IN THE INDEPENDENT
LEGAL SERVICES COMMISSION

No. 002 of 2016

BETWEEN:

CHIEF REGISTRAR

Applicant

AND:

VILIMONE VOSAROGO (AKA FILIMONI WR VOSAROGO)

Respondent

Coram: Dr. T.V. Hickie, Commissioner

Counsel for the Applicant: Mr. A. Chand
Respondent: Ms. B. Malimali with Mr. Vosarogo

Dates of Hearing: 14th June 2017, 18th and 19th September 2017

Date of Judgment: 29th September 2017

JUDGMENT ON SANCTIONS

1. Introduction

[1] This is a judgment as to the sanctions to be imposed upon a legal practitioner following his pleading guilty to four counts of professional misconduct amounting to a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence. In a nutshell, for the audit period of 2015 (i.e. 1st October 2014 to 30th September 2015), the Respondent legal practitioner **negligently failed to ensure that the accounts of four of his clients were not overdrawn** in a combined sum of $14,826.21. There is no suggestion of fraud by him.

[2] On my calculations, the Respondent has now been waiting 18 months and 29 days up until today for a resolution of this matter since the Chief Registrar refused to issue him with a practising certificate as from 1st March 2016. It is now just on 12 months since the proceedings commenced in the Commission with an initial application containing four Counts. An Amended Application was then filed containing 13 Counts. Finally, there was the filing of a Further Amended Application containing four Counts to which the Respondent pleaded guilty. The issues raised

have required a major interlocutory judgment, as well as four ex tempore judgments. Meanwhile, the Respondent has had various periods without a practising certificate (in effect, suspended) and other periods working under a restricted practising certificate with strict conditions.

[3] Arguably, this is the first case of its type to come before the Commission on the sole issue of where a legal practitioner has been negligent in the operation of their trust account to the extent that it is beyond being a minor matter but not to the extent that it has required the practitioner's name to be struck from the Roll. As for similar matters prior to the formation of the Commission, Counsel for the Respondent legal practitioner advised during the sanctions hearing that *"before the ILSC came in we know cases from the Law Society but they are nowhere recorded".* Hopefully, the above may assist in explaining the necessity for the detailed judgment that is to follow, as well as providing a guide for both "prosecution" and "defence" should similar matters arise in the future.

2. Background

[4] According to the written submissions of Counsel for the Respondent legal practitioner, the Respondent was born on 27th September 1976. This means that on Wednesday of this week he turned 41 years of age – an important stage in one's life and career. Further, the Respondent is married, is the father of six children and is also responsible for the care of his elderly mother.

[5] In relation to his legal career, I have been advised that the Respondent commenced work as a Barrister and Solicitor of the High Court of Fiji in late 1999. After working for the Office of Director of Public Prosecutions from November 1999 until September 2003, he was then appointed as the Manager Legal Service for the Land Transport Authority. In June 2006, he was appointed for a period of three years as the Director of the Legal Aid Commission. In June 2010, he opened his own law firm, Mamlakah Lawyers based in Suva. He has been the sole principal of that firm ever since. In addition, he has also been the legal adviser/representative to a number of community organisations in Fiji: the Fiji Rugby Union, the Fiji

National Rugby League, the Scripture Union in Schools, the Fiji Teachers Registration Board, as well as a past Council Member of the Fiji Law Society.

[6] The Respondent has also been the sole trustee of his firm's trust account. For the audit period of 2015 (i.e. 1st October 2014 to 30th September 2015), the firm's trust account was overdrawn $14,826.21. After an investigation, it was revealed that four ledgers in the firm's trust account were overdrawn as follows:

(1) Mamlakah Health & Safety's account was overdrawn by $14,090.17;

(2) Eugenia Guruyawa Foon's account was overdrawn by $715.89;

(3) Janendra Murti's account was overdrawn by $10.10;

(4) Lai Hui v Changlin and Wang Xiutu's account was overdrawn by $10.05.

[7] When the above came to light following the yearly external audit of the Respondent firm's trust account, the Respondent admitted that the firm had a poor manual accounting system. He personally repaid into the firm's trust account the overdrawn sum totalling $14,826.21. He also purchased a software package for the firm's trust account.

[8] On 1st March 2016, which was the beginning of the legal practising year, the Chief Registrar refused to issue the Respondent with a new practising certificate.

[9] Just under four months later, on 27th June 2016, the Chief Registrar filed an application with the Commission alleging three counts of professional misconduct by the Respondent legal practitioner. That application was made returnable in the September 2016 Sittings of the Commission.

[10] After various discussions during those Sittings, Orders were made for the filing of submissions in relation to the Applicant's Interlocutory Application for Amendment of Count 3 and the Respondent's Interlocutory Application for the charges to be struck out. The matter was then listed at the commencement of the November/December 2016 Sittings for a ruling

on those two applications and (depending upon the outcome of the ruling) for a hearing of the substantive matter/s on 7th December 2016,

[11] In addition, on 23rd September 2016, Counsel for the Respondent legal practitioner made an oral application (opposed by Counsel for the Chief Registrar) for the issuing of an interim practising certificate until the 7th December 2016. An ex tempore ruling was delivered on 23rd September 2016 granting the application but with the following restrictions:

> *'Pursuant to Section 121(3) of the Legal Practitioners Decree, the Chief Registrar shall issue a Practicing [sic] Certificate to the Respondent until 7th December 2016 forthwith on payment of the prescribed pro rata fees, on the following conditions:*
>
> > *(i) The Respondent is not to operate a Trust Account.*
> > *(ii) The Respondent is not to operate Trust Account No. ******* held at the Bank ****** unless approved in writing by the Chief Registrar.*
> > *(iii) The Respondent is to take the monthly bank statement for Mamlakah Lawyers Trust Account No. ******* held at the Bank ****** to the Office of the Chief Registrar at the end of each month until further notice.*
> > *(iv) The Respondent will only operate or practice as a Barrister and will only receive payment upon issuance of an invoice, after the work has been done (Invoice for work done).*
> > *(v) The Respondent will work under the Supervision of Mr. Simione Valenitabua who was admitted as a Barrister & Solicitor of the High Court of Fiji in 2006. He is the Managing Partner in the firm of TOGANIVALU & VALENITABUA whose address is 30 High Street, Toorak, Suva.'*
>
> (See *Chief Registrar v Vosarogo*, Unreported, ILSC Case No.002 of 2016, 23 September 2016; PacLII: [2016] FJILSC 6, <http://www.paclii.org/fj/cases/FJILSC/2016/6.html>.)

[12] The matter was then relisted at the commencement of the November/December 2016 Sittings when Orders were made for the filing of further written submissions to be addressed at a hearing on 7th December 2016.

[13] On 7th December 2016, following the hearing in relation to the two interlocutory applications, Counsel for the Respondent legal practitioner made an oral application (opposed by Counsel for the Chief Registrar) for

the issuing of an interim practising certificate until the next mention date on 6th February 2017. An ex tempore ruling was delivered on 7th December 2016 granting the application upon the same restrictions as set out in the ex tempore ruling of 23rd September 2016. (See *Chief Registrar v Vosarogo*, Unreported, ILSC Case No.002 of 2016, 7 December 2016; PacLII: [2016] FJILSC 9, <http://www.paclii.org/fj/cases/FJILSC/2016/9.html>.)

[14] On 6th February 2017, a Ruling was delivered on the two interlocutory applications wherein (1) The Applicant's Application seeking Leave to Amend Count 3 was refused and (2) The Respondent's Application for the three counts to be stuck was granted in part. Leave was granted, however, to Counsel for the Chief Registrar to file an Amended Application. The matter was then made returnable on 13th February 2017, to hear from Counsel for the Respondent as to whether she had any objections to the Applicant's Further Amended Application and, if not, to set the substantive matter down for hearing. (See *Chief Registrar v Vosarogo*, Unreported, ILSC Case No.002 of 2016, 6 February 2017; PacLII: [2017] FJILSC 1, <http://www.paclii.org/fj/cases/FJILSC/2017/1.html>.)

[15] Immediately following the above ruling on 6th February 2017, Counsel for the Respondent legal practitioner made an oral application (that was opposed by Counsel for the Chief Registrar) for the continuation/issuing of an interim practising certificate until 28th February 2017 (the end of the "2016" legal practising year). An ex tempore ruling was delivered on the same date granting the application upon the same restrictions as set out in the ex tempore ruling delivered on 23rd September 2016. (See *Chief Registrar v Vosarogo*, Unreported, ILSC Case No.002 of 2016, 7 February 2017; PacLII: [2017] FJILSC 9, <http://www.paclii.org/fj/cases/FJILSC/2016/9.html>.)

[16] On 10th February 2017, an Amended Application was filed by Counsel for the Chief Registrar alleging 13 counts of professional misconduct against the Respondent legal practitioner.

[17] On 13th February 2017, the Amended Application was set down for hearing on 10th April 2017 with a time estimate of two days and, if necessary, a third hearing day on 13th April 2017. Counsel for the Respondent legal practitioner then made an oral application (opposed by Counsel for the Chief Registrar) for the continuation/issuing of the Respondent's interim practising certificate until the next hearing, that is, as from 1st March 2017 up to and including 13th April 2017. When I advised that I would be granting the application, Counsel for the Chief Registrar indicated that he did not require on this occasion to have a written ex tempore ruling providing reasons. The application was then granted upon the same restrictions as set out in the ex tempore ruling of 23rd September 2016.

[18] On 10th April 2017, just prior to commencement of the hearing, Counsel for the Chief Registrar sought to have evidence taken by Skype from one witness and explained that there was also another witness who was in New Zealand. Counsel for the Respondent legal practitioner objected to evidence being taken by Skype and noted that no prior discussion had taken place seeking her consent to this proposed course of taking evidence. Counsel for the Chief Registrar then indicated that he was not ready to proceed on that day. The matter was then adjourned for hearing on 13th April 2017.

[19] On 13th April 2017, Counsel for both parties advised that discussions had taken place in relation to the various counts with indications as follows:

(1) there would be a plea of guilty to Count 1;

(2) Counts 2, 3, 5, 6 and 10 might be withdrawn;

(3) there needed to be a reconfirmation that Counts 4 and 13 were part of the audit period;

(4) there would be a plea of guilty to Count 7 once the Applicant had agreed that the amount was $10.10;

(5) there would be a plea of guilty to Count 8 in the amount was $10.05;

(6) Count 9 was alleged to have been a "bank problem" with the Applicant to check and, if it had to proceed, then it would be a plea of not guilty;

(7) Count 11 was a bank error again for the Applicant to check and, if it had to proceed, then it would be a plea of not guilty; and

(8) Count 12 was also for the Applicant to check.

[20] The matter was then adjourned until 18th April 2017 to allow discussions to continue so that on that date the Commission could be advised whether the remaining matters were to proceed as a defended hearing or as a plea in mitigation.

[21] On 18th April 2017, Counsel for the Chief Registrar advised that further discussions had now taken place for which he was seeking instructions from the Chief Registrar who was overseas. The matter was then adjourned until 5th June 2017. In the meantime, Counsel for the Chief Registrar was to write to the Respondent with a copy to the Commission as soon as he received a response from the Chief Registrar. In addition, it was ordered that the Respondent's interim practising certificate be extended until 5th June 2017.

[22] On 5th June 2017, Counsel for both parties advised that an agreement had been reached whereby it was proposed that Counsel for the Chief Registrar would file a Further Amended Application containing just four counts (that is, Counts 1, 4, 7 and 8 from the previous Amended Application) and the remaining counts would be withdrawn. Counsel for the Respondent legal practitioner indicted that once the Further Amended Application had been served there would be pleas of guilty formally entered to the four counts. Orders were then made for the Further Amended Application to be filed and served by 6th June 2017 and the matter was adjourned until 7th June 2017.

[23] On 7th June 2017, Counsel for the Respondent legal practitioner entered pleas of guilty to the four counts. Orders were then made for Counsel for both parties to file and serve written submissions and the matter set down for a sanctions hearing (plea in mitigation) on 14th June 2017.

[24] On 14th June 2017, the sanctions hearing proceeded, following which, Counsel for the Respondent legal practitioner made an oral application for the continuation of the Respondent's interim practising certificate while

judgment was pending on what sanctions were to be imposed in this matter. Counsel for the Chief Registrar opposed that application. An ex tempore ruling was delivered that same evening wherein the application was refused. (See *Chief Registrar v Vosarogo*, Unreported, ILSC Case No.002 of 2016, 14 June 2017.) The Respondent has now been without a practising certificate since 5th June 2017.

[25] On my calculations, after reviewing the history of this matter as set out in paragraphs [8]-[24] above, the Respondent legal practitioner has been **refused the issuing of a practising certificate (in effect, suspended) for a total of 327 days or 10 months and 17 days** since 1st March 2016, as follows:

(1) **1st March 2016 up to and including 23rd September 2016** (when I granted at approximately 7.00pm that evening the Respondent's application for the issuing of an interim practising certificate) - a period of suspension for 205 days or 6 months and 21 days including the end date;
(2) **13th April until 17th April 2017** - a period of 5 days.
(3) **5th June 2017 until today, 29th September 2017** - a period of 117 days or 3 months and 25 days including today.

[26] In addition, on my calculations, the Respondent legal practitioner has worked under a **severely restricted practising certificate for a total of 249 days or 8 months and 7 days** as follows:

(1) 24th September 2016 until 13th April 2017 - a period of 201 days or 6 months and 20 days NOT including the end date (when he appeared before the Commission);

(2) 18th April 2017 until 5th June 2017 - a period of 48 days or 1 month and 18 days NOT including the end date (when he appeared before the Commission).

3. The offences - professional misconduct – ***while operating a trust account failed to ensure that the ledgers (accounts) of four clients were not overdrawn***

[27] Counsel for the Respondent legal practitioner has entered pleas of guilty on behalf of her client to **four counts of professional misconduct** contrary to section 82 (1)(a) of the *Legal Practitioners Decree 2009* as follows:

'Count 1

PROFESSIONAL MISCONDUCT: Contrary to section 82(1) (a) of the Legal Practitioners Decree 2009

PARTICULARS

Vilimone Vosarogo also known as Filimoni WR Vosarogo, *a legal practitioner, principal of Mamlakah Lawyers and trustee of Mamlakah Lawyers Trust Account kept with ******** Bank, Suva Branch, bearing Account Number ******* from the period 1st October 2014 to 30th September 2015 failed to ensure that his client, namely, Mamlakah Health & Safety's account was not overdrawn by a sum of $14,090.17, which conduct constitutes professional misconduct pursuant to section 82(1)(a) of the Legal Practitioners Decree 2009.*

Count 2

PROFESSIONAL MISCONDUCT: Contrary to section 82(1) (a) of the Legal Practitioners Decree 2009

PARTICULARS

Vilimone Vosarogo also known as Filimoni WR Vosarogo, *a legal practitioner, principal of Mamlakah Lawyers and trustee of Mamlakah Lawyers Trust Account kept with ******** Bank, Suva Branch, bearing Account Number ******* from the period 1st October 2014 to 30th September 2015 failed to ensure that his client, namely, Eugenia Guruyawa Foon also known as Eugine Guruyawa and also known as Eigine Praveena Agness' account was not overdrawn by a sum of $715.89, which conduct constitutes professional misconduct pursuant to section 82(1)(a) of the Legal Practitioners Decree 2009.*

Count 3

PROFESSIONAL MISCONDUCT: Contrary to section 82(1) (a) of the Legal Practitioners Decree 2009

PARTICULARS

Vilimone Vosarogo also known as Filimoni WR Vosarogo, *a legal practitioner, principal of Mamlakah Lawyers and trustee of Mamlakah Lawyers Trust Account kept with ******** Bank, Suva Branch, bearing Account Number ******* from the period 1st October 2014 to 30th September 2015 failed to ensure that his client, namely, Janendra Murti's*

account was not overdrawn by a sum of $10.10, which conduct constitutes professional misconduct pursuant to section 82(1)(a) of the Legal Practitioners Decree 2009.

Count 4

PROFESSIONAL MISCONDUCT: Contrary to section 82(1) (a) of the Legal Practitioners Decree 2009

PARTICULARS

Vilimone Vosarogo also known as Filimoni WR Vosarogo, *a legal practitioner, principal of Mamlakah Lawyers and trustee of Mamlakah Lawyers Trust Account kept with ******** Bank, Suva Branch, bearing Account Number ******* from the period 1st October 2014 to 30th September 2015 failed to ensure that his clients, namely, Lai Hui v Changlin and Wang Xiutu's account was not overdrawn by a sum of $10.05, which conduct constitutes professional misconduct pursuant to section 82(1)(a) of the Legal Practitioners Decree 2009.'*
[My anonymisation]

[28] Section 82(1)(a) of *the Legal Practitioners Decree 2009* states:

> *'82.—(1) For the purposes of this Decree,* ***"professional misconduct" includes*** *–*
> *(a) unsatisfactory professional conduct of a legal practitioner, a law firm or an employee or agent of a legal practitioner or law firm,* ***if the conduct involves a substantial*** *or consistent* ***failure to reach or maintain a reasonable standard of competence and diligence****;'*
> [My emphasis]

4. Background to the submissions

[29] On 7th June 2017, once the Respondent legal practitioner entered a plea of guilty to each of the above four counts, Orders were made for each party to file written submissions, noting that I would be considering the 5th edition of *'Guidance Note on Sanctions'* published by the Solicitors Disciplinary Tribunal of England and Wales on 8th December 2016 as a guide as to what sanction/s should be imposed in this matter. (See <http://www.solicitorstribunal.org.uk/sites/default/files-sdt/GUIDANCE%20NOTE%20ON%20SANCTIONS%20-%205TH%20EDITION%20-%20DECEMBER%202016.pdf>.) A copy of that publication was provided to Counsel for the Respondent (Counsel for the Applicant already having obtained a copy in previous matters). I then set the matter down for a "sanctions" hearing on 14th June 2017, following which I then adjourned the matter until 18th September 2017, whilst I

considered my judgment and to also allow the Respondent legal practitioner the opportunity to undertake a trust account management course in either New Zealand or Australia.

[30] As I was considering my judgment subsequent to the sanctions hearing on 14th June 2017, I noted that of the cases that have come before the Commission between 2009-2017 involving **poor or negligent trust account management**, apart from two decisions of Commissioner Connors in 2010 that had been cited by Counsel for the Respondent in her submissions, I was not cited any other case from Fiji by either Counsel. Instead, Counsel for the Applicant had cited three cases from Australia, while Counsel for the Respondent had cited four case summaries published on the web site of the New Zealand Law Society.

[31] Thus, I had the staff of the Commission check through both the Commission's files and Discipline Register to provide a summary of all matters that have come before the Commission between 2009-2017 involving trust account issues where the application has been established. That summary revealed 11 cases. I also undertook a survey of recent cases listed on the website of the Solicitors Disciplinary Tribunal of England and Wales where the legal practitioner had failed to keep proper accounting records and came across five recent decisions.

[32] I then arranged for the Secretary of the Commission to write to Counsel for each party on 11th September 2017 (which was the Monday of the week prior to the present Sittings) providing them with a written summary of the 11 cases that have come before the Commission between 2009 and 2017 involving trust account issues, as well as a written summary of five recent decisions of the Solicitors Disciplinary Tribunal of England and Wales where the legal practitioner failed to keep proper accounting records.

[33] As the focus of the summaries was on whether orders were made for a practitioner to be struck off from the Roll, suspended or fined together with any costs that were ordered, the summary did not include in most cases whether any conditions were attached to the grant of a restricted practising

certificate except where it was of particular relevance such as a course was required to be undertaken. Counsel were provided, however, with the web address for each case if it was listed on the internet and invited to provide written submissions to be filed and served by the Friday (i.e. 15th September 2017) before the commencement of the present Sittings addressing the penalties imposed.

[34] Counsel for the Applicant filed submissions on 14th September 2017. He also sent a further reply on 14th September 2017, confirming that *'the summary of the 11 cases [sent by the Secretary of the Commission on 11 September 2017] is correct'* save that the Orders in *Shah* and *Naidu* were not complete and attached copies which included matters in addition to suspension or fine which was the focus of the Commission's letter.

[35] Counsel for the Respondent legal practitioner did not file any written submissions and sought instead to make further oral submissions.

[36] When the matter was listed for mention at the commencement of these present Sittings (18th September 2017), after Counsel for the Respondent legal practitioner was asked why she had not complied with the above and why costs should not be awarded, a timetable was ordered for the filing of final submissions. In addition, as both Counsel agreed that there would not be the need for a further listing date (for Counsel to speak to their respective submissions), the parties were advised that judgment would then be on notice.

[37] Counsel for the Respondent then appeared in the Commission the following day (19th September 2017) to file her submissions whilst I was hearing another matter where Counsel for the Applicant Chief Registrar in this present matter was also appearing. I immediately stood the matter down that I was then hearing and asked both Counsel to come forward as it was an opportune time for me to immediately relist this matter rather than having to call Counsel back on another date.

[38] I then explained to both Counsel that since the mention of this matter the previous day, my staff (in consultation with me) had noted that there was a twelfth trust account case that had come before the Commission in the period 2009-2017 that was not listed in the summary previously provided by the Commission to Counsel for the parties, namely another case involving ***Haroon Ali Shah***. I further explained that what was of relevance from that case for the present matter was that in one of the counts it had been found that the legal practitioner had failed to account properly for money received from the proceeds of a sale and there was a certain sum of money in the legal practitioner's trust account that was yet to be paid to the client (approximately $4,000). I noted that it was a condition imposed by Commissioner Connors in *Shah* that the legal practitioner was required to undertake five criminal trials for the Legal Aid Commission on a pro bono basis within 12 months, otherwise the legal practitioner's practising certificate would be automatically suspended for five months. (See ***Chief Registrar v Haroon Ali Shah***, Unreported, ILSC Case No.008 of 2009, Commissioner Connors, 30 September 2010; PacLII: [2010] FJILSC 26, <http://www.paclii.org/fj/cases/FJILSC/2010/26.html>) – involving three counts of professional misconduct and one count of unsatisfactory professional conduct.)

[39] Counsel for the Applicant Chief Registrar recalled this additional *Shah* case and confirmed that the legal practitioner did comply with the condition imposed by Commissioner Connors. I then noted that I wanted both Counsel to be aware of it so that if Counsel for the Respondent legal practitioner wanted to add anything further to her written submissions that she was just about to file she could do so and then Counsel for the Applicant Chief Registrar could have the opportunity to respond.

[40] Counsel for the Respondent legal practitioner advised that she did not wish to add anything further to her written submissions and would accept whatever additional research my staff had located. She also noted that *"Because in the Dorsami Naidu, because it was a conveyancing matter. He was asked to do a conveyancing [course] … in Australia or New Zealand"* as one of the conditions imposed on his practising certificate by

Commissioner Connors. (See *Chief Registrar v Dorsami Naidu* (Unreported, ILSC Case No. 005 of 2009, 16 August 2010, Commissioner Connors; PacLII: [2010] FJILSC 20, <http://www.paclii.org/fj/cases/FJILSC/2010/20.html>.)

[41] In reaching my judgment, therefore, as to the appropriate sanction/s to be imposed in this matter, I have taken into account the following submissions:

(1) the *'Applicant's Submissions on Penalty'* filed on 13th June 2017;

(2) the *'Respondent's Submission on Sanction'* filed on 14th June 2017;

(3) the oral submissions made by each party before me at the sanctions hearing on 14th June 2017;

(4) the *'Applicant's Further Submissions on Penalty'* filed on 14th September 2017;

(5) the brief oral responses made before me by Counsel for each party on 18th and 19th September 2017;

(6) the *'Respondent's Further Submission on Sanction'* filed on 19th September 2017;

(7) the *'Applicant's Reply to Respondent's Further Submission on Sanction'* filed on 21st September 2017.

5. The *'Guidance Note on Sanctions'* and the three stages in *Fuglers*

[42] In the 5th edition of the ***'Guidance Note on Sanctions'*** published by the Solicitors Disciplinary Tribunal of England and Wales, the Tribunal has explained (page 6, paragraph [7]) that its 'approach to sanction' is based upon the three stages set out in ***Fuglers and Others v Solicitors Regulation Authority*** **[2014] EWHC 179 Admin** (per The Honourable Mr Justice Popplewell, at paragraph [28]) (see <http://www.bailii.org/ew/cases/EWHC/Admin/2014/179.html>). That is:

> *'The first stage is* ***to assess the seriousness of the misconduct****. The second stage is* ***to keep in mind the purpose for which sanctions are imposed by such a tribunal****. The third stage is* ***to choose the sanction which most appropriately fulfils that purpose for the seriousness of the conduct in question****.'*
> [My Emphasis]

(1) THE FIRST STAGE – 'to assess the seriousness of the misconduct'

[43] In assessing the seriousness of the misconduct, the 5th edition of the *Guidance Note on Sanctions* has explained at paragraph [16] as follows:

> *'The Tribunal will assess the seriousness of the misconduct in order to determine which sanction to impose.* ***Seriousness is determined by a combination of factors****, including:*
> - *the respondent's* ***level of culpability*** *for their misconduct.*
> - ***the harm caused*** *by the respondent's misconduct.*
> - *the existence of* ***any aggravating factors****.*
> - *the existence of* ***any mitigating factors****.'*

> [My emphasis]

(a) 'The respondent's level of culpability for their misconduct'

[44] According to Counsel for the Applicant (*'Applicant's Submissions on Penalty'*, 13th June 2017, page 5, paragraph [20]), '*there is a high level of culpability on the part of the Respondent'* on the following basis:

(1) '*The Respondent was grossly in breach of his position as the trustee'* of the trust account;

(2) *'The Respondent had direct control or responsibility'* and '*such control or responsibility was primarily and principally incumbent on the Respondent and not to anyone else in the firm'*;

(3) *'The total amount overdrawn was $14,826.21 which was a large sum*';

(4) *'... given the Respondent's experience and also having [a] poor accounting system in place leads to a high level of culpability on the part of the Respondent'.*

[45] Counsel for the Respondent in her submissions in response has sought to argue that culpability be seen in terms of negligence rather than fraud as has been accepted by Counsel for the Applicant. (See *'Respondent's Submission on Sanction'*, 14th June 2017, page 6, paragraphs 4.3-4.8). That is, as submitted at paragraph 4.5, the Respondent *'had entrusted his booking on his accounting and conveyancing staff to ensure compliance and that he be properly advised of the balances*'.

[46] In assessing culpability, the 5th edition of the '*Guidance Note on Sanctions'* has explained as follows (pp.8-9):

> *'The level of culpability ("responsibility for fault or wrong") will be influenced by such factors as (but not limited to):*
> - *the respondent's motivation for the misconduct.*
> - *whether the misconduct arose from actions which were*

planned or spontaneous.

- *the extent to which the respondent acted in breach of a position of trust.*
- *the extent to which the respondent had direct control of or responsibility for the circumstances giving rise to the misconduct.*
- *the respondent's level of experience.*
- *the harm caused by the misconduct.*
- *whether the respondent deliberately misled the regulator* ***(Solicitors Regulation Authority v Spence [2012] EWHC 2977 (Admin))****.'*

[47] Applying the above criteria, I have assessed the Respondent legal practitioner's level of culpability as follows:

(i) 'The respondent's motivation for the misconduct'

- I accept the submission of Counsel for the Applicant that there is '*a high level of culpability'* on the part of the Respondent legal practitioner as the sole practitioner of the firm.
- I also accept the submission of Counsel for the Respondent *'had entrusted'* the booking keeping to certain of his staff.
- Whilst there is no motivation of fraud, he should, however, have had more stringent systems in place to oversight the work of his staff and thus was negligent.

(ii) 'Whether the misconduct arose from actions which were planned or spontaneous'

- I accept the submission of Counsel for the Applicant that the misconduct, in particular associated with Count 1, was not just a "one-off" but occurred over a period of time.

(iii) 'The extent to which the respondent acted in breach of a position of trust'

- The breach involved here was of a trust account – a serious matter.
- Counts 3 and 4 are at the very lower end of the scale being $10.10 and $10.05 respectively and were caused, it would appear, from staff wrongly attributing bank charges.
- Count 2 is a little more serious where $715.89 was wrongly sent twice to a client (and thus being an overpayment that was not

"picked up" so to speak until the yearly audit of the Respondent's trust account). Fortunately, the client returned the money. I have noted the oral submission made by Counsel for the Respondent at the sanctions hearing on 14th June 2017, when he succinctly observed: *"... where did that overpayment come from? It came from another client's money, which was held in trust".* I have also noted that Counsel for the Respondent disputed this. It is something to which I will return later in this judgment when discussing aggravating factors.

- Count 1 is the most serious of the four counts, that is, where the account of the client (who is also the respondent's spouse) was overdrawn by a sum of $14,090.17. From my attempts to clarify at the sanctions hearing on 14th June 2017 how this occurred, I accept the submission of Counsel for the Applicant that in relation to both Counts 1 and 2, *"So what the auditors relied on is the ledger that is kept, that is why the ledger at all times should show the true accounting position."* It would appear from an explanation from the Bar Table provided by the Respondent that (although not being evidence and not objected to by Counsel for the Applicant), I accept was an attempt to be forthright with the Commission as to how this occurred. As I understood the Respondent, the accounts were incorrect at the start of the accounting year with the ledger incorrectly showing a lesser amount to be in the trust account for the Respondent's spouse. I have, however, not been provided with any documentary evidence to support this submission.
- **In short, it was a breach of trust - even though it arose from negligence in not overseeing staff rather than the Respondent acting dishonestly.**

(iv) 'The extent to which the respondent had direct control of or responsibility for the circumstances giving rise to the misconduct'

- I believe that that is no dispute that this was the respondent's responsibility to oversee his staff.

(v) 'The respondent's level of experience'

- As noted above, the Respondent has been a solicitor with nearly 18 years of experience and for at least the last seven operating his own firm.

(vi) 'The harm caused by the misconduct'

- I note that the Respondent has repaid the total overdrawn sum $14,826.21 into the trust account. Counsel for the Respondent in her written submissions suggested that the harm caused was minimal (see paragraph 4.7).
- Further, at the sanctions hearing on 14th June 2017, Counsel for the Respondent initially suggested that *"... the biggest harm really in terms of the monetary amount which is the health and safety"*, that is, the business of the Respondent's spouse.
- I note, however, that after I explained to Counsel for the Respondent that in terms of harm *"there is a whole issue about the protection of the public"* and *"the harm to the profession"*, Counsel for the Respondent conceded: *"Absolutely, and he has accepted that".*
- I agree with the oral submission of Counsel for the Applicant when he stated at the sanctions hearing on 14th June 2017 as follows:

> *"... I would say that the harm is caused to the public ... and also to the reputation that the profession has in the minds of public. So what I am saying is that the harm has been caused, because the public have a certain expectation from the legal profession, in terms of trust monies they have a higher level of expectation from the legal profession, the profession that is regarded as noble. So, therefore, it is the harm that is done to that expectation from members of public. They are entitled to have that expectation, and it a harm to them sir, when the practitioner is not able to protect the[m]"*

(vii) 'Whether the respondent deliberately misled the regulator (Solicitors Regulation Authority v Spence [2012] EWHC 2977 (Admin))'

- It is my understanding that both Counsel agree that the Respondent was frank as to what occurred.

(b) 'the harm caused by the respondent's misconduct'

[48] As I have noted above, I do not accept that the harm caused was minimal, particularly in relation to Count 1.

[49] Indeed, recently in ***Chief Registrar v*** *Alipate Qetaki* (unreported, ILSC Case No.004 of 2016, 18 April 2017), I discussed the applicability or otherwise of the test of what a fair and reasonable person would think of such behaviour, as was discussed by the United Kingdom Supreme Court in ***Healthcare at Home Limited v. The Common Services Agency*** [2014] UKSC 49; (BailII: <http://www.bailii.org/uk/cases/UKSC/2014/49.html >), where Lord Reed (with whom Lord Mance, Lord Kerr, Lord Sumption and Lord Hughes agreed) explained the application of the term noting:

> *'As Lord Radcliffe observed in Davis Contractors Ltd v Fareham Urban District Council [1956] AC 696, 728:*
>
> > *"The spokesman of the fair and reasonable man, who represents after all no more than the anthropomorphic conception of justice, is and must be the court itself."'*
> > [My emphasis]

[50] In **assessing harm**, the 5th edition of the '*Guidance Note on Sanctions'* has explained as follows (p.9):

> *'In determining the harm caused by the misconduct, the Tribunal will assess:*
>
> - *the impact of the respondent's misconduct upon those directly or indirectly affected by the misconduct, the public, and the reputation of the legal profession. The greater the extent of the respondent's departure from the "complete integrity, probity and trustworthiness" expected of a solicitor, the greater the harm to the legal profession's reputation.*
> - *the extent of the harm that was intended or might reasonably have been foreseen to be caused by the respondent's misconduct.'*
>
> [My emphasis]

[51] Applying the above criteria, I have assessed *'the harm caused by the misconduct'* of the Respondent legal practitioner as follows:

(i) *'the impact of the respondent's misconduct upon those directly or indirectly affected by the misconduct … '*

- In my view, '*the impact of the respondent's misconduct',* while arguably low for Counts 2, 3, and 4, is very serious in relation to Count 1.

(ii) 'the extent of the harm that was intended or might reasonably have been foreseen to be caused by the respondent's misconduct'

- Whilst there has been no allegation of dishonesty against the Respondent legal practitioner, '*the extent of the harm that ... might reasonably have been foreseen ... caused by the respondent's misconduct'* is again arguably low for Counts 2, 3, and 4, it is again very serious in relation to Count 1.

(c) 'The existence of any aggravating factors'

[52] According to Counsel for the Applicant Chief Registrar ('Applicant's Submissions on Penalty', 13th June 2017, page 5, paragraphs [15]-[16]):

> *'15. The Respondent's misconduct could be seen as one committed within one accounting period that is from the 1st of October 2014 to 30th September 2015 and* ***involved the accounts of more than a single client****.*
> *16. The Respondent being a trustee and principal of the law firm knew that the conduct which gave rise to disciplinary proceedings* ***was in material breach of his obligation as a trustee*** *and as such he had the obligation to protect the public (client's) moneys that he held in trust.'*
> [My emphasis]

[53] According to Counsel for the Respondent legal practitioner in her oral submissions on 14th June 2017*: "paragraphs 15 and 16 are not aggravating factors, they are actually part of the charges and particulars of the charges".*

[54] The 5th edition of the *'Guidance Note on Sanctions'* includes (at page 9) some nine criteria (though not an exhaustive list) of *'factors that aggravate the seriousness of the misconduct'*. Arguably, four of them might be applicable to the present matter:

(i)'misconduct continuing over a period of time'

- It is my understanding that there is no dispute that this occurred throughout one accounting period and while Counts 2, 3 and 4 may have each involved been a single incorrect ledger entry and/or transaction, Count 1 involved multiple incorrect entries and/or transactions.

(ii)'misconduct where the respondent knew or ought reasonably to have known that the conduct complained of was in material breach of

obligations to protect the public and the reputation of the legal profession'

- I accept that the Respondent legal practitioner ought reasonably to have known that such misconduct '*was in material breach of obligations to protect the public and the reputation of the legal profession'* as Counsel for the Respondent legal practitioner conceded at the hearing – that is, the Respondent should have reasonably known what his staff were doing.

(iii) 'previous disciplinary matter(s) before the Tribunal where allegations were found proved'

- The Respondent was reprimanded and fined $2,500.00 in 2013 for instructing another legal practitioner who did not hold a valid practising certificate.

- Counsel for the Respondent legal practitioner in her oral submissions on 14th June 2017 (whilst noting that there were various changes to the practice of law in Fiji arising from the introduction of the *Legal Practitioners Act* in 2009) conceded:

> *"Well, it is something that we cannot dispute and with respect, again we have to concede that the previous disciplinary proceeding is something that is relevant to the ultimate sanction …"*

(iv)'the extent of the impact on those affected by the misconduct' -

- According to Counsel for the Applicant in his oral submissions on 14th June 2017:

> *"… our submissions are that <u>the amounts that were overdrawn</u> despite it being reimbursed. At the time it was overdrawn, **<u>another client's money was being taken out</u>**."* [My emphasis]

- **Whilst I accept that the accounts of four clients were overdrawn to which the Respondent has pleaded guilty and I understand the argument of Counsel for the Applicant that it logically follows it was <u>*another client's money was being taken out*</u>, submissions from the Bar Table, however, are not evidence and <u>there was no documentary evidence to which my</u>**

attention was drawn by Counsel for the Applicant that it was indeed "*another client's money*".

- Indeed, while Counsel for the Respondent agreed four accounts were overdrawn, she disputed that "***another client's money was being taken out***". Instead, Counsel for the Respondent suggested that, *"the one that has suffered the most out of all of this is Mr. Vosarogo"* and further submitted from the Bar Table that *"Mamlakhaa Health and Safety, they have a lump sum of money that was deposited into the trust account, I think it was over a $100,000.00".* **Again, as was the case with the submissions of the Applicant on this issue, similarly it is with the submissions of the Respondent. That is, submissions from the Bar Table are not evidence. There has been no documentary evidence to which my attention was drawn by Counsel for the Respondent to support her submission that it was the Respondent who has suffered most and that it was his wife's business that was the source of the money being taken out.**
- Therefore, on the issue as to '*the extent of the impact on those affected by the misconduct',* the most that I can say is the following:
  (1) The accounts of four clients were overdrawn;
  (2) For Counts 3 and 4, the overdrawn amounts were very minor, being $10.10 and $10.05 respectively, apparently related to wrongly allocated bank charges. The conduct might be viewed of the type where a reprimand or fine might be applicable;
  (3) For Count 2, the overdrawn amount was $715.89 when a client had been reimbursed twice and although this conduct was **sufficiently serious**, the client, when alerted, returned the overpayment to the Respondent's firm;
  (4) The account of the company of the Respondent's wife was overdrawn by $14,090.17. This was a **very serious** breach. As to who was exactly affected by this, Counsel for the Applicant Chief Registrar has not pointed me to any documentary evidence other than making the oral submission

whereby he concluded that if it was overdrawn then it followed that "***<u>another client's money was being taken out</u>***". Similarly, Counsel for the Respondent legal practitioner has not made provided me with any documentary evidence to support her submission that it was the Respondent (and the Respondent's spouse) who have been '*affected by the misconduct';*

(5) I note that at the relisting of the matter on September 2017, the following exchange took place between Counsel for the Applicant Chief Registrar and the Bench:

"Mr. Chand: *So the applicant also has not been able to say, because the auditors were not able to say, where the monies went to. So the applicant case is indeed based on that* ***the monies <u>may</u> have come from other clients***.

Commissioner: ***<u>May</u> have come from other clients?***
Mr. Chand: *Ah..*

Commissioner: *But in the end of the day, whether it is or it isn't, the major issue is this: he was negligent in ...*
Mr. Chand: *Yes.*

Commissioner: *There was just this was raised - I just want to be fair too - as an aggravating factor Ms. Malimali remembered and argued whether this was still part of the charge ...*
Mr. Chand: *Yes.*

Commissioner: *and I said well there was still an issue about aggravation but there is an argument it's a bit unclear what has actually happened.*
But you are saying well it is up to me whether I find that aggravating or not, <u>but at the end of the day he has been negligent in his accounts</u>.
Mr. Chand: *<u>Yes</u>."*
[My emphasis]

(6) Thus, whether the money was the Respondent's wife, that of the Respondent (misplaced through poor accounting by his staff), or indeed *"may have come from others clients"*, I agree with Counsel for the Applicant that <u>there is no doubt that in</u> considering '*<u>the extent of the impact on those affected by the</u>*

misconduct', **it has had an impact on the reputation of the legal profession. I would see that as a factor 'that *aggravate[s] the seriousness of the misconduct'*.**

(d) 'The existence of any mitigating factors'

[55] Counsel for the Applicant did not mention any mitigating factors during his written and oral submissions of 13th and 14th June 2017 respectively.

[56] Counsel for the Respondent legal practitioner raised, both in her written and oral submissions, *"The mitigating factor, of the family circumstances"* of the Respondent.

[57] According to the 5th edition of the *'Guidance Note on Sanctions'* (page 10), '*matters of* ***purely personal mitigation are of no relevance in determining the seriousness*** *of the misconduct'.* Such matters, however, ***'will be considered*** *...* ***when determining the fair and proportionate sanction'*** to be applied. I agree.

[58] Applying the criteria set out in the 5th edition of the *'Guidance Note on Sanctions'*, I have assessed *'the existence of any mitigating factors'* as follows:

(i) 'misconduct resulting from deception or otherwise by a third party (including the client)'

- Whilst, arguably, this is not applicable, as it is somewhat unclear (and no direct evidence provided) as to what exactly occurred, the submission was not challenged by Counsel for the Chief Registrar that the misconduct resulted from staff within the Respondent's firm who are no longer employed by the firm.

(ii) 'the timing of and extent to which any loss arising from the misconduct is made good by the respondent'

- The Respondent, once advised as to the problem, took immediate steps to "make good" the loss.

(iii) 'whether the respondent voluntarily notified the regulator of the facts and circumstances giving rise to misconduct'

- Not applicable.

(iv) 'whether the misconduct was either a single episode, or one of very brief duration in a previously unblemished career'

- Not applicable.

(v) 'genuine insight, assessed by the Tribunal on the basis of facts found proved and the respondent's evidence

- While the Respondent has not given direct evidence under oath, I have taken note of his explanation from the Bar Table together with his correspondence to the Chief Registrar and that he has recently undertaken a trust account course in New Zealand as '*genuine insight'* that go towards mitigating the seriousness of the misconduct.

(vi) 'open and frank admissions at an early stage and/or degree of cooperation with the investigating body'

- There is no doubt that the Respondent made open and frank admissions in his letter dated 26th February 2016 to the Chief Registrar.
- Whilst the Respondent may have resisted pleading guilty to the charges and indeed, through his Counsel, brought an application for the initial application to be struck out, this was the Respondent's right as my ruling of 6th February 2017 confirmed.
- The Amended Application filed on 10th February 2017 by Counsel for the Chief Registrar alleged 13 counts which were to have proceeded to hearing on 10th April 2017 but could not proceed on that date through no fault of the Respondent.
- It was then that serious discussions resulted in a Further Amended Application being filed on 7th June 2017 containing the present four counts, to which Counsel for the Respondent entered pleas of guilty on his behalf on that date.
- I also note that it was suggested by 13th April 2017 that the Respondent would be entering pleas of guilty to what has

eventually become three of the four counts of the Further Amended Application for which the Respondent is now being sanctioned.

- Therefore, the Respondent should be given some credit for his pleas of guilty.

(e) Initial conclusion on Stage 1 – the seriousness of the misconduct

[59] Thus, in assessing the seriousness of the misconduct, I have considered in detail as set out above the four factors from the 5th edition of the *Guidance Note on Sanctions* and concluded:

(1) ***'level of culpability'***: **high** even if it involved negligence by not overseeing the staff managing his trust account;

(2) ***'harm caused'***: while arguably low for Counts 2, 3, and 4, it is again **very serious** in relation to Count 1;

(3) ***'aggravating factors'***: Counsel for the Respondent suggested at the sanctions hearing that the misconduct fell within the level 3 "more serious" range suggested in the five fine bands (on page 12 of the 5th edition of the *Guidance Note on Sanctions*), *"we have 2 aggravating factors out of paragraph 19 of your guidelines"* and *"... you would probably with those aggravating factors and that, you would now be looking at, alright, at this point I am looking at suspension"*. I disagree. **I have clearly identified above four aggravating factors**. Even on the submissions of Counsel for the Respondent, this would take the level of the seriousness of the misconduct into Level 4 of the fine bands, into 'conduct assessed as **very serious**' and to use the words of Counsel for the Respondent, "*I am looking at suspension";*

(4) '***mitigating factors***': **I have identified two mitigating factors** that go towards mitigating the seriousness of the misconduct. - the Respondent took immediate steps to "make good" the loss and his '*genuine insight'*. Arguably, there were '*open and frank admissions at an early stage*' for which he should be given some credit. I have noted there is a suggestion that, arguably, the fault lay at the feet of staff within the Respondent's firm, however, without more, I cannot take it to the level of mitigating the seriousness of the misconduct.

(5) Therefore, in my view, the mitigating factors would only impact upon the level of the seriousness to some degree. That is, **the misconduct**

would remain within Level 4 of the fine band 'assessed as very serious', but, perhaps, take it down to the lower end of that band. The mitigating factors would not have such an impact as to take the seriousness of the misconduct back into Level 3.

(2) THE SECOND STAGE – 'to keep in mind the purpose for which sanctions are imposed'

[60] The 5th edition of the *'Guidance Note on Sanctions'* does not explicitly discuss this stage. An insight, however, was provided by Popplewell J in *Fuglers* at paragraphs [30]-[32] as follows:

> *'30. **At the second stage, the tribunal must have in mind that by far the most important purpose of imposing disciplinary sanctions is addressed to other members of the profession, the reputation of the profession as a whole, and the general public who use the services of the profession**, rather than the particular solicitors whose misconduct is being sanctioned. In **Bolton v The Law Society** [1994] 1 WLR 512 Sir Thomas Bingham MR stated the guiding principles as follows, at pp 518-519:*
>
> > *"... Lapses from the required high standard may, of course, take different forms and be of varying degrees ... **If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust.** A striking-off order will not necessarily follow in such a case, but it may well. **The decision whether to strike off or to suspend will often involve a fine and difficult exercise of judgment** ... **Only in a very unusual and venial case of this kind would the tribunal be likely to regard as appropriate any order less severe than one of suspension**. It is important that there should be full understanding of the reasons why the tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession **in order to punish him for what he has done and to deter any other solicitor tempted** to behave in the same way ... **But often the order is not punitive in intention.** ... **In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence.** This purpose is achieved for a limited period by an order of suspension; plainly **it is hoped that***

experience of suspension will make the offender meticulous in his future compliance with the required standards … The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth *… **A profession's most valuable asset is its collective reputation and the confidence which that inspires.** Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again… **All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness.** Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears likely, to be so the consequence for the individual and his family may be deeply unfortunate and unintended. **But it does not make suspension the wrong order if it is otherwise right**. **The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is part of the price."***

…

*32. … **The primary purpose of the sanction is to deter others and uphold the reputation of the profession** (see e.g. **Solicitors Regulation Authority v Anderson** [2013] EWHC 4021 (Admin) per Treacy LJ at [72]). In determining sanction the tribunal will properly have in mind **the message which the sanction will send to other solicitors for the purposes of promoting and maintaining the highest standards by members of the profession, and the high standing of the profession itself in its reputation with the public at large**. This latter aspect engages not only the public's confidence in the standards maintained by practising solicitors, but also its confidence in the organs of a self regulating body to conduct effective and fair disciplinary regulation.'*
[My emphasis]

[61] I have taken note of the above discussion by Popplewell J in *Fuglers* as to '*the purpose for which sanctions are imposed'* and, in particular, his citation of *'the guiding principles'* as outlined by Sir Thomas Bingham MR in ***Bolton v The Law Society*** (also cited in Bailii: [1993] EWCA Civ 32 (6 December 1993), <*http://www.bailii.org/ew/cases/EWCA/Civ/1993/32.html*>, paragraphs [13]-[16].)

(3) <u>THE THIRD STAGE</u> – 'choose the sanction which most appropriately fulfils that purpose for the seriousness of the conduct in question'

(a) The Applicant: The Commission should impose a suspension of 3 to 5 years (with a discount for time served under suspension)

[62] Counsel for the Applicant in his written submissions of 13th June 2017 submitted in his conclusion (page 7): *'that there be a suspension for a period between three to five years imposed on the Respondent'*.

[63] At the sanctions hearing on 14th June 2017, Counsel for the Applicant explained:

> *"... our submissions are that this is not a matter where fine would be sufficient, however, if the Commissioner is minded to give a suspension and fine ... To reflect the seriousness, we do not have any, any issues with that, but fine alone with a reprimand we feel is too lenient."*

[64] Thus, it was my understanding that the submission of Counsel for the Applicant was that <u>the starting point would be a suspension of three to five years with credit being given for the over six months</u> (between 1st March and 23rd September 2016) <u>when the Respondent was not issued with a practising certificate</u>.

[65] The question as to <u>what credit is to be given for the Respondent working under a restricted practising certificate</u> from late September 2016 until the beginning of June 2017, was left for determination by the Commission. In

addition, as to what credit must also now be given for the additional three months (between 5th June and September 2017) when the Respondent was not issued with a practising certificate, has also been left for determination by the Commission.

[66] As for case law, Counsel for the Applicant cited:

(1) ***Guss v Law Institute of Victoria Ltd*** [2006] VSCA 88 (21 April 2006);

(2) ***Victorian Legal Services Commissioner v Koltay*** VCAT 1374 (16 August 2016); and

(3) ***Law Society of New South Wales v Shenker*** [1999] NSWADT 37 (23 April 1999).

[67] According to Counsel for the Applicant in his written submissions (paragraph 23), *Guss* (although not being a trust account matter) has been cited for ***'****what the Supreme Court of Victoria – Court of Appeal acknowledged as serious misconduct for which suspension as penalty was ordered in various judgments'* for a trust account breach.

[68] *Koltay* has been cited by Counsel for the Applicant for what the Victorian Civil and Administrative Tribunal stated (amongst other matters) at paragraph 13 of its judgment:

*"**One of the defining characteristics of being a solicitor is that you can be trusted to protect clients' money** which is given into your custody no matter what happens. **Trust money is sacrosanct**."*
[My emphasis]

[69] In relation to *Shenker*, Counsel for the Applicant noted in his written submissions (at paragraph 26) that '*the Respondent was charged for a number of trust account breaches including overdrawn trust account'* and it was *'ordered that the name of the Respondent be removed from the Roll of legal practitioners'*. In his oral submissions on 14th June 2017, however, Counsel for the Applicant distinguished *Shenker* from the present case explaining:

> *"The current matter could be distinguished from Shenker on the basis that there were other serious breaches of the trust account [in Shenker]. Other serious allegations, trust account allegations against the practitioner and also the overdrawn trust account were in*

> *relation to a longer period of time in the case of Shenker. In totality, the court ordered a striking off, in that matter.* ***Whereas if you see, we have established it in this matter and <u>we are not asking for a striking off but we are</u> ...***
> ***[seeking] suspension <u>on the basis that this is a very serious breach</u> ...***
> *And the harm that has been caused ... In light of the public interest and because of the profession in regards to some of the admissions that has been made by the respondent in sense that <u>there were poor accounting system in place</u>,* ***we believe that this a case where <u>anything lesser than suspension would not be sending the right message</u> not only to the public but also to the profession****."*
> [My emphasis]

(b) The Respondent: The Commission should impose a reprimand and fine and, if appropriate a further restricted practising certificate (taking into account time already suspended and restricted)

[70] Counsel for the Respondent legal practitioner in her written submissions sought that *'the Commission ... impose a reprimand, a fine and consider* the time without the practising certificate as sufficient suspension and *order further suspension ... it may seem appropriate under restricted practice'*. (See *'Respondent's Submission on Sanction'*, 14th June 2017, page 6, paragraph 10.3).

[71] In terms of case law, Counsel for the Respondent legal practitioner in her written submissions cited (at paragraph 8.1) *Solicitors Regulation Authority v Sharma* [2010] EWHC 2022 for enunciating the principle that *'cases of dishonesty will almost lead to striking off, save in exceptional circumstance'*. (See BaiLII: <http://www.bailii.org/ew/cases/EWHC/Admin/2010/2022.html>.)

[72] Further, at the sanctions hearing on 14th June 2017, Counsel for the Respondent legal practitioner in her oral submissions cited two cases from Fiji being decisions of the Commission: *Chief Registrar v Akuila Naco* (Unreported, ILSC Case No.007 of 2009, 16 June 2010, Commissioner Connors; PacLII: [2010] FJILSC 11, <http://www.paclii.org/fj/cases/FJILSC/2010/11.html>) and Chief Registrar v Dorsami Naidu of the 16th August 2010 cited above.

[73] Counsel for the Respondent legal practitioner noted that in *Naco "it was to do with trust account, Mr. Naco was fined a sum of $1000.00 and he was to pay costs of $500.00 to Chief Registrar"*. She also noted that in *Naidu, "it was also something to do with a trust account, and at paragraph 5, Justice Connors said, they are not matters of dishonesty but matters of carelessness and poor practice".* [My emphasis] In *Naidu*, the practitioner was fined $1,500.00 and ordered '*to undertake no less than 10 hours of professional development or legal education in … Conveyanicng, Real Property and Practice Management'*.

[74] I did point out to Counsel for the Respondent legal practitioner at the sanctions hearing, that in *Naco* the trust account was overdrawn $2,000 for three days - a different scenario to the present case. As for *Naidu*, I also agreed with Counsel for the Applicant when he submitted that the *Naidu* case was not a trust account breach, rather, *"… it was a conveyancing matter which had gone wrong between parties and there were certain things as per the sales and purchase agreement … which gave rise to the complaint."*

[75] In response, Counsel for the Respondent legal practitioner explained: *"… the reason we were highlighting this judgment was because at paragraph 12 of the same judgment"*. To what Counsel for the Respondent legal practitioner was referring, was the following statement made by Commissioner Connors in *Naidu* at [12]:

> *'The conduct of the Respondent is in many respects concerning and whilst it does not display dishonesty it shows a lack of appreciation of practice management principles and the obligations of legal practitioners under the Trust Account requirements.'*
> [My emphasis]

[76] In addition to citing the cases of Naco and Naidu from Fiji, Counsel for the Respondent legal practitioner during her oral submissions on 14th June 2017, tendered four case summaries published on the web site of the New Zealand Law Society. Subsequently, I checked the website of the New Zealand Law Society (as well as NZLII) for a fuller citation and details of each of the four cases. These can be summarised as follows:

(1) ***Lawyers Standards Committee v Lawyer D***: *'Censure and fine for trust account breaches'* (Published online: 04 Aug 2014, last updated on 3rd June 2015) –

> *'A lawyer, D, has been **censured and fined $5,000** by a lawyers standards committee after it found she had failed to keep accurate trust account records, had allowed client ledgers to become overdrawn and had provided the Law Society monthly certificates that her trust account was in order when it was not.'*
>
> *'As well as the censure and fine, ... **ordered D to pay $1,500 costs**.'*
> [My emphasis]
>
> (See New Zealand Law Society', 'For the Community', 'Standards Committee decisions', <https://www.lawsociety.org.nz/for-the-community/lawyers-standards-committee-decisions/2014/Censure-and-fine-for-trust-account-breaches>.)

(2) ***Lawyers Standards Committee v Lawyer C:*** *'Fined for breaching trust account regulations'* – (Published online: 08 Dec 2015)

> *'A lawyer, C, has been **censured and fined $4,000** by a lawyers standards committee for contravening the Trust Account Regulations [had filed neither monthly nor quarterly trust account certificates between September 2014 and February 2015] and failing to honour an undertaking to the NZLS. The committee **also ordered C to successfully complete a Trust Account Supervisor training programme within 12 months**, and provide confirmation of this to the Lawyers Complaints Service.'*
>
> *'As well as the censure, fine and order that C complete a Trust Account Supervisor training programme, ... **ordered … to pay the Law Society $1,000 costs**.'*
> [My emphasis]
>
> (See New Zealand Law Society', 'For the Community', 'Standards Committee decisions', <https://www.lawsociety.org.nz/for-the-community/lawyers-standards-committee-decisions/2015/fined-for-breaching-trust-account-regulations>.)

(3) ***Otago Standards Committee v Richard Zhao:*** *'Suspension follows mishandling client monies'* – (Published online: 31 March 2017)

> *'... Richard Zhao was **censured and suspended for four months** from 1 December 2016 by the New Zealand Lawyers and Conveyancers Disciplinary Tribunal ... The misconduct involved four different categories of default:*
> - *failure to pay client money [of $50,000] into a trust account;*
> - *failure to ensure client money earned interest;*

- *personally earning interest from client monies; and*
- *failure to act upon a request to uplift client documents.'*

*'**As well** as the censure and suspension, the Tribunal ordered Mr Zhao **to undertake the next available trust account supervisor course, pay $47,903 standards committee costs and $15,508 Tribunal costs**.'*
[My emphasis]

It was noted that the lawyer was appealing.

*(*See New Zealand Law Society', 'For the Community', 'Standards Committee decisions', <*http://www.lawsociety.org.nz/for-the-community/lawyers-standards-committee-decisions/decisions-by-other-bodies/nzlcdt/suspension-follows-mishandling-client-monies*>.*)*

I also note that the full decision of the New Zealand Lawyers and Conveyancers Disciplinary Tribunal in *Zhao* is published on NZLII: ***Otago Standards Committee v Zhao*** [2016] NZLCDT 32 (23 November 2016), <http://www.nzlii.org/nz/cases/NZLCDT/2016/32.html>.

(4) ***Lawyers Standards Committee v Lawyer K:*** *'Trust account breaches'* (Published online: 17 May 2017)

*'A lawyer, K, has been **censured and fined $1,000** ... for a series of breaches relating to the operation of his trust account.'*

'K had:
- *Charged agency fees in transactions where he had not employee an agent;*
- ***Made payments for personal matters from his trust account ledger** (no client funds were used for these payments);*
- *Dormant balances in his firm's accounts;*
- *Not provided engagement letters in two matters; and*
- *Paid funds into a client's bank account without verifying the account with his client before making payments.'*

*'As well as the censure and fine, ... a finding of unsatisfactory conduct, ordered K **to pay $2,000 standards committee costs and $1,200 LCRO costs**, and ordered publication of the facts of the complaint, but not K's name.'*
[My emphasis]

*(*See New Zealand Law Society', 'For the Community', 'Standards Committee decisions', <*http://www.lawsociety.org.nz/for-the-community/lawyers-standards-committee-decisions/decisions-by-other-bodies/nzlcdt/trust-account-breaches*>.*)*

[77] Counsel for the Applicant's oral submissions in reply (in relation to the above four case summaries), I have summarised as follows:

(1) What had been tendered was *"I won't call it case law, the case briefs from the New Zealand Law Society";*

(2) Case of lawyer D of 3rd June 2015 –

> *"The issue that I picked up, the Commissioner has already raised that, is that to do with overdrawn amount, and there is no mention of that amount and also the practitioner, from my reading, it seems the committee has found that the accounts have been overstated but the accounts have not been overdrawn. I cannot see that the committee's finding that there had been an overdrawn account."*

(3) Case lawyer C of 8th December 2015 -

> *"There is no mention of the overdrawn account in the matter …*
> *And there is also no mention of the amount that was overdrawn. Further, in the current scenario the practitioner is charged with professional misconduct and there I see the New Zealand law society had put allegation of unsatisfactory professional misconduct."*

(4) Case of lawyer Richard Zhao of 31st March 2017 –

> *'… the allegations were completely different from what the allegations are In this matter. There were no allegations on overdrawn trust account and the allegation were mainly to do with failure to pay a client's money into a trust account …*
> *Then it was about interest, failure to ensure that the client money earned interest and we do not have those offenses under the trust account act in Fiji. 'Failure to act upon request to uplift client's documents'. Now those are totally different allegation from what the respondent in the current situation faces."*

(5) Case of lawyer K of 17th May 2017 involving trust account breaches – the case "is not relevant".

[78] As for relevant trust account disciplinary cases from Fiji prior to the establishment of the Commission in 2009, Counsel for the Respondent legal practitioner observed in passing at the sanctions hearing on 14th June 2017 that, *"… before the ILSC came in we know [of] cases from the [Fiji] Law Society but they are nowhere recorded"*. Counsel for the Applicant Chief Registrar did not dispute her observation. I can only presume, therefore, that it is correct. Indeed, to reinforce her observation, Counsel for the Respondent legal practitioner mentioned that she had at one time

been part of the Council of the Fiji Law Society. I am unaware of any formal attempt made by Counsel for either party to obtain records from the Fiji Law Society and, even if there are any such records, whether they would have any relevance or not to the present matter before me.

(c) Trust account matters that have come before the ILSC 2009-2017

[79] In relation to trust account matters that have come before this Commission since 2009, Justice Madigan in ***Chief Registrar v Silika Vuilagi Waqabitu*** (Unreported, ILSC Case No.001 of 2014, 28 July 2014; PacLII: [2014] FJILSC 4, <http://www.paclii.org/fj/cases/FJILSC/2014/4.html>) stated as follows (at [12]):

> *'Trust account defalcations have been dealt with by the Commission in the cases of Haroon Ali Shah (No 007 of 2011), Kini Marawai (No 006 of 2012), Jolame Uludole(No 025 of 2013) and Luseyane Ligabalavu (No 002 of 2013 and No 003 of 2013). The principles established by these cases are that offending with regard to trust accounts matters by a practitioner is very serious professional misconduct and it is offending which would attract the severest of penalties available to the Commission.'*

[80] The above cases each involved serious trust account defalcations/operating issues.

[81] Of the cases that have come before the Commission involving **poor or negligent trust account management**, apart from the decisions of Commissioner Connors in 2010 of *Naco* and *Naidu* (cited by Counsel for the Respondent), I was not cited any other cases by Counsel for either party.

[82] Therefore, as noted above, subsequent to the sanctions hearing on 14th June 2017, I had the staff of the Commission check through both the Commission's files and Discipline Register to provide **a summary for me of all matters that have come before the Commission between 2009-2017 involving trust account issues where the application had been established (either from trust account defalcations or negligent trust account management)**. **That summary revealed 11 cases in total**:

(1) six cases involved allegations having been established of serious trust

account defalcations/operating issues (the four cases cited by Justice Madigan in *Waqabitu*, as well as *Waqabitu* itself and a second earlier case involving *Luseyane Ligabalavu*);

(2) five cases involved allegations being established of poor or negligent trust account management.

[83] Of the six cases involving allegations being established of serious trust account defalcations/operating issues, the summary focused on whether the legal practitioner was suspended or fined and costs. It did not include if any other conditions were imposed as that was not the focus of the summary. That summary (apart from an amendment to *Ligabalavu*) is reproduced here:

(1) ***Chief Registrar v Haroon Ali Shah*** (Unreported, ILSC Case No.007 of 2011, Justice Madigan, 1 June 2012; PacLII: not listed) – seven counts alleging irregularities in a trust account or keeping a trust account and failing to render an invoice for fees deducted from a trust account. The practitioner's name was **struck from the Roll**;

(2) ***Chief Registrar v Kini Marawai*** (Unreported, ILSC Case No.006 of 2012, Justice Madigan, 15 May 2013; PacLII: [2013] FJILSC 4, <http://www.paclii.org/fj/cases/FJILSC/2013/4.html>) – the practitioner pleaded guilty to five counts: Counts 1 to 3, the practitioner appeared before a court without a practising certificate; Count 4, for appearing without a practising certificate, instructing another solicitor; and Count 5, for failing to establish and keep a trust account. The practitioner was **suspended from practice for three years and fined $1,000**;

(3) ***Chief Registrar v Jolame Uludole*** (Unreported, ILSC Case No.025 of 2013, Justice Madigan, 5 February 2014; PacLII: [FJILSC] 1, <http://www.paclii.org/fj/cases/FJILSC/2014/1.html>) – the practitioner pleaded guilty to two counts for his failure to open a trust account: Count 1, from on or about the 11th of October 2012 to the 9th of May 2013; and Count 2, from on or about the 14th of June 2013 to the 25th of July 2013. The practitioner was publicly reprimanded, **suspended from practice for two years and fined $3,000**;

(4) ***Chief Registrar v Melaia Ligabalavu; and Luseyane Ligabalavu*** (Unreported, ILSC Case No.007 of 2012, Justice Madigan, 7

June 2013; PacLII: [2013] FJILSC 5, <http://www.paclii.org/fj/cases/FJILSC/2013/5.html>) – the second respondent's case is relevant as ***Luseyane Ligabalavu*** pleaded guilty to four counts, two of which involved trust accounts: Count 3 was that the practitioner failed to cause accounting and other records to be audited and Count 4 was that the practitioner failed to lodge, or cause to be lodged, by the required date, a statement signed by the trustee with the Registrar and the Minster. Counts 1 and 2 were that the practitioner instructed the First Respondent, *Melaia Ligabalavu,* to appear in the Magistrates' Court without holding a valid practising certificate. The practitioner was **suspended from practice for two years**;

(5) ***Chief Registrar v Luseyane Ligabalavu*** (Unreported, ILSC Case No.002 of 2013 and 003 of 2013, Justice Madigan, 17 October 2013; PacLII: not listed) – the practitioner pleaded guilty to four counts. Counts 1, 2 and 4 involved money: Count 1 – she failed to pay a sum of money to a third party in accordance with client/ vendors instructions; Count 2 – she deposited a sum of money in her own operating account at her firm instead of the law firm's trust account; Count 4 – she withdrew a sum from an operating account for purposes other than the purpose of trust. Count 3 was that she acted for both vendor and purchaser and failed to protect the interests of the purchaser. The practitioner's name was **struck from the Roll**;

(6) ***Chief Registrar v Silika Vuilagi Waqabitu*** (Unreported, ILSC Case No.001 of 2014, Justice Madigan, 28 July 2014; PacLII: [2014] FJILSC 4, <http://www.paclii.org/fj/cases/FJILSC/2014/4.html>) – two counts of professional misconduct established the practitioner: that the practitioner failed to ensure that trust monies of $23,000 were not utilised for unauthorized purposes and then *'completed a trust account report for the period 1st October 2012 to 30th September 2013 … obviously being false and misleading'*. The practitioner's name was **struck from the Roll**.

[84] Of the five cases involving allegations of **negligent trust account management being established**, the summary focused on whether the legal practitioner was suspended or fined and costs. Again, it did not include if any other conditions were imposed or other than in *Naidu* where

the respondent was required to undertake a conveyancing course. The summary of those five cases is reproduced here:

(1) ***Chief Registrar v Sheik Hussain Shah*** (Unreported, ILSC Case No.004 of 2009, Commissioner Connors, 15 June 2010; PacLII: not listed) – Issued trust fund account cheque that was dishonoured. Orders: 1. Pay $1,000 to the complainant. 2. To pay witness expenses of $ 610.20;

(2) *Chief Registrar v Akuila Naco* (16 June 2010) – Overdrew Trust Account. Orders: 1. **Fined** $1,000.00 2. Pay costs to the sum of $500 to Chief Registrar. 3. Publicly reprimanded;

(3) ***Chief Registrar v Dorsami Naidu*** (Unreported, ILSC Case No.005 of 2009, Commissioner Connors, 16August 2010; PacLII: [2010] FJISLC 10, <http://www.paclii.org/fj/cases/FJILSC/2010/19.html>) – Count 4A: Trust Account Mismanagement. Other counts: Count 1B: Failed to inform the client on progress of their case; Count 3A: Failed to inform client that the land was co-owned; failed to inform client about conflict of interest; Count 3B: Failed to obtain the consent of the third party on behalf of vendor; Count 6C: Failed to reinstate proceedings on behalf of client after matter had been struck out; Count 6D: Failed to carry out client instructions and protect his client's interests. Orders: 1. Must **undertake no less than 10 hours of professional development** or legal education each of: Conveyancing, Real Property and Practice Management. To be undertaken in Fiji, New Zealand or Australia. 2. Order 1 to be complied with before 30 June 2011, or practising certificate is to be suspended without further order; 3. To pay the Commission $1,500.00; 4. To pay applicant witness expenses totaling $1,428.95;

(4) ***Chief Registrar v Saimoni Nacolawa*** (Unreported, ILSC Case No.027 of 2013, Commissioner Connors, 11 March 2014; PacLII: [2014] FJILSC 10, <http://www.paclii.org/fj/cases/FJILSC/2014/10.html>) – Count 1: Failure to make proper enquiry into accreditation of accounting firm engaged to prepare Trust Account Audit report. Orders: 1. Publicly reprimanded. 2. **Fined** $1,500;

(5) ***Chief Registrar v Alipate Qetaki*** (Unreported, ILSC Case No.027 of 2013, Commissioner Hickie, 18 April 2017; PacLII: not listed). Counts 1-2: Opening a trust account without first obtaining the written approval of the Attorney-General. Orders: 1. No sanction. (2) Pays costs of $1,000 to

Chief Registrar and $1,000 to Commission.

[85] In addition, as noted above, on the second day of the present Sittings, I explained to both Counsel that since the mention of this matter the previous day, my staff (in consultation with me) had noted that there was a twelfth trust account case that had come before the Commission in the period 2009-2017 that was not listed in the summary previously provided by the Commission to Counsel for the parties, namely another case involving *Haroon Ali Shah*, (ILSC Case No.008 of 2009, Commissioner Connors, 30 September 2010).

[86] This third case involving *Haroon Ali Shah*, concerned three counts of professional misconduct and one count of unsatisfactory professional conduct as follows: Count 2: The Respondent was paid $25,000.00 in legal fees and $4,00.00 for a hotel liquor licence transfer, when, in actual fact, there was no liquor licence attached to the hotel; Count 2B: The Respondent failed to ensure that all debts or encumbrances by way of utility bills or rates had been paid by the vendor before the transfer when, in actual fact, $10,790.65 remained outstanding; Count 11B: The Respondent failed to account properly for money received from proceeds of a sale for which a certain sum of money was unaccounted and had yet to be paid to the client approximately $4,000 (there being a discrepancy between $4,838 according to Fiji Sugar Corporation records and $4,060 held in the Respondent's trust account). The relevant Orders were: 1. The Respondent is to undertake on behalf of the Legal Aid Commission at no cost, selected by the Director of Legal Aid, five criminal trials in the High Court Lautoka of not more than five days' duration and if this was not completed he would be automatically suspended for five months 2. The Respondent is to pay the sum of $7,000 to the Commission for payment to complainants to be made within 28 days or the practising certificate will be suspended until the payment is done.

[87] The addition of the above case of *Shah* to the summary of cases previously provided by the Commission to Counsel for the parties in the present matter, means that there have now been the 12 cases that have come before

the Commission between 2009 and 2017 involving trust account issues. **Six of the 12 have involved what Justice Madigan termed in *Waqabitu as 'Trust account defalcations'* or serious operating issues** and the **other six cases have involved mismanagement issues with no element of dishonesty or involving less serious operating issues.**

[88] Of the penalties imposed in the six ***Trust account defalcations* or serious operating issues**, apart from costs, three had their names 'struck from the Roll of practitioners' and three had lengthy periods of suspension (one being for three years and the other two for two years each respectively).

[89] Of the remaining six cases **involving mismanagement issues with no element of dishonesty or less serious operating issues**, the penalties imposed, apart from costs, were fines (three cases), the undertaking of a number of hours of professional development (one case), the undertaking of five legal aid trials (one case) and one had no sanction imposed.

*(d) Five recent decisions **of the Solicitors Disciplinary Tribunal of England and Wales where the legal practitioner failed to keep proper accounting records.***

[90] As mentioned above, I have also had regard to five recent decisions of the Solicitors Disciplinary Tribunal of England and Wales where the legal practitioner failed to keep proper accounting records. Those decisions I also had summarised and provided to Counsel for each party in the present matter highlighting as to whether the practitioner was suspended or fined and what costs were awarded. Again, the summary did not include if any other conditions were imposed as that was not the focus of the summary. That summary is reproduced here:

(1) ***Solicitors Regulation Authority v Jared Donald Bailey***, Solicitors Disciplinary Tribunal, Case No.11403-2015, 12 November 2015 (see <http://www.solicitorstribunal.org.uk/sites/default/files-sdt/11403.2015.Bailey.pdf>) – As the Tribunal explained at [34.6]:

> *'The evidence … which the Tribunal accepted was that he firmly believed that the problems with his accounts arose from bookkeeping*

and poor administration issues rather than from misappropriation of client money or other improper activity.'

And at [38]

'As to the seriousness of the Respondent's misconduct he was a sole practitioner and a solicitor of more than 30 years' experience and he was in control of the accounts. What happened arose out of his admittedly careless accounting. ***His actions had been incompetent rather than deliberate.*** *What he had done had not been planned or in breach of trust. As to the harm which had been caused, there was an identified shortfall of around £14,000 on client account which the Respondent asserted could be brought down to around £6,000. There was clearly damage to the reputation of the profession as a result. It was an aggravating factor that there were repeated mistakes which continued over a period of time which were not addressed. The losses had not been made good and the Respondent had not himself notified the regulator of the accounting problems. However by way of mitigation he had shown insight into what had happened, he had made frank admissions and cooperated with the Applicant. While any shortage on client account was concerning, the individual amounts and the total were not large.*

... The Tribunal took into account that at the material time the Respondent was suffering very serious problems particularly with medical issues in his family but also had difficulties with his business including with HMRC and financial claims arising out of a previous business relationship.'

The sanction imposed was a fine of £2,500.00 and costs of £6,500.00.

(2) ***Solicitors Regulation Authority v Colin Nasir***, Solicitors Disciplinary Tribunal, Case No.11405-2015, 21 March 2016 (see <http://www.solicitorstribunal.org.uk/sites/default/files-sdt/11405.2015.Nasir.pdf>) – As the Tribunal explained at [23]:

'The Respondent had been the major fee earner in the Firm and had not been involved in the preparation of accounts or reconciliations. He had employed professionals to do this work and he would sign them off ... At the end of 2013 the Respondent decided to close the Firm and arranged for the finalisation of the accounts. It was at this point that he was told of the ***surplus money in the client account in the region of £200,000****. In order to resolve this matter the Respondent kept the Firm open. He ordered an investigation into the reason for this surplus and in April 2014 he was told that none of the money could be traced as belonging to clients. The Respondent had concluded that it must be money from his father that had accidentally found its way into the client account. In May 2014 therefore, the monies had been transferred into the office account, in the honest belief that it was office monies.'*

As the Tribunal noted, however, at [14]:

> *'It later transpired that* ***£162,009.82 belonged to Client S, as outlined above, and £3,498.00 belonged to Client M'****.*

As for sanction the Tribunal explained at [29]-[31]:

> *'29.* ***There had not been any harm caused to any individual*** *and the Tribunal noted that Client S had not complained about the missing £162,000 and had been repaid promptly upon discovery by the Respondent. However* ***the potential for harm was high as the sums of money were significant****.*
>
> *30. There were no aggravating factors present but there were a number of mitigating factors. The Respondent had been the victim of misfortune, if not worse, when the Practice Manager deleted the files from the system shortly before her departure from the Firm.* ***The Respondent had tried to establish the cause of the surplus in the client account as soon as he became aware of it, albeit initially unsuccessfully. He had co-operated with his regulator and had shown insight into the factors behind the breaches, all of which arose out of the same set of circumstances.***
>
> *31. The Tribunal found that the level of potential harm, reflected in the sums of money involved, were too great for 'No Order' or a Reprimand to be appropriate.* ***The protection of the reputation of the profession required a greater sanction than this but it did not require the Respondent to be suspended or struck off****. The Respondent had shown a sufficient level of insight to satisfy the Tribunal that it was not necessary to impose restrictions on his practice in order to protect the public. The appropriate and proportionate sanction was* ***a Fine in the sum of £6,000****.'*
> [My emphasis]

The practitioner was also ordered to pay fixed costs of £16,000.

(3) ***Solicitors Regulation Authority v David Trevor Bowden***, Solicitors Disciplinary Tribunal, Case No.11591-2016, 5 June 2016 (see <http://www.solicitorstribunal.org.uk/sites/default/files-sdt/11591.2016.Bowden.pdf>) – where the practitioner *'caused or permitted client monies in the sum of £20,562.50 ... payable under a rent deposit deed ... to be paid into the general account'* of his firm when they should have been paid into a designated deposit and further *'caused or permitted various transfers'* between ledgers held for another client and later to pay costs owed when the funds still belonged to the tenants. The practitioner was **fined £7,500** and ordered to pay costs of £13,500.00

(payable by way of a charging order over an asset owned by the practitioner);

(4) ***Solicitors Regulation Authority v Rajinder Singh Digwa***, Solicitors Disciplinary Tribunal, Case No.11425-2015, 28 October 2016 (see <http://www.solicitorstribunal.org.uk/sites/default/files-sdt/11425.2015.Digwa.pdf>) – where the practitioner withheld £5,000 of client money and further withdrew £10,448 from the client account of the Firm under a mistaken belief that he was using money owed to the office account. Further, the client account was overdrawn £237.30 at one stage and there was a failure to carry out reconciliations over a prolong period. The practitioner was **fined £3,000** and ordered to pay costs of £6,00.00 reduced from £18,519.37 sought due to the way the case had been brought (such costs payable by way of a charging order over an asset owned by the practitioner);

(5) ***Solicitors Regulation Authority v Roland Ivor Cassam and Peter Rhidian Lewis***, Solicitors Disciplinary Tribunal, Case No.11580-2016, 1 June 2017 (see <http://www.solicitorstribunal.org.uk/sites/default/files-sdt/11580.2016.Cassam.Lewis_.pdf>) – where the there were a number of allegations that the two practitioners while principals of a law firm between February 2014 and March 2015 failed to keep proper accounting records and that the first practitioner had used client monies for purposes otherwise than intended. There was a shortfall of £238,748.70 in the firm's client account. The first practitioner was struck off the Roll and ordered to pay costs fixed in the sum of £15,575.00. **The second practitioner was fined £3,000** and ordered to pay costs fixed in the sum of £3,000. Initially*, 'the Tribunal determined that the … misconduct was more than moderately serious and **the appropriate fine** [for the Second Respondent] … **was £7,600** (i.e. just within indicative fine band 3 in the Tribunal's current Guidance Note on Sanction)'*. The Tribunal then took into account, however, *'the fact that the Second Respondent was making efforts to pay some of the Firm's liabilities'* having paid £10,000 in the last year, and **reduced the fine to £3,000**;

(e) Responses of Counsel to the summary provided of the ILSC trust account cases 2009-2017 and recent decisions ***of the Solicitors Disciplinary Tribunal of England and Wales***

[91] As mentioned earlier in this judgment, prior to the relisting of this matter on 18th September 2017, I arranged for the Secretary of the Commission to write to Counsel for each party providing them with a summary of the above 11 cases that have come before the Commission involving trust account issues, as well as a summary of the above five recent decisions of the Solicitors Disciplinary Tribunal of England and Wales where the legal practitioner failed to keep proper accounting records. Counsel for each party were invited to provide written submissions to address the penalties imposed by the Commission in the previous 11 cases and/or the five cases of The Solicitors Disciplinary Tribunal of England and Wales.

[92] Counsel for the Applicant Chief Registrar, apart from noting that the initial summary did not include any conditions attached to the granting of a practising certificate, (which, as noted above, had been purposely not included as the focus of the summary was upon whether or not a practitioner was suspended or fined) submitted in relation to the five cases as follows:

(1) <u>Bailey</u> - *'could be distinguished with the current case'* as -

(i) *'the Tribunal considered the Respondent's financial problem and serious health problems suffered by a close relative of the practitioner at the material time'*;

(ii) *'the amount of shortfall is ambiguous as to whether it was £6,000 or £14,000 … but rather felt that the Respondent not denying the shortfall was sufficient enough'*;

(iii) it was the practitioner's first appearance before the Tribunal, whereas *'in the current case the Respondent has been dealt with by the Commission before although on a breach not similar to the one in the present case'*;

(iv) *'there was an* ***additional penalty apart from an order of fine and costs*** *… and that was that the Respondent … was subject to a condition … being that he may not practice as a sole practitioner, Partner or member of a Limited Liability Partnership (LLP), Legal*

Disciplinary Practice (LDP) or Alternative Business Structure (ABS)';

(2) <u>Nasir</u> - *'could also be distinguished with the current case'* as -

(i) 'there were monies remaining in the account but were unaccounted for and since the beneficiaries of the monies could not be traced, the Respondent assumed it was money that may have belonged to his father, hence the transfer of the said sum into the office account. The factual matrix in that case is quite different from that of the current case';

(ii) it was the practitioner's first appearance before the Tribunal, whereas *'in the current case the Respondent has been dealt with by the Commission before although on a breach not similar to the one in the present case'*;

(3) <u>Bowden</u> - *'could be distinguished with the current case'* as -

(i) it was the practitioner's first appearance before the Tribunal, whereas *'in the current case the Respondent has been dealt with by the Commission before although on a breach not similar to the one in the present case';*

(ii) *'there was only one client account that was affected'*;

(iii) *'both parties had agreed to the penalty that was awarded'*;

(4) <u>Digwa</u> -*'could be distinguished with the current case'* as -

(i) 'the only relevant count … to the present case is Allegation … was in relation to an overdrawn amount in the sum of £237.30;

(ii) it was the practitioner's first appearance before the Tribunal, '*whereas in the current case the Respondent has been previously dealt with by the Commission although on a charge relatively different from one that he is charged';*

(iii) *'there was an* ***additional penalty apart from an order of fine and costs*** *... against the Respondent ... That the Respondent may not: i. Practice as a sole practitioner or sole manager or sole owner of an authorized or recognized body other than with the approval of the Solicitors Regulation Authority; ii. Be a partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS) or other authorized or recognized body other than with the approval of the Solicitors*

Regulation Authority; iii. Hold client money other than with the approval of the Solicitors Regulation Authority; iv. Be a signatory on any client account other than with the approval of the Solicitors Regulation Authority';

(5) <u>Cassam and Lewis</u> -*'the sanction against the second Respondent [Lewis] is more relevant to the present case',* however, *'the facts could be distinguished with the current case'* as -

(i) In *Lewis*, the practitioner *'admitted to the allegations before the hearing whereas in the present case the Respondent pleaded guilty on the day of the hearing'*;

(ii) In *Lewis,* the practitioner *'had ceased to be a fee-earning solicitor in the firm and had withdrawn from the day to day involvement with the firm whereas in the present case, the Respondent was the Principal and sole proprietor of the firm and had a higher duty and responsibility to his clients';*

(iii) *'Lewis had paid and was continuing to pay some of the debts and/or liabilities of the firm'.*

[93] Counsel for the Applicant Chief Registrar also concluded with a general submission as to an alleged difference between Fiji and England (and presumably he also meant Wales) in the need for greater protection of the public in Fiji:

> *'The Applicant therefore humbly prays that there be a suspension for a period between three to five years imposed on the Respondent with costs payable to the Applicant in the sum of $2000 as was earlier submitted to the Commission on the basis that* ***the protection of the public in terms of trust account breaches is to be taken in more stricter sense in the context of Fiji given that <u>the expectation of the members of public in Fiji and in England are different</u>****. This is due to the fact that the level of education, the knowledge of the law and/or legal principles, access to justice and socio-economic status of the members of public in Fiji is lower and as such they are more vulnerable than the members of public in UK. It is for this very reason that the Applicant humbly submits that* ***the Commission's sanctions should reflect greater protection to the members of public here****.'*
> [My emphasis]

[94] Counsel for the Respondent legal practitioner in her submissions dated 19th September 2017 responded in relation to the five cases, in summary, as follows:

(1) Bailey –

(i) *'The Applicant ... have failed to alert the Commission to the monies equivalent of the alleged shortfall of the Solicitor's Trust Account. ... the lowest figure of 6,000 pounds would range between 16,431 – 17,960 in FJD ... as of 19 September 2017. The 14,000 pounds would have been 38,320 – 38,361. Even with the lowest figure in the **Bailey** case, the amount is more or less bordering on the equivalent of what the Respondent in this matter has pleased guilty to so the sanction based not on fraud, could be applicable';*

(ii) *'The similar feature ... is that both are not a case where fraud or dishonesty was alleged by the Applicant';*

*(iii) 'Whilst the Applicant is submitting that the Commission should treat the Respondent here differently because unlike **Bailey**, the Respondent had already been dealt with by the Commission, ... whilst this is accepted, the Respondent's last issue before the Commission is not a like offence. The past sanction ... only means, like in criminal practice, that the approach to first offenders would not be available .... **It doesn't [sic] not and could not be taken to be an aggravating feature. He simply looses some lenient consideration usually available to a first offencer [sic] but it doesn't attract aggravation**. Wha[t] the Applicant is submitting is not a correct position in law nor in practice';* [My emphasis]

(iv) *'... the Appicant [sic] is suggesting that there were additional conditions of the orders by the SDT and that is true. However, the condition imposed by the SDT in the Bailey matter could best be addressed in this matter with the attendance of the Respondent already done on the 14th September 2017 of the Trust Account Supervisor's Program 2017 in Wellington, NZ. This Supervisor's Program Course is an intensive trust account supervision course which has now upgraded the Respondent's knowledge in trust account administration and supervision, a learning which coupled with the Legal & Trust Account Software that the Respondent had purchased in January 2016 (refer to our submissions on sentence), would ensure future compliance and minimize errors in the future conduct of the practice and the practitioner';*

(2) Nasir -

(i) 'Whilst the factual matrix may be different, the similarity is in the nature of the culpability alleged. The Applicant's case proposes lack of diligence in the trust accounting and ledgering of client accounts. It does not allege fraud or dishonesty. That is the similarity feature ...';

(ii) Counsel has restated what she submitted in *Bailey* above, in that the past sanction could '*not and could not be taken to be an aggravating feature';*

(3) Bowden -

*(i) The fact that the Respondent had appeared in the Commission before is inconsequential to the application of the principle of **parity of sanction**. It simply means that, generally, the Respondent would not*

be entitled to considerations usually given to a first offender. We emphasize the term 'generally' because in considering whether or not someone should be considered a first offender or not, ***the Commission would cast his mind on whether or not the second is a like offending as the first****. If it is not, the Commission is well entitled to consider that since they are not like offences,* ***a Respondent could be treated in law to be a first offender and get the same application a court would make as if the Respondent is a first offender****;* [My emphasis]

(ii) '*Whilst it is accepted that only one Client ledger was affected, it is submitted that* ***the amount of 30,845.75 pounds is significantly enormous if converted to the Fijian equivalent. That equivalent would be approximately $84,000 FJD tod****ay;* [My emphasis]

(iii) 'The Tribunal at paragraph 34 of the Judgment viewed the misconduct as more serious and considering all the relevant considerations, proposed a fine of 7,500 pound against Mr Bowden';

(4) *Digwa* -

(i) '... Digwa and the present matter are both cases falling short of fraud and or deceit/ dishonesty. This is the crux of the category. It is testament of lax office trust accounting procedure/ system, which results in such unfortunate circumstances';

(ii) 'With the Respondent's resolve shown as early as January 2016 when he purchased a Legal & Accounting Software for $5,000 (evidence shown to the LPU in March 2016 letter response) to ensure that his accounts, operational and trust are well maintained and further, undertaken course on Trust Account Supervision in Wellington, 14 September 2017, the office manual system will now have a checking electronic system and backup which would ensure compliance at all times of the trust accounts of the Firm';

(iii) 'With regard to the additional conditions issued against ***Digwa****, the Respondent submits that from 27 September 2016 (after 7 months of no practicing certificate) to the 5th of June 2017 (9 months in total),* ***the Respondent had been practicing under restricted practice and monthly reporting to the Chief Registrar. The Respondent performed this religiously.*** *These orders, or the equivalent of these in the Fijian practice context is something that the Respondent, should the Commission prefer, submit to for a period of time and review for compliance with a view of full restitution of practice ...'.* [My emphasis]

(5) *Cassam and Lewis* -

(i) '... the proposition of the Applicant that the Commission should note that in the matter of Lewis, he pleaded guilty early and in this case, the Respondent pleaded guilty at the hearing date is submitted to be inconsequential, considering all the circumstances of the case. ***Indication of a plea was made earlier after the Amended Charges were filed and served****. Pending a document to be discovered and a witness not available during the hearing date, the Respondent indicated plea on a 'progressive approch' [sic] and instructions had to be sought from the Chief Registrar on his views about th[e] Respodnent's [sic] representation to reduce the numbe[r] of counts.* ***The delay were neither deliberate [n]or consciously made to defer proceedings befor[e] the Commision [sic]';*** [My emphasis]

(ii) *'The important pragraphs [sic] of the decision of the SDT is found in 156 – 162 ... In paragraph 160*

> *'The Tribunal found that the Second Respondent's misconduct was far too serious to merit either no order or a reprimand, particularly as the latter had been the sanction on the previous occasion. Whilst the ultimate losses to clients had been large, the Tribunal did not find his misconduct had been so serious as to justify removing him, temporarily or permanently, from practice. The Tribunal determined that a financial penalty would be appropriate in these circumstances.'*

(iii) *'The Applicant is [sic] their submissions ... appear to draw some suggestion that comfort should be afforded to the case because* ***Lewis*** *had made and was maing [sic] some payments toward the Firm's liability.* ***The Respondent in this case had paid back all the amounts of monies when he was notified about it on February 2016, promptly****';* [My emphasis]

(iv) *'The Applicant is suggesting that because the Respondent was a sole practitioner, he had a higher duty of care and responsibility to his clients as opposed to Mr Lewis. This is simply unsustainable.* ***The role of Lewis in as far as the trust account is concerned is equally important as Mr Cassam*** *as the SDT found in paragraphs 157 and 159. The facts found in Mr Lewis case does not even exist in the present matter of the Respondent';* [My emphasis]

(v) *'****The Respondents submits that such regime of sanction issued againt [sic] Mr Lewis could also be made against the Respondent in this matter****, considering all the circumstances of the case, the agreed facts and the facts pleaded in mitigation by the Respondent';*
[My emphasis]

(vi) *'The Tribunal in the Lewis matter had considered all the relevant considerations in the Guideline which included the collective protection of the profession and still felt that in the circumstances of the case, Mr Lewis still should only be fined and reprimanded.'*

[95] Counsel for the Applicant Chief Registrar replied in his submissions dated 21st September 2017, in summary, as follows:

(1) Counsel for the Applicant Chief Registrar did not directly respond to as to the applicability of the five recent cases from the Solicitors Disciplinary Tribunal of England and Wales. Instead, Counsel for the Applicant Chief Registrar simply replied:

> '*The Applicant submits that the Fiji Legal Practitioners Act 2009 is based on the New South Wales legislation/model and hence, the Australian case laws are more relevant in the Fijian context.'*

Also, at the end of his submissions, Counsel for the Applicant Chief Registrar restated his concluding submission (cited above) that '*the*

protection of the public in terms of trust account breaches is to be taken in more stricter sense in the context of Fiji given that the expectation of the members of public in Fiji and in England are different'.

(2) On the issue as to level of seriousness of the breach, Counsel for the Applicant Chief Registrar submitted:

> *'The Applicant reiterates that* ***trust account breaches are*** *regarded as* ***serious misconduct*** ***irrespective whether the Respondent practitioner was negligent, fraudulent or dishonest.*** *Whilst the Applicant appreciates the fact that in the event of dishonesty, the issue of fitness to practice becomes a factor to be considered as opposed to suspension, the present case is a good example of one where suspension is warranted for the purpose of protection of the public interest.'* [My emphasis]

And further:

> *'The applicant reiterates paragraph 22 of its submissions filed on the 13th of June 2017 and the ratio in the case of Guss v Law Institute of Victoria Ltd [2006] VSCA 88 (21 April 2006).'*

(3) In relation to aggravation, Counsel submitted:

> *'... the Commission ought to regard* ***the Respondent's failure to properly explain the purpose for which the overdrawn amount*** *in the total sum of $14,826.21 (as admitted by the Respondent)* ***was used*** *for as an aggravating factor'.* [My emphasis]

(4) Counsel also cited three cases from Fiji:

(i) *Chief Registrar v Melaia Ligabalavu;* and *Luseyane Ligabalavu* (Justice Madigan, 7 June 2013) and noted: –

> *'... the second Respondent was suspended from practicing law for a period of two years albeit there being no finding of dishonesty by the Commission. At paragraph 17 of the judgment, the honorable [sic] Commissioner stated:*
>
> > *"The 2nd Respondent's failures on all four of these allegations found established show a distinct lack of organization and professional acumen rather than dishonesty and deceit. It is suspected that she may be a little out of her depth in managing her own practice."*

(ii) *Chief Registrar v Jolame Uludole* (Justice Madigan, 5 February 2014)

> *'the Commission had very clearly stated that trust account offending would attract very strict penalties. At paragraph 6 of*

> *the judgment, the learned Commissioner relying on the case of* Chief Registrar v Kini Marawai *ILSC Matter No. 006 of 2012 mentioned:*
>
> > *"As the Commission indeed said in* Kini Marawai *(supra), trust account offending is venturing on to "sacred turf" in terms of professional misconduct and as a general rule such offending will attract* ***very strict penalties*** *(my emphasis)"*

(f) The relevance of sanctions imposed in Australia as well as *by* ***the Solicitors Disciplinary Tribunal of England and Wales***

[96] I note that in the submissions of Counsel for the Applicant Chief Registrar, he has, on the one hand, cited three Australian cases (two of the three on the appropriate penalty for suspension of a practitioner in relation to trust account breaches), and then, on the other hand, has submitted as to the inapplicability of penalties imposed by the Solicitors Disciplinary Tribunal of England and Wales, as '*the Commission's sanctions should reflect greater protection to the members of public here'* in Fiji. Counsel for the Applicant Chief Registrar has not cited any case authority to support this assertion. Further, he has not tendered examples as to a tendency of an alleged lesser *'protection to the members of public'* in England and Wales.

[97] Indeed, Popplewell J in *Fuglers and Others v Solicitors Regulation Authority*, citing Sir Thomas Bingham MR in *Bolton v The Law Society* at pp. 518-519 (that I have set out in detail earlier in this judgment) makes the importance of the protection of the public abundantly clear. So that there is no confusion, it is important for me to cite again here an excerpt from *Bolton*:

> *'... **If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious** indeed in a member of a profession whose reputation depends upon trust. A striking-off order will not necessarily follow in such a case, but it may well. The decision whether to strike off or to suspend will often involve a fine and difficult exercise of judgment ... **Only in a very unusual and venial case of this kind would the tribunal be likely to regard as appropriate any order less severe than one of suspension**.'*
> [My emphasis]

[98] Bingham MR in *Bolton* then went on to make clear:

> ***'***In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. ***This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards*** ... The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth ...'
> [My emphasis]

[99] **Thus, where a breach is assessed as very serious, it follows that there will be a period of suspension whether it occurs in Fiji or England and Wales**. Further, '*only in a very unusual and venial case'* would the sanction imposed be any '*less severe than one of suspension'*. Such has been made clear by Popplewell J in *Fuglers* and Sir Thomas Bingham MR in *Bolton.*

[100] **In the present case, the Respondent legal practitioner has since 1st March 2016, served, in effect, two periods under suspension** (totalling 249 days or 8 months and 7 days) **and two periods under a severely restricted practising certificate** (totalling 249 days or 8 months and 7 days), **making a combined total** period of suspension or working under a restricted practising certificate **of 576 days or 18 months and 18 days**. **To be clear, the Respondent legal practitioner has not been allowed to operate a trust account for 18 months and 18 days, including that he has not been allowed to even practise as a lawyer for 10 months and 17 days of those 18 months and 18 days.**

[101] **The question that I now have to decide is whether the Respondent legal practitioner should serve a further period of suspension** (as submitted by Counsel for the Applicant), **or whether this should now been varied** (as suggested by Counsel for the Respondent), **to allow the Respondent legal practitioner to resume legal practice, but, if the Commission deems it so necessary, under a period of restriction, so as to ensure the protection of the public and to maintain the reputation of the legal profession?**

[102] This is why in the letter sent from the Secretary of the Commission to Counsel for the parties in the week prior to the present Sittings, (setting out the 11 cases then known dealt with by the Commission from 2009-2017 involving trust account issues, as well as five examples of recent decisions from the Solicitors Disciplinary Tribunal of England and Wales where the legal practitioner had failed to keep proper accounting records), it was stated:

> *'Should either, or both, Counsel for the parties wish to address the above penalties imposed by the ILSC and/or The Solicitors Disciplinary Tribunal of England and Wales, the Commissioner invites Counsel to do so in succinct written submissions ...*
>
> *To assist Counsel, the Commissioner is of the preliminary view that* ***the present case sits somewhere between the less serious and the more serious operating issues where a legal practitioner has failed to keep proper accounting records****.* ***Hence, why a period of suspension has been appropriate****. As to whether that suspension should continue (as submitted by Counsel for the Applicant) is what the Commissioner now has to decide.'*
> [My new emphasis]

[103] On that point, in *Chief Registrar v Naco,* Commissioner Connors stated:

> *'10. In circumstance such as this* ***the appropriate disciplinary sanction ultimately rests heavily on whether or not the lawyer has been dishonest when dealing with Trust funds****. Technical breaches of the Trust Account requirements that involve no element of dishonesty, such as on isolated failure to pay money directly into a Trust Account or a failure to account, may not justify suspension or disbarment.*
>
> *11. In* ***Law Society of New South Wales v Lee*** *[2005] NSW ADT 242. The New South Wales Administrative Decisions Tribunal* ***opted to fine and publicly reprimanded the Respondent solicitor*** *arousing [sic]* ***out of his failure to maintain proper trust account records in circumstance involving no tinge of dishonesty****. The Tribunal appears to be influenced by the Respondents solicitor's subsequent conduct. In that matter the Tribunal also ordered the solicitor to undertake and satisfactorily complete a trust account management course with subsequent three monthly trust account inspections.*
>
> *...*
>
> *14. Imposing the penalty* ***I take into account that nobody has suffered financially as a result of the actions of the Respondent*** *and I note his apparent adherence to the requirements throughout the past five years.*
>
> *15. There is, as the Applicant points out a significant public interest in matters such as this and whilst I accept there is no*

> *suggestion of dishonesty on the part of the Respondent a breach of the trust account requirements warrants the imposition of at least a monetary penalty.'*
> [My emphasis]

[104] I have, however, taken on board the submission made by Counsel for the Applicant that in *Naco* the overdrawn amount was in the vicinity of $2,000 and was for a period of only three days, which is somewhat different from the present case where the total overdrawn sum was $14,826.21 and involved many transactions over the entire audit year.

[105] I have also noted, however, that in *Law Society of New South Wales v Lee* (cited by Commissioner Connors in *Naco* and presumably an example of Australian case law that, according to Counsel for the Applicant, upon which I should be relying), the New South Wales Administrative Decisions Tribunal (see AustLII: [2005] NSWADT 242 (25 October 2005), <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWADT/2005/242.html>), stated:

> *'5.* ***The Solicitor came under notice not because of any complaint by a client but following a regular trust account inspection by the Law Society****. It was apparent to the trust account inspector that the Solicitor was not correctly operating accounts, not keeping proper records and was regularly dealing with trust monies in breach of the Regulations and the Act ...*
> *6. The Solicitor regularly failed to retain duplicate receipts for any trust monies received, failed to maintain a record of trust cheque particulars for the period 15 May 2000 to 6 August 2000, failed to maintain a record of daily trust payment transactions in the form of a payments ledger or cash book and failed to prepare monthly trust bank reconciliation statements. The Solicitor did not maintain a trust journal. The Solicitor did not keep a separate trust ledger account for each matter for each person for whom trust money had been held and the Solicitor failed to prepare a monthly trust trial balance.*
> *7.* ***It was not suggested by the Society nor was there any evidence that the Solicitor has misappropriated monies for his own benefit.*** *What became apparent when the Solicitor gave evidence was that despite having attended compulsory courses ... the Solicitor's knowledge of what constitutes trust monies remains poor.*
> *...*
>
> *11.* ***The Tribunal's jurisdiction is protective****. The Law Society did not seek nor does the Tribunal find that the Solicitor should be suspended from practice or struck off.* ***The Tribunal is of the view that with further education it is unlikely that this Solicitor will appear before the Tribunal in the future*** *...*

> *12. …* ***The Tribunal was of the view that the Solicitor had already suffered a substantial financial penalty in respect of costs and Receiver's fee and that a substantial fine would be inappropriate in these circumstances****. The Tribunal accepts the Solicitor's explanation that* ***the contraventions although willful arose primarily from ignorance and a reckless disregard for the obligations of the Solicitor under the Act and Regulations****. The Tribunal was however concerned that the Solicitor should be subject to some further monitoring and complete a further course of education in respect of trust account management. Accordingly the Tribunal made the following orders:*
>
> ***Orders***
> *1. That the Solicitor be fined the sum of $1,000.00 to be paid within three months of 28 September 2005.*
> *2. That the Solicitor be publicly reprimanded.*
> *3. That the Solicitor pay the Society's costs of and incidental to the proceedings in the sum of $2,750.00 such costs to be paid within three months.*
> *4. That the Solicitor undertake and satisfactorily complete within twelve months of 28 September 2005 a course relating to trust account management as approved by the Law Society and implement as necessary any procedures recommended.*
> *5. That the Solicitor's practice be subject to inspection at the Solicitor's cost by an independent practitioner nominated by the Law Society at intervals of three, six and nine months from 28 September 2005.*
> *6. That if the Solicitor fails to comply with Orders 1, 3, 4 and 5 above his practising certificate be immediately suspended until such order is complied with.'*

[106] From *Lee*, I have noted the following that I have compared with the present case:

(1) '*The Solicitor came under notice not because of any complaint by a client but following a regular trust account inspection by the Law Society'* – the same has occurred here;

(2) '*It was not suggested by the Society nor was there any evidence that the Solicitor has misappropriated monies for his own benefit'* – the same applies here;

(3) '*The Tribunal's jurisdiction is protective'* - the same applies here;

(4) '*the contraventions although willful arose primarily from ignorance and a reckless disregard for the obligations of the Solicitor under the Act and Regulations'* – there has been no evidence placed before me that the Respondent's actions in the present case could be described as 'willful'. In that regard, I note the definition relied upon by the Fiji Court of Appeal in

Balekivuya and Anor v State (Unreported, Fiji Court of Appeal, Criminal Appeal No. AAU 81 of 2011, 26 February 2016, Calanchini, P, A. Fernando and Fernando, JJA); PacLII: [2016] FJCA 16, <http://www.paclii.org/fj/cases/FJCA/2016/16.html>), where, in the reasons and conclusions arrived at by Calanchini P (with whom A. Fernando and P. Fernando JJA agreed), His Lordship observed at [31]: *'... Some of the meanings ascribed to "willful " in the Shorter Oxford English Dictionary include "done of one's own free will or choice", "voluntary", "done on purpose or wittingly", "deliberate" and "intentional"...'.*

[107] I have also noted the Orders made in *Lee* (apart from the fine, public reprimand and costs) and applied them to the present case as follows:

(1) '*That the Solicitor undertake and satisfactorily complete ... a course relating to trust account management ... and implement as necessary any procedures recommended'* – the same could be ordered by me in the present case, however, I note that the Respondent legal practitioner has already undertaken such a course conducted through the New Zealand Law Society (which he completed in the week before the commencement of these Sittings), involving both distance learning of some 40-55 hours followed by his compulsory attendance at a seminar in New Zealand culminating in his being required to sit and pass a trust account exam);

(2) '*That the Solicitor's practice be subject to inspection at the Solicitor's cost by an independent practitioner nominated by the Law Society at intervals of three, six and nine months ...'* and failure to comply would result in *'his practising certificate be[ing] immediately suspended until such order is complied with'* – I am of the view that should I decide in the present case to allow the Respondent legal practitioner to resume his practising certificate, then a similar sanction should apply, that is, of stringent independent reviews/audits of the Respondent legal practitioner's trust account for at least the next year.

(g) The fine sanction

[108] According to the 5th edition of the *'Guidance Note on Sanctions'* (paragraph 25, page 11) in relation to the sanction of **a fine**:

> *'A Fine will be imposed where the Tribunal has determined that the seriousness of the misconduct is such that a Reprimand will not be a*

sufficient sanction, but neither the protection of the public nor the protection of the reputation of the legal profession justifies Suspension or Strike Off.'

[109] As to the applicable appropriate 'level of fine', the 5th edition of the *'Guidance Note on Sanctions'* (paragraph 26, page 11) has explained as follows:

> *'The Tribunal will consider the following guidance in determining the appropriate level of Fine or combination of Fines to be imposed ...*
>
> - *... In deciding the level of Fine, the Tribunal will consider all the circumstances of the case, including aggravating and mitigating factors. The Tribunal will* ***fix the Fine at a level which reflects the seriousness of and is proportionate to the misconduct****.*
> - *the respondent shall be expected to adduce evidence that their ability to pay a Fine is limited by their means*
> - *the factors to be considered include those outlined by Popplewell J at paragraph 35 of* ***Fuglers and Others v Solicitors Regulation Authority*** *... , which may result in movement of the level of fine up or down the Indicative Fine Bands... The Indicative Fine Bands provide broad starting points only. Factors to be considered include: (1) whether the seriousness of the misconduct, and giving effect to the purpose of the sanction, puts the case at or near the top, middle or bottom of the category (2)* ***the level of fines imposed by other disciplinary tribunals or the High Court in analogous cases*** *(3) the size or standing of the solicitor or firm in question (4) the means available to an individual or a firm. In considering means* ***it is relevant to take into account the total financial detriment which is suffered, including any costs order, and any adverse financial impact of the decision itself.***'
>
> [My emphasis]

[110] The five 'Indicative Fine Bands' set out by the 5th edition of the *'Guidance Note on Sanctions'* (paragraph 28, page 12) are replicated in ***Table 1*** below:

Fine Band	**Overall Assessment of Seriousness of Conduct**	**Fine Range**
Level 1	Lowest level for conduct assessed as sufficiently serious to justify a fine (rather than a reprimand)	£0-£2,000

Level 2	Conduct assessed as moderately serious	£2,001-£7,500
Level 3	Conduct assessed as more serious	£7,501-£15,000
Level 4	Conduct assessed as very serious	£15,001-£50,000
Level 5	Conduct assessed as significantly serious but not so serious as to result in an order for suspension or strike off	£50,001 - unlimited

[111] As noted above, Counsel for the Respondent legal practitioner has submitted that the current exchange rate on £6,000 British Pounds ranges from FJD$16,431-FJD$17,960. (See *'Respondent's Further Submission on Sanction'*, 19 September 2017, para 1.1., page 1.) On my calculations that makes one British Pound (£1) at present worth between approximately FJD$2.74-FJD$2.99. Obviously, such a simple conversion does not take into account, for example, the fact that wages and the level of social security support in the United Kingdom (including such items as access to the National Health Service, quality education and social security benefits) highlight a different standard of living between the two countries.

[112] Thus, simply converting British Pounds to Fijian Dollars by multiplying each of the figures provided in the above table by FJD$2.74-FJD$2.99 does not provide, in my view, a realistic comparison. I also note that I have not been provided by Counsel for the Applicant with any suggested similar comparable scale of fines as Counsel has limited his submissions to a period of suspension and made no submission, in the alternative, should I decide that a range of other sanctions (including a fine) are applicable to a suspension.

[113] I have had my staff check the level of fines imposed by the Commission in previous cases set out in ***Table 2*** below (with the added rider that this may not cover all fines ever imposed especially those varied on appeal and it is to be taken instead as a broad indication and for which I have made a slight adjustment between Level 1 ($0-$1999) and Level 2 starting at $2,000 rather than $2,001 as fines of $2,000 have been imposed previously by the Commission where the conduct could be assessed at Level 2, that is, "moderately serious"):

Level 1: **Lowest Level for conduct assessed as SUFFICIENTLY SERIOUS to justify a fine (rather than reprimand)**	**Fine band** FJD$0-$1999
013/13 - John Rabuku **Count 1:** Failure to respond to complaint issued by Chief Registrar and subsequent reminder notice	Fine imposed: FJD$500.00
014/2013 - Sushil Chand Sharma **Count 1:** Failure to respond to complaint issued by Chief Registrar and subsequent reminder notice	Fine imposed: FJD$500.00
005/2015 - Vilitatai Daveta **Count 1:** Failed to provide sufficient and satisfactory explanation in writing of matters in a complaint; failed to respond to notice and reminder sent by Chief Registrar.	Fine imposed: FJD$500.00
006/2015 – A Solicitor **Count 1:** Failed to provide sufficient and satisfactory explanation in writing of matters in a complaint; failed to respond to notice and reminder sent by Chief Registrar.	Fine imposed: FJD$500.00
014/2015 - Angeline Kiran Lata **Count 1:** Failed to appear at Lautoka High Court and failed to make formal application for withdrawal as Counsel **Count 2:** Failed to give precedence to the Lautoka High Court over the Sigatoka Magistrates Court.	Fine imposed: FJD$500.00
020/2013 - Kelera Baleisuva Buatoka **Counts 1 and 2:** Acting as a Commissioner for Oaths by witnessing an affidavit while not holding a valid practicing certificate	Fine imposed: FJD$300.00 on each count = FJD$600.00
001/2009-Abhay Kumar Singh **Count 1:** Perverting the course of justice **Count 4:** Acting for both parties to an agreement	Fine imposed: FJD$1,000.00
001/2009-Abhay Kumar Singh **Count 2:** Falling short of the standard of competence and diligence expected of a reasonable professional legal practitioner	Fine imposed: FJD$1,000.00
007/2009 - Akuila Naco **Count 1:** Overdrew Trust Account	Fine imposed: FJD$1,000.00
007/2009 - Akuila Naco **Count 2**: Falling short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonable professional legal practitioner. **Count 3**: Failure to appear in court. **Count 5**: Failure to cross examines a prosecution witness resulting in the complainant as a client being prosecuted. **Count 6:** Abused the relationship of confidence and trust with the client by failure to represent and protect the interest of the client.	Fine imposed: FJD$1,000.00
006/2011 - Siteri Adidreu Cevalawa **Count 1-8:** Solicitor practicing without having a valid practising certificate	Fine imposed: FJD$1,000.00
001/2012 - Laisa Lagilevu **Count 1:** Appeared in High Court without a valid practising certificate	Fine imposed: FJD$1,000.00
006/2012 - Kini Marawai **Counts 1 to 3:** Appearing before court without a practising certificate **Count 4**: Without a practising certificate, instructed another solicitor **Counts 5:** Failed to establish and keep trust account	Fine imposed: FJD$1,000.00
013/2014 - Nikolau Nawaikula **Count 1:** Failed to respond to complaint; failed to respond to notice and reminder sent by Chief Registrar	Fine imposed: FJD$1,000.00
014/14 - Nikolau Nawaikula **Count 1:** Failed to respond to complaint; failed to respond to notice and reminder sent by Chief Registrar.	Fine imposed: FJD$1,000.00
001/2016 - Tevita Vakayarutabua Qauqau Burkarau **Count 1:** Failed to respond to the Chief Register sufficient and satisfactory explanation in writing of matters; Failed to respond to reminder of notice.	Fine imposed: FJD$1,000.00
001/2017 - Aseri Vakaloloma **Count 1:** Appearing without a valid practising certificate	Fine imposed: FJD$1,000.00

013/2015 – Chief Registrar vs A Solicitor **Count 1:** Failed to provide sufficient and satisfactory explanation in writing of matters in a complaint; failed to respond to notice and reminder sent by Chief Registrar.	Fine imposed: FJD$1,500.00
010/2012 - Kalisito Maisamoa **Count 1:** 8 offences of appearing before completing 2 years of practice on the same day. (8 offences regarded as one count with concurrent penalties).	Fine imposed: FJD$1,500.00
027/2013 - Saimoni Nacolawa **Count 1:** Failure to make proper enquiry into accreditation of accounting firm engaged to prepare Trust Account Audit report.	Fine imposed: FJD$1,500.00
Level 2: **Conduct assessed as MODERATELY SERIOUS**	**Fine band** FJD$1999-$7,500
008/2012 - Naipote Vere **Count 1:** Failed to comply with any orders or directions of the Registrar	Fine imposed: FJD$2,000.00
012/2014 - Nitij Pal **Count 1:** Operated without a valid practicing certificate.	Fine imposed: FJD$2,000.00
009/2012 - Niko Nawaikula **Count 1:** Instructed uncertified solicitor to act	Fine imposed: FJD$2,000.00
004/2009- Sheik Hussain Shah **Count 1:** Issues trust fund account cheque which was dishonoured. **Count 3A:** Falling short of the standards of competence and diligence of a reasonably competent or professional legal practitioner. **Count 3B:** Delayed the process **Count 5:** Failed to appear for complainant. **Count 6:** Failed to attend the Magistrate Court proceedings.	Count 3A FJD$500.00 Count 3B FJD$500.00 Count 5 FJD$750.00 Count 6 FJD$500.00 Total fine imposed: FJD$2,250.00
005/2013 - Vilimone Vosarogo **Count 1:** Instructed another legal practitioner without holding a valid practicing certificate	Fine imposed: FJD$2,500.00
025/2013 - Jolame Uludole **Count 1:** Failure to open a trust account **Count 2:** Failure to open a trust account when operating as J.U. Esquire and acting for a client.	Fine imposed: FJD$3,000.00
007/2013 - Ram Chand **Count 1:** Knowingly deceiving or misleading the High Court by seeking an adjournment for health reasons whilst appearing on the same day in the Magistrates Court.	Fine imposed: FJD$5,000.00
010/2013 Amrit Sen **Count 2:** Showed discourtesy to the court by raising his voice to an unacceptable level and by attacking the reputation of the prosecutor in court	Fine imposed: FJD$5,000.00
Level 3: **Conduct assessed as MORE SERIOUS**	**Fine band** FJD$7,501-$15,000
002/2009 - Hemendra Nagin **Count 2(A):** Abused the relationship of confidence and trust of the client. **Count 2(B):** Acted for both parties in a transaction and purchase of land. **Count 2(C):** Failed to protect the best interest of the client.	Fine imposed: FJD$15,000.00
011/2013 - Raman Pratap Singh **Count 1:** Unreasonably delayed seeking consent of the Director of Lands for transfer of the lease **Count 2:** Included a clause which breached the lease conditions of the said Crown land **Count 3:** Failed to fulfil instructions received for completing settlement of sale, failed to have lease transferred to purchasers, failed to ensure that vendor fully paid sum for consideration	Fine imposed: FJD$9,000.00 (fined a total of $3,000.00 on each count)
Level 4: **Conduct assessed as VERY SERIOUS**	**Fine band** $15,001-$50,000
016/2013 - Muhammmed Azeem Ud-Dean Sahu Khan Two counts of gross misrepresentation. Letterhead fraudulently referred to respondent as being 'Bar-at-Law (Lincoln's Inn)' when: **Count 1:** Not a UK barrister **Count 2:** Not a member of Lincoln's Inn	Fine imposed: FJD$20,000.00

003/2011 - Divendra Prasad Solicitor failed to convey settlement offer and acceptance to 3 clients seeking damages for personal injuries having made a contingency fee agreement with the clients. **Count 1A: A**cting without instructions from client, **Count 1D:** Failed to keep client informed of progress of instructions given.	Fine imposed: FJD$30,000.00
Level 5: **Conduct assessed as significantly serious but not as to result in an order for suspension or strike off**	**Fine band** FJD$50,001 - $500,000
No cases	

[114] In my view, by using the same figures in *Table 1* (apart from a slight change with Level 1 concluding at $1999 and Level 2 commencing at $2000) and simply substituting Fijian Dollars for British Pounds, then a much more realistic figure can arguably be used to provide an indication, at least, equating the level of the seriousness of the misconduct by a legal practitioner to the appropriate range of fines applicable in Fiji for disciplinary matters. I have also noted that whereas in the United Kingdom the level of fines is unlimited, in Fiji pursuant to section 121(1)(i) of the *Legal Practitioners Act 2009* there is a limit that can be imposed by the Commission upon a legal practitioner to a maximum '*sum not exceeding $500,000.00'.*

[115] Therefore, doing my best, the level of fines for misconduct by a legal practitioner in Fiji may result in the following "ballpark" figures as I have set out in ***Table 3*** below:

Fine Band	**Overall Assessment of Seriousness of Conduct**	**Fine Range**	**Perhaps Fine Range Applicable in Fiji**
Level 1	Lowest level for conduct assessed as sufficiently serious to justify a fine (rather than a reprimand)	£0-£2,000	FJD $0-$1,999
Level 2	Conduct assessed as moderately serious	£2,001-£7,500	$2,000-$7,500
Level 3	Conduct assessed as more serious	£7,501-£15,000	$7,501-$15,000
Level 4	Conduct assessed as very serious	£15,001-£50,000	$15,001-$50,000

Level 5	Conduct assessed as significantly serious but not so serious as to result in an order for suspension or strike off	£50,001 - unlimited	$50,001 - $500,000

[116] In summary, using the 5th edition of the *'Guidance Note on Sanctions'* as a guide and its indicative fine bands, I have come to the view as to the overall assessment of the seriousness of the conduct in relation to each of the four counts in the present matter as follows:

(1) The Respondent's level of culpability and the harm caused in relation to both **Counts 3 and 4 is low**, that is, the overall assessment of the seriousness of the conduct is **at 'Level 1'**, ' … assessed as **sufficiently serious to justify a fine (rather than a reprimand)';**

(2) I have come to the view that the Respondent's level of culpability and harm caused in relation to **Count 2 is also sufficiently serious**, that is, **at 'Level 1**', ' … assessed as **sufficiently serious to justify a fine (rather than a reprimand)';**

(3) I have come to the view that the Respondent's level of culpability and harm caused in relation to **Count 1, however**, is **very serious**, that is, **at 'Level 4'**, **'conduct assessed as very serious'** having taken place over a period of many months and involving a number of transactions.

[117] **Further, I have come to the view that although the fault may have been with the Respondent's staff, the major fault in this matter (as accepted by the Respondent and his Counsel) lay at the feet of the practitioner.** Indeed, as the Solicitors Disciplinary Tribunal of England and Wales noted in *Bailey* at [5], where there *'the cash shortage on client account was alleged by the Applicant to be in the region of £14,000'* and there was a *'late production of a bundle of material'* by the Respondent legal practitioner that *'might serve to reduce the size of that shortage'*, the Tribunal concluded ***'the information led only to general conclusions and the Respondent still did not deny the existence of a shortfall or that he had failed to address it'.*** [My emphasis]

[118] Similarly, in the present case, there is no dispute that the ledgers for four of the Respondent's clients were overdrawn. The Respondent has pleaded guilty with his explanation being that he was negligent in not overseeing his staff. As to whether it was "another client's money" that was being used to make up the shortfall, is not an element of each of the charges and only goes to aggravation. Without more, however, Counsel for the Applicant has not been able to prove by any direct documentary evidence that this is an aggravating factor. Similarly, I have not been pointed to any direct documentary evidence by Counsel for the Respondent to support her submission that the Respondent has somehow "lost out", so to speak, other than the Respondent repaying the $14,826.21 when the audit revealed the shortfall. Even if the overdrawn amount in Count 1 of $14,090.17 was the result of it being wrongly allocated by staff of the Respondent to the ledger of Mamlakah Health & Safety, that is, the account of the business of the Respondent's wife, that business was still a client of the firm. I cannot say more.

[119] The fact remains that the ledgers of four clients were overdrawn and, in relation to Count 1, Mamlakah Health & Safety's account was overdrawn by $14,090.17 arising from repeated incorrect entries and/or transactions. **This is why I have assessed the conduct that formed the basis of Count 1 as very serious.**

(h) Restriction sanction

[120] I note that the 5th edition of the *'Guidance Note on Sanctions'* suggests in relation to a **restriction order** (at paragraphs 29-31, page 13) that:

> *'29. A Restriction Order may be combined with any other sanction made by the Tribunal.*
>
> *30. The Tribunal, exercising its wide power to "make such order as it may think fit", may if it deems it necessary to protect the public, impose restrictions in the form of conditions upon the way in which a solicitor continues to practice … Any breach of conditions imposed by the Tribunal would be a disciplinary offence which would generally merit a separate penalty. See in particular* ***Ebhogiaye v Solicitors Regulation Authority [2013] EWHC 2445 (Admin).***
>
> *31.Restricted practice will only be ordered if it is necessary to ensure the protection of the public and the reputation of the legal profession from future harm by the respondent.'*

[121] It has also suggested (at paragraph 34, page 13) examples of the type of restrictions that might be imposed could be that the legal practitioner 'may not':

- *'practise as a sole practitioner or sole manager or sole owner of an authorised or recognised body.*
- *be a partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS) or other authorised or recognised body.*
- *be a Compliance Officer for Legal Practice or a Compliance Officer for Finance and Administration.*
- *hold client money.*
- *be a signatory on any client account.*
- *work as a solicitor other than in employment approved by the SRA [Solicitors Regulation Authority of England and Wales].'*

[122] I note that some of the types of restrictions placed by the Commission have been as follows:

(1) *Dorsami Naidu* (16/08/2010) - That the practitioner must undertake in Fiji, New Zealand or Australia, no less than 10 hours of professional development or legal education in relation to Conveyancing, Real Property and Practice Management;

(2) *Haroon Ali Shah* (30/09/2010) - That the practitioner must undertake five criminal trials in the Lautoka High Court on behalf of Legal Aid at no cost (no longer than five days' duration) with such trials to be selected by the Director Legal Aid and if the condition was not fulfilled before a set date, the Respondent's Practicing Certificate was to be suspended;

(3) ***Chief Registrar v Alena Koroi*** (ILSC Case No.005 of 2011, 12 March 2012, Justice Madigan; PacLII: [2012] FJILSC 7, <http://www.paclii.org/fj/cases/FJILSC/2012/7.html> - That the practitioner must for 12 months be under the supervision of a solicitor mentor and the issue of a practising certificate for the following year would be conditional of a report being submitted to the Chief Registrar by the mentor of satisfactory and unexcitable performance by the supervised practitioner in the year of supervision;

(4) ***Chief Registrar v Kini Marawai; Chief Registrar v Rajendra Chaudhry*** (ILSC Case No.002 of 2012, 5 October 2012, Justice Madigan; PacLII: [2012] FJILSC 2,

<http://www.paclii.org/fj/cases/FJILSC/2012/2.html> - That the practitioner be suspended and '*only be re-certified as a practitioner by the Chief Registrar on the proof of having undertaken 5 hours of training in Legal Ethics by an institution or tutor acceptable to the Chief Registrar'*.

[123] In the present case, following the hearing on 23rd September 2016 of the Respondent's oral application for the issuing of an interim practising certificate, the application was granted with stringent restrictions: not being able to operate a trust account, could only invoice clients after the completion of work, must provide monthly bank statements to the Chief Registrar and be supervised by another practitioner.

[124] As noted above, my orders for the issuing of an interim conditional practising certificate with such restrictions were further extended on 7th December 2016, 6th and 13th February 2017 and 18th April 2017. There has been no submission from Counsel for the Chief Registrar that the Respondent did not comply with those restrictions.

[125] An interim conditional practising certificate, however, was not granted beyond 5th June 2017. Counsel for the Respondent then made an oral application on 14th June 2017 for the issuing of an interim practising certificate pending my judgment on the sanctions to be imposed in this matter. In my ex tempore ruling of 14th June 2017 refusing that application, I noted at [3]:

> *'It is a matter for Mr. Vosarogo, but,* ***I'll be encouraged in my decision when I will hand down the judgment during those Sittings, if he has been able to do a course on trust account management.*** *I am not saying, and it may well be (as Mr. Chand said) that if it has not been done then I will consider making it part of an Order, but* ***it may well show Mr. Vosarogo's understanding further to me and affect the Orders that I make in the final judgment if he has undertaken such a course.****'*
> [My emphasis]

[126] I note that the Respondent has completed the 'Trust Account Supervisor Training Programme – Supervisor Course' conducted by the New Zealand Law Society in Wellington, for which he paid a fee of NZD$530.00. I presume that he incurred travel, accommodation and associated living costs

to undertake that course. (See *'Training Programme – Trust Account Supervisor - Workbook'*, NZLS CLE Ltd, New Zealand Law Society, July 2017, page 7, setting out the fees.) Hence, I will not consider as a sanction that the Respondent be required to undertake a trust account course over the next 12 months.

(i) The suspension sanction

[127] I note that the 5th edition of the *'Guidance Note on Sanctions'* suggests in relation to **suspension** (at [35]-[37]) that:

> *'35. Suspension from the Roll will be the appropriate penalty where the Tribunal has determined that:*
> - *the seriousness of the misconduct is such that **neither a Restriction Order, Reprimand nor a Fine is a sufficient sanction** or in all the circumstances appropriate.*
> - *there is a **need to protect both the public and the reputation of the profession** from future harm from the respondent by removing their ability to practise, but*
> - *neither the protection of the public nor the protection of the reputation of the legal profession justifies striking off the Roll.*
> - ***public confidence** in the profession **demands no lesser sanction.***
> - ***professional performance**, including a lack of sufficient insight by the respondent ... is such as **to call into question the continued ability to practise appropriately.***
>
> *36. **Suspension from the Roll, and thereby from practice, reflects serious misconduct**.*
>
> *37. Suspension can be for a fixed term or for an indefinite period. A term of suspension can itself be temporarily suspended.'*
>
> [My emphasis]

[128] I note that I have already set out near the beginning of this judgment my calculations as to the periods that the Respondent has, in effect been suspended, together with the periods of working under a conditional practising certificate with stringent restrictions. Therefore, I accept as follows:

(1) The Chief Registrar refused to issue the Respondent with a practising certificate from 1st March 2016 up to and including 23rd September 2016 (when I granted at approximately 7.00pm that evening the Respondent's application for the issuing of an interim practising certificate). **In effect, the Respondent was under a period of suspension for 205 days or 6**

months and 21 days including the end date between 1st March 2016 and 23rd September 2016;

(2) The Respondent was then on a restricted practising certificate from 24th September 2016 until 5th June 2017 - a period of 255 days or **8 months and 13 days not including the end date;**

(3) The Respondent has again been without a practising certificate from 5th June 2017 until today, 26th September 2017 - a period of 114 days or **3 months and 22 days including today.**

[129] **In summary, since 1st March 2016, the Respondent has (on my calculations) up until today:**

(1) been without a practising certificate for a total of 327 days or 10 months and 17 days;

(2) been working under what I view as a severely restricted practising certificate for a total of 249 days or 8 months and 7 days;

(3) under a combined period of suspension or working under a restricted practising certificate for a total of 576 days or 18 months and 18 days.

[130] **My question then is whether the above justifies a continuing period of suspension and/or the issuing of a restricted practising certificate in some form?**

(j) Personal mitigation

[131] The 5th edition of the *'Guidance Note on Sanctions'* has noted in relation to personal mitigation as follows (page 18, paragraphs [53]-[54]):

> *'53. **Before finalising sanction, consideration will be given to any particular personal mitigation advanced by or on behalf of the respondent.** The Tribunal will have regard to the following principles*:
>
> > *"**Because orders made by the tribunal are not primarily punitive**, it follows that considerations which would ordinarily weigh in **mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases**. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will*

say, convincingly, that he has learned his lesson and will not offend again. .... All these matters are relevant and should be considered. But none of them touches the essential issue, which is ***the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness****.* *Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears, likely to be so the consequence for the individual and his family may be deeply unfortunate and unintended.* ***But it does not make suspension the wrong order if it is otherwise right. The reputation of the profession is more important than the fortunes of any individual member****. Membership of a profession brings many benefits, but that is a part of the price." (Bolton above* [at paragraph [16] in Bailii]*).*

54. ***Particular matters of personal mitigation that may be relevant and may serve to reduce the nature of the sanction****, and/or its severity include that:*

- ***the misconduct arose at a time when the respondent was affected by physical or mental ill-health*** *that affected his ability to conduct himself to the standards of the reasonable solicitor. Such mitigation must be supported by medical evidence from a suitably qualified practitioner.*
- ***the respondent was an inexperienced practitioner*** *and was inadequately supervised by his employer.*
- ***the respondent made prompt admissions and demonstrated full cooperation*** *with the regulator.'*

  [My emphasis]

[132] Applying the above criteria to the present case, I have assessed personal mitigation as follows:

(i) '*the misconduct arose at a time when the respondent was affected by physical or mental ill-health that affected his ability to conduct himself to the standards of the reasonable solicitor* – not applicable;

(ii) '*the respondent was an inexperienced practitioner and was inadequately supervised by his employer'*– not applicable;

(iii) '*the respondent made prompt admissions and demonstrated full cooperation with the regulator'* ***– applicable****.*

(k) Overall totality of the conduct

[133] In relation to sanctions involving multiple allegations of the same wrongdoing, I note that the 5th edition of the *'Guidance Note on Sanctions'* states (at page 7, paragraph 14):

> *'**Multiple allegations involving essentially the same wrongdoing committed concurrently** and drafted in the alternative, or numerous similar examples of wrongdoing committed over a period of time, sometimes come before the Tribunal. When some or all of such allegations are found proved, **it may be disproportionate and unjust to impose a sanction for each matter**. In such a situation the Tribunal may in respect of matters found proved:*
>
> - ***impose a sanction, determined by the totality of the misconduct**, which is specified as being in respect of all those matters; or*
> - *impose a sanction on the more serious allegation/s, and make no separate order (or sanction) in respect of other more minor matters.*'
>
> [My emphasis]

[134] Counsel for the Chief Registrar did not submit that the four counts should each be dealt with separately. Indeed, it is my understanding that the suspension he is seeking covers the four counts in totality.

[135] **I agree that the four counts should be dealt with together**. **As to what sanction should be imposed in totality, I have taken into account the following:**

(1) The background to the offending and the alleged role played by the staff of the Respondent;

(2) The criteria discussed in this judgment by applying that as set out in the 5th edition of the *'Guidance Note on Sanctions';*

(3) The written and oral submissions made by Counsel for each party that I have set out in some detailed in this judgment (including the case law each has cited in support);

(4) The 12 previous cases before the Commission from 2009-2017 involving trust account issues as well as the five recent decisions of the Solicitors Disciplinary Tribunal of England and Wales where the legal practitioner failed to keep proper accounting records;

(5) In addition to having purchased in January 2016 new software purchased to operate his trust account, the Respondent has just completed a

detailed trust account management course in New Zealand.

6. The sanction to be imposed in this case

[136] As I have concluded that the **level of seriousness of the misconduct is very serious**, in my view, it would be appropriate to impose the following four sanctions:

(1) A suspension –

(a) The Respondent's practising certificate is suspended for a combined period of 10 months and 17 days as follows:

(i) The suspension is backdated as from 1st March 2016;

(ii) Taking into account time that the Respondent has been without a practising certificate, that is, from 1st March up to and including 23rd September 2016 (6 months and 21 days), 13th April-17th April 2017 (5 days) and from 5th June 2017 until today, 29th September 2017 (3 months and 22 days), making a total of 10 months and 17 days, the Respondent legal practitioner has served his period of suspension as of today;

(2) A restricted practising certificate –

(a) The Respondent is to be issued with a restricted practising certificate for a combined period of 20 months and 7 days as follows -

(i) The restriction is backdated as from 24th September 2016 as per the restrictions set out in my Orders of 23rd September 2016, 6th and 13th February 2017 and 18th April 2017;

(ii) Taking into account time already served under a restricted practising certificate, that is, from 24th September 2016 until 12th April 2017 (6 months and 20 days) and 18th April 2016 until 4th June 2017 (1 month and 18 days), the Respondent has worked under such a restricted practising certificate for 8 months and 7 days;

(b) **The Respondent is to be again under a restricted practising certificate as from tomorrow, 30th September 2017, up to and including 29th September 2018 (that is, for a further 12 months), with the restrictions, however, to be varied from tomorrow as follows –**

(i) Pursuant to Section 121(3) of the Legal Practitioners Decree, the Chief Registrar shall issue a Practicing Certificate to the Respondent forthwith on payment of the prescribed pro rata fees;

(ii) The Respondent is permitted to operate a Trust Account, however,

the Trust Account is to be subject to an audit at the Respondent's cost by an independent accountant nominated by the Chief Registrar who will inspect the Respondent's Trust Account at intervals of three, six and nine months from 30th September 2017 and make a short written report, again at the Respondent's cost, after each audit, for which the Respondent is solely responsible in ensuring that each report is hand delivered to the office of the Chief Registrar within one week of the completion of each audit;

(iii) The Respondent is to provide the monthly bank statement for Mamlakah Lawyers Trust Account No. ******* held at the Bank ******** as from 31st October 2017 up to and including the bank statement issued for 31st August 2018, which the Respondent is to arrange to be hand delivered to the Chief Registrar's office within one week of the completion of each month;

(iv) That the Respondent's practice shall be subject, at the Respondent's cost, to an inspection by a senior practitioner (such practitioner either agreed to between the parties or decided immediately after this judgment by the Commission) who is to make such inspections at intervals of three, six and nine months from 30th September 2017 and to provide a short written report, again at the Respondent's cost, after each inspection, for which the Respondent is solely responsible in ensuring that each report is hand delivered to the office of the Chief Registrar within one week of the completion of each inspection;

(v) That if the Respondent fails to comply with any of the above conditions, his practising certificate is to be immediately suspended by the Chief Registrar and the non-compliance will be treated as a new disciplinary offence.

(3) A fine -

(a) The Respondent is to pay a fine. Being in the very serious category, a fine would usually be in the range of between $15,000 and $50,000 Fijian Dollars;

(b) I have noted, however, that the 5th edition of the *'Guidance Note on Sanctions'* states that *'The Indicative Fine Bands provide broad starting points only'* and I have taken into account the following factors that it has listed - (i) whilst the seriousness of the misconduct puts the case at Level 4

"very serious", it is near the bottom of that category; (ii) the level of fines imposed by this Commission between 2009-2017, the range of fines considered by the Solicitors Disciplinary Tribunal of England and Wales, New South Wales and New Zealand in analogous cases as set out in this judgment; (iii) the standing of the Respondent; (iv) the limited means available including the total financial detriment which has been suffered, including any costs order I propose to make *'and any adverse financial impact of the decision itself'*. Accordingly, I would be considering a fine in the vicinity of $20,000;

(c) Taking into account, however, that the Respondent has already repaid the overdrawn sum of $14,826.21 into the firm's trust account, the fine to be imposed will be reduced by that amount (in line with the decision of the *Solicitors Regulation Authority v Roland Ivor Cassam and Peter Rhidian Lewis*);

(d) In addition, **credit will also be given for the Respondent undertaking the trust account management course in New Zealand** in terms of course fees (NZD$530), travel, accommodation and associated costs, **which must equate to close to FJD$2,200-$2,500.00;**

(e) Therefore, the fine to be imposed is summarily set in the sum of $3,000.00, with such sum to be paid within six months of today, that is, by 12 noon on 26th March 2018;

(4) Five pro bono legal aid trials –

(a) Finally, to assist in making a direct contribution to restoring the public's faith in the profession, **the Respondent is to undertake five legal aid trials on a pro bono basis to be completed by 30th September 2018;**

(b) The trials are to be selected by the Director of Legal Aid;

(c) Each is to be not more than five days duration;

(d) If the trials are not completed by 30th September 2018, an automatic suspension of the Respondent's practising certificate will apply for a period of five months as from 1st October 2018 until 28th February 2019.

7. Costs

[137] Counsel for the Applicant in his written submissions of 13th June 2017 (at paragraphs 28-29), sought costs fixed in the sum of $2,000 as follows:

'28. The Applicant also submits that the Respondent should pay costs of $2000 to the Applicant as the counsel for the Applicant had prepared his witness and was ready to proceed with trial on the 13th of April 2017 when the Respondent decided to take a progressive approach and to make representations. Further, the Applicant submits that this matter was quite complex given the fact that it involved understanding accounting procedures hence the cost in the sum of $2000 is reasonable.

29. In relation to the issue of costs for the interlocutory hearing, the Applicant submits that parties to bear their own costs as the application of the Respondent was granted in part.'

[138] Counsel for the Respondent legal practitioner has submitted in her written submission (page 14, 10.5) that *'the Respondent is further willing to pay costs as the Commission would deem appropriate'.*

[139] I have taken note of what the 5th edition of the *'Guidance Note on Sanctions'* has stated (at page 19, paragraphs [57]-[58]):

'Costs against Respondent: allegations admitted/proved

General considerations

57. The Tribunal, in considering the respondent's liability for the costs of the applicant, will have regard to the following principles, drawn from ***R v Northallerton Magistrates Court, ex parte Dove (1999) 163 JP 894:***

- *it is not the purpose of an order for costs to serve as an additional punishment for the respondent,* ***but to compensate the applicant for the costs incurred by it in bringing the proceedings*** *and*
- *any order imposed* ***must never exceed the costs actually and reasonably incurred*** *by the applicant.*

58. Before making any order as to costs, the Tribunal will give the respondent the opportunity to adduce financial information and make submissions ...'

[140] I have also taken note of what the *Legal Practitioners Act 2009* says in relation to costs as follows:

'*124.—(1) After hearing any application for disciplinary proceedings ⋯ the Commission may make such orders as to the payment of costs and expenses as it thinks fit against any legal practitioner or partner or partners of a law firm.*
(2) The Commission shall not make any order for payment of costs

and expenses against the Registrar or the Attorney-General.
(3) Without limiting subsection (1) ***the Commissioner may****,*

(a) without making any finding adverse to a legal practitioner or law firm or any employee or agent of a legal practitioner or law firm, and

(b) if the Commission considers that the application for disciplinary proceedings was justified and that it is just to do so,

order that legal practitioner *…* ***pay to the Commission and the Registrar*** ***such sums as the Commission may think fit in respect of costs and expenses of and incidental to the proceedings****, including costs and expenses of any investigation carried out by the Registrar.'*

[141] In relation to costs in this matter, I note as follows:

(1) Counsel for the Applicant has claimed the costs associated with preparation for a defended hearing involving briefing witnesses as well as general preparation for a trial that did not eventuate as the Respondent eventually pleaded guilty;

(2) Counsel for the Applicant has been required to submit written submissions for the sanctions hearing, appeared at such hearing and then has been required to submit further supplementary submissions up to and including Counsel's appearance today;

(3) Balanced against the above, I have taken into consideration –

(i) Counsel for the Respondent was successful in part in her interlocutory application seeking to have the initial counts struck out;

(ii) Counsel for the Respondent was successful in three of her four applications for the granting of an interim practising certificate where (at the request of the Counsel for the Chief Registrar) ex tempore judgments were delivered providing reasons;

(iii) the hearing had to be vacated on 10th April 2017, just prior to commencement of the hearing, through no fault of the Respondent;

(iv) although the hearing was vacated on 13th April 2017, at that time the Applicant was still proceeding with 13 counts and as I have set out earlier in my judgment providing a summary of these proceedings, Counsel for the Respondent indicated to the Commission on 13th April 2017 that pleas of guilty would be entered for three of the four counts for which the Respondent is now being sanctioned;

(v) as for the claim that the preparation for the hearing '*involved understanding accounting procedures',* I am not so sure as to how much time was actually involved in such preparation as my questioning at the

sanctions hearing on 14th June 2017 revealed what might be generously described of Counsel for both parties as a "somewhat hazy" understanding of accounting procedures, though perhaps it might also say something about the then disorganisation of the accounting procedures within the Respondent's firm;

(vi) the matter did not proceed as a defended hearing or as a plea in mitigation on 18th April due to no fault on the part of the Respondent whilst Counsel for the Chief Registrar sought instructions. The delay, however, was of benefit to both sides, as well as to the Commission, as it eventuated in an agreement being reached for the filing of a Further Amended Application to the four counts to which the Respondent has pleaded guilty rather than what could have been a long defended hearing.

[142] In view of the above, the sum of $2,000.00 sought by Counsel for the Applicant for the costs of bringing the application, should be slightly reduced. I have summarily assessed such costs in the sum of $1,500.00. Accordingly, the Respondent should pay the reasonable costs of the Applicant for bringing the proceedings in the sum of $1,500.00.

[143] Further, the Commission put aside a lot of time dealing with the matter since February (aside from the interim applications in which the Respondent was successful). As such, I am of the view that a similar sum of $1,500.00 should be paid to the Commission.

[144] Accordingly, pursuant to section 124 of the *Legal Practitioners Decree 2009,* I have summarily assessed the costs of the Applicant for bringing the proceedings in the sum of $1,500.00.

[144] Similarly, pursuant to section 124 of the *Legal Practitioners Decree 2009,* I have summarily assessed that the Respondent is to pay to the Commission the sum of $1,500.00 towards the reasonable costs incurred by the Commission in this matter.

[145] As I note that the Respondent was not been able to work as a legal practitioner from 1st March until 23rd September 2016 and again, for a

week in April 2017 and further since 5th June 2017, together with the fact that he was under a very restricted practising certificate as from 24th September 2016 until 5th June 2017 (whereby he was allowed to appear as an advocate but was not allowed to operate a trust account and hence he was not able to undertake such day-to-day work as would normally be expected to provide the additional cash flow from non-court work necessary to operate a legal firm), **accordingly, I am prepared to allow the Respondent time to pay the fixed costs that I have summarily assessed. That is, both of the above sums of $1,500 each (totalling $3,000) are to be paid within six months of today, that is, by 12noon on 26th March 2018**.

8. General comments to the profession

[146] As I was conducting the sanctions hearing in this matter, thoughts came to mind of Charles Dickens' wonderful novel, *David Copperfield* and the forever optimistic, Mr Wilkins Micawber, whose simple advice on happiness and the managing of money is a timeless classic of English literature (and to which, at one stage, I indirectly referred):

> *"Annual income twenty pounds, annual expenditure nineteen nineteen and six, result happiness. Annual income twenty pounds, annual expenditure twenty pounds ought and six, result misery. The blossom is blighted, the leaf is withered, the god of day goes down upon the dreary scene, and – and in short you are forever floored. As I am!"*
> (See Charles Dickens, *David Copperfield* (online), The Literature Network, Chapter 12, <http://www.online-literature.com/dickens/copperfield/12/>

[147] **This is not to trivialise what has occurred – far from it. Instead, the case should be a warning to all legal practitioners in Fiji that:**

(1) Trust accounts are sacrosanct;

(2) The onus is upon a practitioner/s operating a trust account to ensure that appropriate systems are in place for the supervision of staff managing the firm's trust account;

(3) The onus is upon a practitioner/s operating a trust account to also ensure that there is a system in place for the occasional "spot check" of the firm's trust account during each year (rather than simply waiting for the end of financial year audit) so as to make sure that correct

procedures are being followed by the staff managing the firm's trust account;

(4) Finally, if it has been a while since a practitioner attended a Continuing Legal Education (CLE) course in trust account management, then perhaps a reading of this judgment might serve as a timely reminder for an update, such as via one of the short trust account courses provided in New Zealand or Australia.

9. Thanks to Counsel and my staff

[148] Before closing, I wish to record my thanks to Counsel who appeared before me for their submissions.

[149] I must also publicly record my thanks to my staff, who, with dedication and good humour, have worked many long hours often into the evening (including until late last night), as well as on weekends, prior to and during these Sittings, assisting me in the research that has enabled me to complete this lengthy but necessary judgment.

10. Conclusion: Continue to complete rehabilitation but with a warning

[150] Mr Vosarogo, please stand. Vilimone Vosarogo, this is now your second appearance before this Commission since 2013. You have, in my view, substantially completed your rehabilitation since 1st March 2016, serving from that date up to and including today, a combined total of 18 months and 18 days during which you have been either under suspension or working under a restricted practising certificate. Hence, why I am allowing you to return as a member of the legal profession but subject to certain conditions to be fulfilled over the next 12 months, including that you will be allowed for the first time in 18 months and 18 days to operate a trust account but this shall subject to stringent conditions. This will enable you, in my view, to complete your rehabilitation over the next 12 months whilst also putting in place stringent safeguards for the continuing protection of the public until this process is completed.

[151] As I mentioned at the beginning of my judgment, Vilimone Vosarogo, you have been a legal practitioner for nearly 18 years, having worked in the

Office of the Director of Public Prosecutions, as Manager Legal Service for the Land Transport Authority, Director of the Legal Aid Commission and since mid-2010 operating your own firm. No doubt, you have assisted many people during your career so far, including, I note, a number of community and sporting bodies. Whilst I did not detect baseball among those sports, I am sure that you are aware of what usually happens when you have three strikes against you (unless, of course, the umpire decides otherwise). Today, you are being given an opportunity to complete your rehabilitation. I suggest that you use this opportunity wisely.

ORDERS

[152] The formal Orders of the Commission are:

1. In the Application filed in ILSC Case No. 002 of 2016, Chief Registrar *v Vilimone Vosarogo (AKA Filimoni WR Vosarogo)*, I find the four counts of professional misconduct have been proven against the Respondent legal practitioner by his pleas of guilty formally entered on his behalf by his Counsel on 7th June 2017.

2. The Respondent's practising certificate is suspended for a combined period of 10 months and 17 days as follows:
   (1) The suspension is backdated as from 1st March 2016;
   (2) Taking into account time already that the Respondent has been without a practising certificate, that is, from 1st March up to and including 23rd September 2016 (6 months and 21 days), 13th April-17th April 2017 (5 days) and from 5th June 2017 until today, 29th September 2017 (3 months and 22 days), making a total of 10 months and 17 days, I order that the Respondent's period of suspension expires at 4.00pm today, 29th September 2017;

3. The Respondent is to be issued with a restricted practising certificate for a combined period of 20 months and 7 days as follows -

   (1) The restriction is backdated as from 24th September 2016 as per the restrictions set out in my Orders of 23rd September 2016, 6th

and 13th February 2017 and 18th April 2017;

(2) Taking into account time already served under a restricted practising certificate, that is, from 24th September 2016 until 12th April 2017 (6 months and 20 days) and 18th April 2016 until 4th June 2017 (1 month and 18 days), the Respondent has worked under such a restricted practising certificate for 8 months and 7 days;

(3) The Respondent is to again be under a restricted practising certificate as from tomorrow, 30th September 2017, up to and including 29th September 2018 (that is, for a further 12 months), however, the restrictions are varied to be as follows –

(i) Pursuant to Section 121(3) of the *Legal Practitioners Act 2009*, the Chief Registrar shall issue a Practicing Certificate to the Respondent forthwith on payment of the prescribed pro rata fees;

(ii) The Respondent is permitted to operate a Trust Account, however, the Trust Account is to be subject to an audit at the Respondent's cost by an independent auditor nominated by the Chief Registrar who will inspect the Respondent's Trust Account at intervals of three, six and nine months from 30th September 2017 and to make a short written report thereafter which the Respondent is to arrange to be hand delivered to the Chief Registrar's office within one week of the completion of each quarterly audit;

(iii) The Respondent is to provide the monthly bank statement for Mamlakah Lawyers Trust Account No. ******* held at the Bank ********** as from 31st October 2017 up to and including the bank statement issued for 31st August 2018, which the Respondent is to arrange to be hand delivered to the Chief Registrar's office within one week of the completion of each month;

(iv) That the Respondent's practice shall be subject, at the Respondent's cost, to an inspection by a senior practitioner (such practitioner either agreed to between the parties or decided immediately after this judgment by the Commission) who is to make such inspections at intervals of three, six and nine months from 30th September 2017 and to provide a short written report, again at the Respondent's cost, after each inspection, for which the Respondent is solely responsible in ensuring that each report is hand delivered to the office of the Chief Registrar within one week of the completion of each inspection;

(v) That if the Respondent fails to comply with any of the above conditions, his practising certificate will be immediately suspended by the Chief Registrar and the Respondent's non-compliance will be treated as a new disciplinary offence.

4. The Respondent is to undertake five legal aid trials over the next 12 months on a pro bono basis, that is, to be completed on or before 28th September 2018, as follows:

(1) The Respondent is to undertake five criminal trials in the High Court Suva on behalf of the Legal Aid Commission at no cost before the 28th September 2018;
(2) Such trials are to have an estimated duration of not more than five days each;
(3) The trials are to be selected by the Director, Legal Aid Commission;
(4) This condition on the Respondent's practising certificate is to be automatically removed on the Director Legal Aid Commission certifying in writing to the Chief Registrar (with a copy to the Respondent and the Commission) that the five trials have been satisfactorily completed;
(5) Should the above condition not be removed on or before the 28th September 2018, the Respondent's practising certificate shall be automatically suspended for five months as from 1st October 2018 without further order.

5. Pursuant to section 121 (1) (i) of the *Legal Practitioners Act 2009,* the Respondent is fined the sum of $3,000.00 payable to the Commission within six months of today, that is, by 12 noon on 26th March 2018.

6. Pursuant to section 124 of the *Legal Practitioners Act 2009,* the costs payable by the Respondent towards the reasonable costs incurred by the Applicant Chief Registrar are summarily assessed in the sum of $1,500.00, payable to the Chief Registrar within six months of today, that is, by 12 noon on 26th March 2018.

7. Pursuant to section 124 of the *Legal Practitioners Act 2009,* the costs payable by the Respondent towards the reasonable costs incurred by the Commission are summarily assessed in the sum of $1,500.00, payable to the Commission within six months of today, that is, by 12 noon on 26th March 2018.

Dated this 29th day of September 2017.

I will now hear the parties in relation to the selection of a senior practitioner who is to inspect the Respondent's practice as per Order 3(3)(iv) above.

INDEPENDENT LEGAL SERVICES COMMISSION SEAL

Dr. Thomas V. Hickie
COMMISSIONER