
 - (iii) Minimum 6% return on investment.
 - (iv) Deposits in excess of £100,000 with a maximum of £100 million.
 - (v) Collective funds placed in an unspecified bank against a "*confirmed irrevocable letter of credit.*"
 - (vi) Funds held for a fixed period of 52 weeks.

- (vii) After 52 weeks funds were to be returned with a further 2% described as a “Rebate of commission”.
 - (viii) Entitlement to all interest normally credited to the account.
17. Berge & Fhinn Investment Group AB was said to have introduced the concept which had been developed by BFSL.
 18. The Respondent had raised concerns regarding the commission to be paid to Berge & Fhinn, that is to say 24% as particularised in the agreement, and that it had seemed extraordinarily high.
 19. The explanation to the Respondent had been that the banks could provide that rate of return “*because they utilised the funds to trade in deposits earning up to 100%.*”
 20. The Report particularised that the commission element of 24% was paid by Anglo Credit Union Inc (ACCU), at the outset and deducted from the sums available for investment. Consequently, 76% of the capital investment remained to generate a return of 106% of the original sum, requiring a return of 39.4% (in 52 weeks) or 42.1% for a return of 108%, if the additional 2% rebate was paid.
 21. The Respondent had confirmed to the IO that that had been his understanding of how the agreement had worked. It had been agreed that Berge & Fhinn would share the commission with Bridford Financial and that the 2% percentage would be rebated to the investor and it had been decided that investors would not be aware of Berge & Fhinn’s involvement.
 22. The Report particularised that which had occurred as regards the opening of accounts.
 23. On 6th March 2006 the Respondent had sent an email to Mr Marlow and had referred to an earlier conversation when it had been mentioned that the legal work would be charged by the firm at 0.25% of the total funds deposited.
 24. Such had been agreed and an agreement to that effect had been sent to Bridfords on 8th March 2006.
 25. On 7th March 2006 the Respondent had attended a meeting with Mr Marlow and a Mr TR, a representative of Margetts Funds Management Ltd, which it was understood was an established fund manager based in Birmingham. The attendance note recorded Mr R’s apparent concern as to the level of return, and the Respondent’s admission that he did not know how the profits were operated to justify such a return.
 26. The note recorded the Respondent’s position as “*however, he had taken the view that it was not necessary to consider this given that the deposit depended simply on the quality of the bank issuing the letter of credit and the terms of the letter of credit itself. Provided they were quite clear and fell within the criteria that was all the trustees needed to be concerned about.*”

27. Shortly thereafter, Mr Marlow had raised with the Respondent the possibility of involving a corporate trustee, with Trident Trustees being considered and agreed in principle. Interest in the Scheme would seem to have been good.
28. An email from LP of Tong Park Investments Ltd had listed a number of questions and had been forwarded by Mr Marlow to the Respondent for his consideration.
29. It was not without significance that LP had indicated in the first paragraph, after point 12 that "*We trust that you accept that we do need to conduct a significant level of due diligence on any product. In particular one which appears to be 'too good to be true'.*"
30. The involvement of Trident had been progressing and it had been agreed that Trident would be paid the equivalent of 0.2% of deposits paid in respect of their remuneration as co-trustees, Mr Marlow had signed an agreement with Bio Profit Asset Management Ltd and BMI Overseas Investment Ltd to exclusively market the Scheme in Asia.
31. On 29th March 2006, Mr Marlow had retired as a trustee and Mr G of Trident had become co-trustee with the Respondent.
32. On 26th April 2006, Mr Marlow had sent an email to the Respondent, attaching a 'letter of intent', as required by Berge & Fhinn for the consideration of VGI Global Investment Management Und Beteiligungs AG, hereinafter referred to as (VGI).
33. It would seem that Mr G of Trident had not been entirely content with the letter and had requested amendments be made. The amendments had been made and forwarded to the Respondent for signing on 27th April 2006. The letter purported to provide Optimum Returns (BFIG) Trusts "*firm commitment and intent*" to invest a minimum of £7,300,000 in VGI.
34. It was to be noted that Optimum Returns BFIG Trust stated that, "*we hereby declare under penalty of perjury that as Trustees we are the holders of the funds and these funds are good, clean and cleared funds, and to the best of our knowledge legitimately earned, unencumbered and freely transferable by us*".
35. The Respondent had indicated that VGI was a financial advisory firm to Berge and Fhinn and that it had originally introduced the idea of the Scheme to Berge & Fhinn. The Respondent had said that he had met members of the company in Austria. The IO had asked the Respondent whether he had considered the above mentioned passage to be similar to the yellow card warning to which the Respondent had replied "*Did not consider it to be a warning as to ML (Money Laundering) and did not recognise it as a sign of fraud. Yes looking at yellow card it is something we should have been careful of but at the time did not connect that (Yellow Card)*".
36. Investors' funds totalling £9.3 million had been deposited with the Royal Bank of Scotland.
37. On 15th May 2006, the Respondent had received an email from Mr Marlow, attaching previous related emails regarding the Scheme, starting on 10th April 2006.

38. It was of significance that on 10th April 2006 a Mr JR (an investment consultant at Target Consulting) had raised a number of concerns regarding the Scheme.
39. In particular, reference was made to a Mr H advising to give the Investment a “wide birth” and that *“How can the returns be so much greater than conventional bank accounts, with what only appears to be a fractional increase in risk? If it is feasible to structure a deal like this in the way that you have, why isn’t anyone else doing it? E.g. the Banks?”*.
40. Mr Marlow had attempted to offer some reassurance and comfort to Mr R in his reply of the same date.
41. The Respondent had now been alerted to the concerns of fund managers who had questioned the legitimacy of the Scheme, namely Mr R of Margetts Fund Management Ltd, LP of Tong Park Investments Limited and Mr R of Target Consultant.
42. The Respondent had been asked whether those comments had given him any cause for concern and whether that had been a warning sign, to which the Respondent had said *“I was aware, but other firms didn’t see as a warning. Did and didn’t as other firms were prepared to look at it, provided security was adequate, not for me to advise on financial viability of it. Mr role was to ensure security. Morgans looked at it and their clients invested in it. My role not to judge financial viability, just ensure adequate security”*.
43. On 15th May 2006 Mr Marlow had written by email to the Respondent and had attached a Final Notice issued by the FSA in respect of Scotts Private Client Services Ltd in which the FSA had withdrawn their approval of Scotts to provide regulated work.
44. Mr Marlow’s concern had been that there had been a similarity between Scotts and Optimum Returns BFIG Trust and had asked the Respondent to consider the position.
45. The Respondent had replied by email dated 15th May 2006 and had attempted to distinguish between the two schemes and to explain why their scheme would be alright.
46. On 20th June 2008, during the interview with the IO the Respondent had indicated that he had restricted his comparison of the Scheme whether their scheme had been a CIS.
47. Subsequently, it had become apparent that there had been difficulty in sourcing a guarantee and that the banks had only been prepared to deal with the owners of the funds and not the trustees.
48. The Respondent had then sought a guarantee from various banks.

Banco Santander Central Hispano

49. On 31st May 2006 Mr Marlow had sent an email to the Royal Bank of Scotland relating to a transfer of £9,452,000 to AACU, following the receipt of a guarantee from Banco Santander Central Hispano.
50. The time taken for the guarantee to be found had been causing the trustees difficulties, because the investors' agreement had only permitted a syndication period of 6 weeks, with the result that a letter had been sent to all of the investors requesting a further extension to 16th June 2006.
51. On 1st June 2006 the Respondent and Mr Marlow had flown to Vienna, Austria to discuss the guarantee with Jussi Ora (BFIG Sweden) and Dieter and Stefan (VGI Global Investment Management).
52. On 1st June 2006 Mr Marlow had sent an email to the Royal Bank of Scotland requesting that the balance held on the trust accounts (£9.452 million) was to be sent by SWIFT by no later than 2nd June 2006.
53. The bank had replied the following day raising a number of concerns.
54. The Respondent had sent a fax message to Ms H at Royal Bank of Scotland instructing the transfer of £9,452,000 to an account at Santander Central Hispano in the name of Anglo – American Credit Union, Incorporated.
55. Despite their request, the SWIFT payment had not been sent and on 14th June 2006 Mr Marlow had contacted a Mr M at the Royal Bank of Scotland setting out what was required and stating that he needed the Royal Bank of Scotland to issue the letter of credit.
56. On 16th June 2006 the Respondent had sent a faxed letter to Ms L at the Royal Bank of Scotland requesting that a bankers draft in the sum of £9,452,000 be drawn in favour of “*Anglo American Credit Union Inc. Banco Santander Central Hispano*”
57. Efforts had been continuing to obtain the bank guarantee and on 23rd June 2006 Mr Marlow had emailed the Respondent thanking him for his additional work and proposing to increase his commission to 0.5%, since Mr Marlow had considered the Respondent, “*As a partner in this and not just a lawyer/trustee and want you to benefit from the work you put in so you were earning more than if you were just on a fee basis*”.
58. The Respondent had indicated during an interview with the IO that the firm had in fact charged on a fixed fee basis.
59. On 23rd June 2006 the Respondent had re-deposited the bankers draft with Royal Bank of Scotland.
60. On 28th June 2006 the Respondent had received a copy of the agreement between Bridford Optimum Returns (BFIG) Trust and Anglo – American Credit Union, Inc,

which had changed the terms of the agreement and now offered a certificate of deposit.

61. The Respondent had discussed this with Mr Marlow and it had been agreed to exchange contracts and a fresh draft had been ordered from the Royal Bank of Scotland, notwithstanding the Key Features Document indicating that:-

“The collective funds to be placed on the wholesale market via an EU Bank, against a receipt of confirmed irrevocable letter of credit....once the minimum level had been deposited..... On confirmation from the Trust account holding bank (RBS), that the paying bank has given an irrevocable letter of credit... the trustees will then release the collective funds to the paying bank....”
62. On 29th June 2006 Mr Marlow had emailed Mr L of Anglo American, indicating that they wished to receive formal confirmation from Banco Santander, including the terms of the deposit which should be sent via Royal Bank of Scotland.
63. An attendance note, dated 30th June 2006, recorded the further problems encountered by the Respondent in obtaining a confirmation of deposit from Banco Santander. Mr L of Anglo American had sent an email to Mr Marlow on 1st July 2006 attempting to deal with the concerns he had raised.
64. On 4th July 2006 the Respondent and Mr Marlow had flown to Malaga to meet with Mr L.
65. The meeting had taken place on 5th July 2006 and had included a Mr G and a Mr M of the Banco Santander. Mr M had advised that the bank draft had been incorrectly drawn and it had been agreed that the trustee would return to England, cancel the bankers draft and arrange for the funds to be sent direct by the Royal Bank of Scotland. On 5th July 2006 Mr L had sent a letter to Banco Santander regarding the Certificate of Deposit.
66. However, it had not been until 10th July 2006 that funds had been sent by the Royal Bank of Scotland to Banco Santander.
67. On 25th July 2006 the FSA had written to Mr D, Managing Director of City Gate Money Managers Ltd of whom Bridford Optimum Returns was appointed representatives.
68. The FSA had indicated that they considered the exemption which the Respondent thought applied to the trust did not apply and that the Scheme being promoted was a CIS and as such a breach of the Financial Services and Markets Act and also a criminal offence. The Respondent had drafted a reply to the FSA, for the approval of City Gate on 26th July 2006.
69. There then had followed an extensive exchange of emails between the bank, the trust and Mr L concerning the wording of the certificate, culminating in a telephone conversation on 28th July 2006.

70. The Respondent had prepared an attendance note of the same date which had demonstrated that the relationship between all involved was deteriorating.
71. The IO had reviewed all files relating to the matter. It had been apparent that the parties had been unable to agree on the final form of wording on the certificate of deposit and the agreement had broken down and an alternative bank had been needed.
72. The IO had discussed matters with the Respondent on 20th June 2008.

Bankhaus Lampe

73. The IO had noted that the paperwork for August 2006 was missing from the files.
74. However, given the problems with Banco Santander, an alternative bank had been found, that was Bankhaus Lampe, Dusseldorf.
75. On 30th August 2006, the sum of £9,452,000 had been transferred to Bankhaus Lampe. It was understood that Bankhaus Lampe was an independent private bank based in WestPhalia, Germany, dealing with private clients and medium sized corporations. It was not clear whether the bank was sufficiently rated to comply with the terms of the trust. The trust deed stated that the bank “*shall have a Moody’s rating of at least A, preferably Aa....*”.
76. Indeed, the Respondent had indicated to the IO that the Bank had not been A rated, and had indicated that he had believed that since Goldman Sachs had been Aa rated, that had been adequate security. The Respondent had conceded that he had been in breach of trust by placing the £9,452 million with the Bankhaus Lampe.
77. On 5th September 2006, Bankhaus Lampe had advised that they had bought Goldman Sachs Bonds.
78. However, on 8th September 2006, and notwithstanding that funds had already been used to buy Goldman Sachs Bonds on 5th September 2006, the Respondent had sent a letter, as trustee, confirming that the £9,452,000 could be placed in the Anglo American Credit Union account and that there was no restriction on the funds.
79. There had been no reference or evidence from the bank that would have suggested that the Goldman Sachs bonds had been security against the investors’ funds or that the bank was to use the bonds to secure a guarantee in favour of the trust. However, email correspondence on 8th September 2006 had shown that further difficulties were being experienced in obtaining an appropriately worded letter that complied with the Scheme’s specified criteria, to include being held for 52 weeks and guaranteeing a 6% return.
80. On 9th September 2006 Mr L had sent an email to Mr Marlow, which had been copied to the Respondent, to which he had attached a draft of a possible letter from Anglo American Credit Union.
81. Mr Marlow had written to the Respondent by email dated 10th September 2006 raising concerns. It had been generally viewed by those involved in the transaction that the

letter in its then current format had been the closest that they had been likely to achieve to enable the investment to be concluded.

82. On 13th September 2006 Mr Marlow had sent an email to Mr G, (co-trustee) copied to the Respondent up dating him on events and informing him that the investment had been now concluded.
83. During the interview on 20th June 2008, with the IO, the Respondent had indicated that he had wrongly believed that the pre-advice had been adequate security that the funds would be returned.
84. It had been pointed out to the Respondent that maturity had been stated as 2017 and not as 52 weeks to which the Respondent had replied "*I did not pick this up at the time*".
85. The Respondent had conceded that he had been wrong to release the original £9.452 million, without adequate security.

FSA complaint

86. Following complaint received from the FSA, the Respondent had attended a meeting with Counsel regarding the CIS on 15th October 2006.
87. The Respondent had prepared a draft letter to the FSA dated 14th December 2006.
88. The FSA had replied by letter dated 11th January 2007 to City Gate Money Managers Ltd, which had been forwarded to the Respondent on 15th January 2007.
89. The FSA had not accepted that the Scheme fell within the exemption, and that it considered it to be a CIS.
90. The Respondent had replied by letter dated 22nd January 2007, with a copy of the advice he had received from Counsel. The FSA had not been persuaded and had remained of the view that the Scheme was a CIS.
91. The FSA had requested details of all investors, confirmation that the trust could meet its liabilities and details of the mechanism by which repayment would be guaranteed.
92. The FSA had also wanted confirmation that the Scheme would not be marketed.
93. A draft response to the FSA had been prepared and dated 15th February 2007, along with a draft that was to be sent to all investors informing them of the FSA's view of the Scheme, and enquiring as to whether they wished to have their investments returned or retained until maturity.
94. The FSA had replied on the 15th March 2007 indicating that provided evidence was produced to show that the trust could meet its liabilities, the FSA would not seek to restrain the Scheme or to wind it up.

95. By September 2007, Bridford had no longer been associated with City Gate. The Scheme was to be wound up on 5th September 2007, investors were due to have returned to them 106% of the original capital, plus an additional 2% and the interest accrued on the capital. Cheques had been drawn in favour of the investors which had been signed by the Respondent and the co-trustee. The total amount due to investors had been more than that held by the trust. The total amount to be paid was £10,344,859.34.
96. On 21st September 2007 the investors had still not received their money and a complaint had been received by the Respondent on behalf of the investors, from Mr D, Director and Compliance Officer at Morgans Independent Advisors Plc. Mr D had been concerned that he had received a number of complaints from investors regarding delays in the Scheme and the return of their investments.
97. The Respondent had replied the same day, explaining the delays were because “*The counter party is not fully experienced on the documentary requirements for closing the transaction....*” and problems with “*unwinding the GS (Goldman Sachs) note*”.
98. The Respondent had remained confident that the investment had been secure and that full payment would be made in only a few days.
99. On 24th September 2007 Mr Marlow had sent to the Respondent details regarding the Goldman Sachs bonds and had indicated that the Scheme had achieved the 8% return.
100. One of the documents recorded that the value of the bonds had been in the sum of \$16,378,824. That had been acknowledged by the Respondent, who had calculated that the bonds had been worth an equivalent of £8,106,043.79, as against the original sum invested of £9,452,000, thereby resulting in a shortfall.
101. On 26th September 2007 Mr G had sent an email to the Respondent expressing concern that the cheques that both he and the Respondent had signed, had been posted, despite his understanding that the cheques would not be sent out to investors until the trust’s bank account was in funds. As it happened, several cheques had cleared before the bank had received instructions to stop the cheques.
102. On 26th September 2007, Mr Marlow had emailed the Respondent explaining what had happened to generate the complaint and attempting to reassure the Respondent that the trust would be wound up the following week.
103. On 28th September 2007, Mr Marlow had sent an email to Mr P attempting to deal with his concerns and had offered a reassurance that the funds would be available “*early the next week*”. The email had been copied to the Respondent.
104. The Respondent’s attendance note, dated 28th September 2007, recorded his conversation with Mr P on 28th September 2007.
105. There had been continuing events and emails. More investors had been beginning to complain that a month had passed since the investment should have closed and on 3rd October 2007 the Respondent had sent an email to Mr Marlow advising him that he considered that he had until the Friday, that is to say 5th October 2007, before the

matter would be referred to the FSA. On the same day, the Respondent had sent an email to Mr L, indicating that if funds were not returned by 5th October 2007 then the trust would commence legal action for recovery. On 4th October 2007 the Respondent had sent an email to Mr G, his co-trustee, advising him of the problems and of his discussions with Mr L.

106. It was apparent from his email that the Respondent had not been happy with what Mr L had told him or that matters would be resolved by 5th October 2007.
107. On 5th October 2007, the Respondent had received an email from Mr Marlow in which he had relayed a conversation which he had with Mr L, during which Mr L had offered a further 1% if no further action was taken, but that Mr L wanted it confirmed in writing by the solicitors.
108. On 7th October 2007, the Respondent had sent another email to Mr L marked "*high importance*", in which he had urgently requested the letter regarding the banking regulations and proof that the Goldman Sachs bonds had been held for the benefit of the trust.
109. On 8th October 2007, the Respondent had received an email, with an attached letter from Mr L, in which Mr L had attempted to reassure the Respondent that the investment was secure.
110. On 9th October 2007, the Respondent had written to Berkhaus Lampe advising that the bank's client, Anglo-American, had not repaid the £9.452 million as stated in the agreement between the trust and Anglo-American. The Respondent had sought confirmation from the bank as to when the funds would be returned to Royal Bank of Scotland and that any funds capable of meeting the payment should be held within the clients' account.
111. On 8th October 2007, Mr G had sent the Respondent copies of the trust accounts from 10th October 2006 until 4th October 2007, as provided by Royal Bank of Scotland.
112. Mr G had also attached a copy of a document that he had found on the internet regarding Mr L, showing that Mr L had been before the Courts in Andorra.
113. On 8th October 2007, the Respondent had received an email from Mr C, who acted for AGA Group Limited, who had invested £1 million in the Scheme. The email particularised a number of serious concerns to include that investors had not been informed of the problems and that the key features of the Scheme had not been adhered to. On the same day, Mr P had also sent an email particularising his concerns to Mr Marlow which had been forwarded to the Respondent on 9th October 2007.
114. On 9th October 2007, the Respondent had received a letter from Wallace Solicitors, who acted on behalf of Morgans Independent Advisors Plc setting out their concerns.
115. On 10th October 2007, the Respondent had met with Mr Rea, a partner in his firm, and had explained what had happened regarding Optimum Returns (BFIG) Trust.
116. On 11th October 2007 the Respondent had written to:-

- (i) Fidelity Investments Ltd requesting that the Anglo American Credit Unit account in which the Goldman Sachs bonds were being held by Fidelity should be held for the benefit of the trust pending further legal action.
 - (ii) To Wallace Solicitors attempting to allay some of their concerns and assure them that their clients investments were safe.
117. On 12th October 2007, the Respondent had received an email from Mr Marlow, which had forwarded a previous email from Mr L, in which Mr L was suggesting that he had a second alternative method for repaying the investors' money.
118. On the same day Mr Marlow had notified Bridford's Professional Indemnity Insurers, a copy of which had been sent to the Respondent, putting the insurers on notice of a potential claim in respect of the Scheme.
119. On 12th October 2007, a Dr K, a German lawyer, had written to the Respondent, as a solicitor for the trust. The letter recorded what happened to the funds which had been initially deposited at Bankhaus Lampe, and that the funds had been transferred to Bank Leu, in Geneva, on 12th September 2006.
120. Dr K had referred to the Respondent's letter of 8th September 2006 in which he had consented to Anglo American not having any restrictions on what they did with the funds.
121. On 15th October 2007, Wallace Solicitors had advised the trustees that due to no adequate response having been received to their letter of 9th October 2007 they would take legal action, without further notice.
122. On 16th October 2007, a meeting had taken place at the firm's offices following the firm's notification on 11th October 2007 to their Professional Indemnity Insurers of a potential claim.
123. On 18th October 2007, the Respondent's former firm had written to him indicating that he was to be suspended for 1 month.
124. On 19th October 2007, the Respondent had received a number of statutory demands in connection with the trust and in his capacity as co-trustee totalling £3,677,351.44.
125. On 25th October 2007, Trident Trust had obtained a "*stipulate temporary restraining order*" in the district court of Ohio, USA against Anglo American Credit Unit Inc and Fidelity and attached to the Fidelity account in which the Goldman Sachs bonds were held. Fidelity had asserted that the value of the bonds was not equal to the market value of the securities in the account.
126. The Respondent had subsequently been expelled from the LLP and had been so advised on 7th November 2007.

127. During the interview on 20th June 2008, the IO had asked the Respondent why he had not reported matters to his firm until 10th October 2007, despite the numerous complaints received regarding threats of legal action.
128. The Respondent had replied, *“It was then clear that he (Mr Rea) had to be involved, as until then I didn’t see any problem with return of funds”*. The Respondent had been asked, why, given that he had attended a number of “risk” meetings at the firm, he had not mentioned the difficulties with the Scheme to which the Respondent had replied, *“I wasn’t thinking that there was a problem”*.
129. When asked by the IO as to when he had thought he would “pull the plug” on the Scheme, the Respondent had replied, *“I think that I should have pulled the plug at the time of the, certainly, I should have pulled it when the Banco Santander guarantee was not forthcoming – if not before”*.
130. The Respondent had denied that he had in any way been dishonest and had asserted that he had been duped. The Respondent had said, *“I had a responsibility and I did not meet that responsibility and I am sorry. I did not meet the duties of trustee but I was not dishonest”*.
131. When asked who he had blamed for the problems, the Respondent had said Mr L and Mr Marlow and that, *“Neil Marlow had been less than forthcoming in the information provided and has been dealing regarding the notes and how they ended up with fidelity”*.
132. The Respondent had confirmed that he had not benefited in any way under the Scheme and had confirmed that the IO’s understanding was correct that Mr Marlow had earned about £750,000 in commission.
133. When asked what the position was regarding the £9.452 million, the Respondent had indicated that it had been returned plus the 8%.

Payment of £5,000

134. On 17th September 2007, Mr Marlow had sent an email to the Respondent advising that he had sent by CHAPS the sum of £5,000 to the Respondent’s personal account and in respect of a “Trustee fee”.
135. The Respondent had acknowledged the email the same day and said *“Many thanks Tim”*.
136. The Members Agreement dealt with fees and expenses. In essence the agreement had provided that any fees, salaries, profits, gifts of value or other payments of whatsoever kind received or receivable by a member, should be accounted for and belonged to the LLP, save for some limited exceptions in which the £5,000 did not fall.
137. When interviewed by the IO on 20th June 2008, the Respondent had indicated that he did not view the £5,000 as a gift and had intended to disclose it to the firm.

138. He had indicated that he had agreed the £5,000 should be retained and deducted from funds due to him in November 2007.
139. During interview with the firm's insurers on 17th October 2007, the Respondent had indicated that he had received the £5,000 and had confirmed that he had not accounted to the firm for that amount.

The Respondents explanation

140. By letter dated 8th October 2008 the SRA had written to the Respondent seeking his explanation. By letter dated 5th November 2008 the Respondent had replied.
141. The Respondent conceded that he had acted in breach of trust, had denied that he had failed to account for the £5,000, that his assurance, made to investors, that there had been no risk, had been made in good faith, but with hindsight had been misguided.
142. The Respondent had accepted that, with hindsight, he could have disclosed the circumstances to the firm some days earlier than he had done, albeit asserting that he had reported the claim when it had become clear to him that there was a problem rather than an unexplained delay in the payment of the investors fund.
143. The Respondent stated:

“At the critical time, i.e. the release of the funds to Bankhaus Lampe in August 2006, I was working under pressure as I was about to go on holiday, and Bridford and other clients were pressing for work to be done. I recall an exchange of memo's with Jeremy Ward, the Dawsons Finance Director, who wanted me to get bills issued before I left on holiday, and I recall had a rather heated conversation with him saying I resented being put under pressure like that. He replied to the effect that if bills were not issued, I would receive greater pressure from the partners. This is not an excuse, but the worries of moving house (to provide more accommodation to allow my 90 year old mother to live with me and my family) and the pressure to achieve billings probably affected my judgement in the trust matter..

With hindsight, I clearly should not have allowed the deal to proceed on a basis different from that described in the Trust Key Features Document....The problem was that as we got nearer to the deadline for getting the deal done, or having to return the funds to the investors, the pressure to complete increased. I did not go through the Lampe process having deliberately decided to do so knowing it was in breach of trust. My judgement at the time was that it would create an adequate security for an investor. When coupled with the “post advice” to be obtained from Lampe I believed at the time that the investors would get an undertaking from a bank in Germany for the trusts capital and interest to be repaid after 1 year, backed by securities issued by a financial institution authorised by the FSA and with the necessary credit rating.

Looking back on it now, that judgement was clearly flawed. I emphasise that I did not look at the process, decide that it was in breach of trust, and then proceed regardless. In the dealings I had with AACU and Lampe, I always

wanted the investors to get an adequate security and although I felt under pressure to conclude the investment, I expected that the investors would get the security that they needed.

I realise now that I did not give enough thought to the terms of the trust documentation. I was wrong both as to the adequacy of the security and in failing to give enough thought to the terms of the trust. I also realise now that even if the security had been adequate, i.e. if the investors had got what they expected to get because recourse could have been made to the Goldman Sachs bonds, I would still have been in breach of trust, because the arrangement was not in accordance with the terms of the trust documentation. I am extremely sorry and disappointed by my default. I feel desperately guilty about the consequences of my negligence although I am aware that, fortunately, the investors have since been paid by Trident's Insurers.

The consequence of these events is that I was expelled from Dawsons. I have no desire ever to return to practice as a solicitor. My career as a practising solicitor has been ended."

The submissions of the Applicant

144. The Applicant took the Tribunal through the details of the 8 allegations and the facts in support. He said that the Respondent admitted the first allegation but that he denied the rest.
145. The Applicant submitted that in each of the courses of conduct represented by the 8 allegations the Respondent had behaved in a way so as to justify the imposition of a sanction by the Tribunal. Moreover, that while recklessness was not an essential ingredient of any one of the allegations, the Applicant submitted that in relation to each of the allegations the Respondent had been reckless.

Allegation 1

146. The Applicant submitted that the Respondent had acted contrary to the terms of a trust of which he had been a trustee, and in particular had released the entire trust fund to a non qualifying bank on 6th July and 31st August 2006. Moreover, that the Respondent had acted in breach of trust and recklessly as regards the release of the trust funds to Banco Santander in Spain, and Bankhaus Lampe in Germany when neither had been qualifying banks as defined by the terms and conditions of the Scheme.
147. The Applicant further submitted that the Respondent would have been aware as to his obligations as a trustee under the terms of the Scheme, which had included not to release the trust funds from the trust account, unless a letter of credit or guarantee on satisfactory terms had previously been obtained in accordance with the terms of the Scheme, from a qualifying bank. It was the Respondent who had prepared and drafted the documents to include the trust deed, the terms and conditions and the Key Features Document which had established the Scheme.

Allegation 2

148. In relation to the second allegation the Applicant submitted that the Respondent had signed cheques payable to investors for the return of their investment at a time when he had known or should have known that there had been insufficient funds in the trustee account to meet those cheques.

Allegation 3

149. In relation to allegation 3, the Applicant submitted that notwithstanding that the Respondent had been alerted to the concerns of others; Mr R of Margetts Fund Management Ltd; Mr P of Tong Park Investments Ltd and Mr R, who had questioned the legitimacy of the Scheme and the fact that the Respondent himself had not understood how the Scheme worked, the Respondent had provided assurance and/or comfort to clients and/or investors that there had been no risk in the Scheme. In particular, following the complaint received on 21st September 2007 and having been alerted to the fact that the bonds were worth less than the original investment, on 24th September 2007 the Respondent had sought to assure certain investors that the money had not been at any risk and would be paid as promised. The Applicant noted that the Respondent had indicated that the assurance had been made in good faith albeit that it had been misguided.

Allegation 4

150. In relation to allegation 4 the Applicant submitted that the Respondent had failed to properly advise clients and/or investors as to the status and merits of the Scheme. In particular, when providing the assurances on 24th September 2007, the Respondent had failed to advise that there had been less money available than had been originally deposited. The Applicant submitted that any reasonable and prudent solicitor would have made enquiry, prior to the giving of any assurance or comfort. The Respondent had failed to do so and accepted that his assurances had been misguided. In the event that the Respondent sought to rely upon the assurances provided by Mr Marlow to him, the Applicant submitted that the Respondent had been under a duty to make his own enquiry and that in failing to do so he had acted contrary to Rule 1 of SPR and/or SCC and recklessly.

Allegation 5

151. The Applicant submitted that following the involvement of the FSA the Respondent had been aware that the FSA had not accepted that the Scheme fell within the exemption and that they had considered it to be a CIS.
152. By letter dated 15th February 2007 and sent to Mr D of City Gate Money Managers Limited, the FSA had made reference to section 26 of the Financial Services and Markets Act 2000 which provided an agreement made by a person in the course of carrying on a regulated activity in contravention of the general prohibition was unenforceable against the other party and that party was entitled to recover any money or other property paid or transferred by him into the agreement together with compensation for any loss sustained by him as a result of having parted with it.

153. The FSA had requested that the Scheme write to all investors of the trust to advise them of the FSA view, that the trust was a CIS, and to inform them of their Section 26 rights.
154. The Respondent had been dealing with the correspondence from the FSA and had been aware of the FSA's letter dated 15th February 2007.
155. The Applicant submitted that the Respondent had failed to send the letters to investors as requested by the FSA or in the alternative had failed to make arrangements for such to be sent on behalf of the trust.

Allegation 6

156. The Applicant submitted that the Respondent had failed to account to the LLP for £5,000 paid on account to him, contrary to Rule 1 of the SPR and/or SCC and the terms of his membership of the LLP.

Allegation 8

157. Finally in relation to allegation 8 the Applicant submitted that the Respondent had failed to notify the LLP of the high value/risk element involved in the Scheme and, subsequently, of a possible claim in circumstances where he had known or should have known that there was a potential claim having regard to the fact that:-
 - (i) Funds had been released in breach of the terms of the trust deed (which he himself had prepared);
 - (ii) The subsequent concerns expressed by certain investors about the return of their funds;
 - (iii) The concerns raised by fund managers;
 - (iv) The fact that the Respondent himself had conceded he did not understand how the Scheme worked.
158. In particular the Applicant submitted further that despite being a member of the Risk Committee of Dawsons LLP and having attended the Risk Committee meetings over the preceding 12 months, the Respondent had failed to disclose any of the circumstances relating to the Scheme to the committee. Moreover he had failed to disclose any reference to the matter on the disclaimer form on the renewal of Professional Indemnity Insurance cover. The first reference by the Respondent to the LLP was 10th October 2007. Given the significant sums involved and the fact that investors had not been repaid as they should have been in September 2007 the Applicant submitted that it was a matter of concern that the Respondent had failed to report matters to his partners immediately on him becoming aware of the failure to repay.
159. While the Respondent conceded that he had become aware of a potential claim by 21st September 2007, he had failed to make mention of it to any of the members of Dawsons at Dawsons LLP and despite having attended the Risk Committee meetings

regularly and as late as 2nd October 2007 at which such matters would and should have been discussed, he had said nothing.

Oral evidence on behalf of the Applicant

160. Mr Cassini, an IO with the SRA, gave evidence as to the preparation and contents of his report dated 31st July 2008 dealing particularly with the Optimum Returns (BFIG) Scheme. He explained that having considered the various papers and documents relating to the matter, he had formed the view that such were redolent of a high yield investment fraud. He said that during an interview with the Respondent on 20th June 2008 the Respondent had agreed with his assessment.
161. In cross-examination, Mr Cassini explained that interviews during Forensic Investigations are not conducted under caution and there is no obligation on the SRA to give a caution as it is not a criminal investigation.

Oral evidence from the Respondent

162. The Respondent referred the Tribunal to his witness statement of 22nd January 2010. He admitted allegation 1, that he had failed as a trustee. He agreed that the phrase that the “scheme was too good to be true” did occur, but he had been aware that the Scheme had been considered by a number of independent financial advisers who had advised their clients to enter into it.
163. The Respondent explained that he had been concerned that investors in the Scheme got adequate security and that he had become too engrossed in trying to make the Scheme work. In placing the funds, he had allowed the deal to proceed on a basis different from that described in the Trust Key Features Document. However, at the time, he had believed that they were still going to achieve an exchange of the trust funds for acceptable security, namely the obtaining of Goldman Sachs bonds held on deposit with Lampe.
164. The Respondent explained that Bridford Financial Solutions Ltd (Bridford) was his client and Neil Marlow was a director and principal shareholder in the Bridford group. The Respondent gave details of the Scheme and said that initially his role was to advise on the legal basis for structuring the product using a trust-based Scheme finally name Optimum Returns (BFIG) Trust. By the trust deed of 18th January 2006, Neil Marlow and the Respondent had been appointed as trustees. Later, a corporate trustee, Trident Trust UK Ltd had replaced Neil Marlow. In about June 2006, the Respondent explained that he understood Anglo-American Credit Union (AACU) might be the counter party represented by Mr L. He said it was for the counter party to assist in arranging a bank guarantee whereby the funds would be repaid after 12 months with interest of 6%. The counter party would use the funds in order to access the inter-bank market. In addition, the counter party would pay commission to Bridford (the Respondent’s client) out of which Bridford would pay the investors an additional return.
165. The Respondent said that he had expected Banco Santander to provide a bank guarantee however negotiations had not reached agreement. However, on 3rd August he had learnt that Banco Santander were not going to proceed. By 15th August the

funds had been returned by Banco Santander in Malaga to the trust's account at the Royal Bank of Scotland and the shortfall of £32,793.91 was later made up by AACU.

166. The Respondent explained that it had been only on his return from holiday on 7th September 2006 that he had become aware that the Goldman Sachs bonds had a maturity date of 2017. He had sought confirmation from Bankhaus Lampe that the capital and interest on the trust funds would be repaid after 52 weeks even though the maturity on paper was not until 2017.
167. The Respondent referred to numerous emails between all the parties seeking to secure the funds. He insisted that at the time he had felt that the arrangements had been adequate to protect the funds. The Respondent stressed that his concern had been to ensure that the investors were adequately secured. However when the time came for the funds to be repaid, he knew that he had failed. However, he insisted that he had not sought to deliberately or to recklessly breach the trust.
168. The Respondent asked the Tribunal to note that it had subsequently been found by the Financial Services Authority that the trusts funds had been transferred twice without his knowledge. He stated that it was his belief that had the funds not been so transferred, the trust would have been able to return the investors funds.
169. Dealing with allegation 2, the signing of the cheques, the Respondent explained that on 6th September 2007 Bridford had sent him a letter confirming that the investors' funds were about to be returned with the 6% interest and additional 2% rebate of commission. Enclosed with the letter had been a schedule of investors and monies due together with cheques. Bridford had asked him to sign the cheques as trustee and to send the cheques to the other trustee, Trident, for counter signature and return to Bridford for dispatch to the investors. The Respondent said that he had been aware when he signed the cheques that the money was not yet in the trust account but he had considered it to be administratively sensible to get the cheques ready. He had not expected any cheques to be sent out by Trident until the trust funds had been put back in the account.
170. In cross-examination the Respondent said that he regretted his involvement with the Scheme and that, with hindsight, he realised that he should not have proceeded with the arrangements when those arrangements were not as had been described in the trust's documentation. He had been qualified for 34 years and was experienced in company law and financial services but he had never been involved previously in such a Scheme.
171. In relation to allegation 5, the Respondent said the arrangements had been made to send letters to investors and he had believed that those letters had been sent.
172. The Respondent insisted that his advice had been that the Scheme had fallen within a statutory exemption from the definition of a collective investment Scheme and that he had the legal knowledge to give that advice.
173. The Respondent stressed that his role had been to ensure that security was in place and that although he had a general understanding of the Scheme, that funds were to be invested in the money market achieving the return that investment and the

achievement of the return had been the role of the counter party. The Respondent agreed that he had acted contrary to the terms of the trust and at the time the funds were released those funds were at risk. He agreed that he never should have departed from the Key Features Document. He explained that he had let his client market the Scheme before getting the guarantee arranged and that that marketing had built up pressures and expectations. The Respondent said that he had also been under pressure to achieve billings. He had lost his judgement in trying to make the Scheme work and had failed at the critical point to stop the transaction. With hindsight the Respondent said that he believed he had been distracted and that perhaps he had agreed things for swiftness which in other circumstances he would not have permitted.

174. The Respondent insisted that he had not been acting recklessly in agreeing to things for swiftness. It had not been that he had not cared about outcomes but that due to distractions he had been thinking with a serious loss of clarity. The Respondent stressed that he had believed that he would get adequate security but he had failed to do so. He accepted that the failure had been serious and that he had taken a blinkered approach to his professional obligations but he wanted the Tribunal to understand the background facts and the building up of great pressures.
175. In relation to allegation 6, the Respondent explained that his firm had given him clearance for a directorship and for a fee. He had never had any intention of receiving a fee from his client, Bridford, in breach of his partnership agreement.
176. In relation to allegation 8 the Respondent agreed that he should have mentioned the trust to the Risk Committee. However, he said that until late September or early October 2007, he had not considered that there had been any risk of the trust funds not being returned.

The decision of the Tribunal

177. Having considered all the evidence and submissions the Tribunal were satisfied so that it was sure that allegation 1 had been proved and that the Respondent had been reckless, that allegation 2 was proved but without the reckless element. Allegation 3 was proved and that the Respondent had been reckless, allegations 4, 5 and 6 were not proved, allegation 7 was proved and the Respondent had been reckless and allegation 8 had been proved but without any element of recklessness.
178. The Tribunal found the Respondent to be a credible and not an ill intentioned witness. However, he had clearly failed in his role as a trustee. Indeed the Respondent had admitted the allegation. By releasing funds when an appropriate guarantee had not been arranged for the protection of the investors, the Tribunal were satisfied that the Respondent had acted recklessly. Misguidedly he had put his concerns to make the Scheme operational before his responsibilities as a trustee. His actions, whilst carried out when he was subject to many pressures, had been heedless of their probable consequences. His involvement as a solicitor and as a trustee had been an assurance to investors that the Scheme would be carried out as presented in the Key Features Document. Indeed the Respondent admitted that he had been mainly responsible for the drafting of the key documentation.

179. The Tribunal was satisfied that the Scheme itself had exhibited characteristics of fraudulent transactions which was not to say that it was fraudulent but as such the Respondent should have been alerted to be extremely meticulous in his professional duties both as a solicitor and as a trustee. In this he had failed.

Mitigation by the Respondent

180. The Respondent gave the Tribunal details of his financial circumstances. He explained the devastating effects of his expulsion from his firm and of his bankruptcy. The Respondent explained that he did not believe that he would ever be able to work as a solicitor again.

Application for costs

181. The Applicant applied for an Order for costs which he explained had been agreed at £22,000.

The decision of the Tribunal as to penalty and costs

182. While expressing sympathy for the Respondent, the Tribunal considered that it was necessary for the protection of the public that he be Struck off the Roll of Solicitors and it so Ordered. Given that Order and his financial circumstances the Tribunal made an Order for costs but indicated that such Order was not to be enforced without its leave.

Dated this 7th day of May 2010
on behalf of the Tribunal

Miss T Cullen
Chair