IN THE APPEAL TRIBUNAL **TDB/2023/65**
OF THE TAXATION DISCIPLINARY BOARD

B E T W E E N

THE TAXATION DISCIPLINARY BOARD ("TDB")

– and –

MS MICHAELA REES
(ATT Membership Number 158245)

Appellant

DECISION OF APPEAL TRIBUNAL

Virtual hearing 13 and 23 February and 19 March 2026

PRESENT:

Annabel Joester (Chair)

Michael McCulley (Lay Member)

Martin Brown (CIOT member)

Ms Rees, represented by Counsel James Lloyd

Tim Grey, Counsel for the TDB

Nigel Bremner, Clerk to the Appeal Tribunal

1. The Appeal Tribunal ('the Tribunal') sat on 13 February, 23 February and 19 March 2026 to hear an appeal brought by Ms Michaela Rees ('the Appellant') against a finding made by the Disciplinary Tribunal on 28 August 2025. At that hearing the Disciplinary Tribunal found all charges against the Appellant proved. The Tribunal announced its decision with summary reasons on 19 March 2026.

2. The hearing was conducted remotely by video conferencing. The Tribunal was chaired by Ms Annabel Joester (legally qualified chair) sitting with Mr Martin Brown CTA (CIOT member) and Mr Michael McCulley (lay member). The Appellant was represented by

Mr James Lloyd of Counsel. The Respondent was represented by Mr Tim Grey of Counsel. The Clerk to the Tribunal was Mr Nigel Bremner.

3. The Tribunal was provided with and read the appeal bundle (1114 pages) which included the documents that were before the Disciplinary Tribunal, a transcript of the Disciplinary Tribunal hearing and the Appellant's appeal papers. The Tribunal was also provided with and read the Respondent's bundle, (75 pages) and correspondence between the Appellant and the TDB, which was provided on the day of the hearing by the Appellant and Respondent.

4. The following abbreviations are used in this determination.

The "CIOT" means the Chartered Institute of Taxation;

The "ATT" means the Association of Taxation Technicians;

The "Regulations" means the Taxation Disciplinary Scheme Regulations 2014 (as amended November 2016 and January 2024);

"PRPG" means the Professional Rules and Practice Guidelines effective from 9 November 2018 (updated 2021);

The "ISG" means the Indicative Sanctions Guidance as revised.

CHARGES:

5. At a hearing on 27 and 28 August 2025, the Disciplinary Tribunal found the following charges against the Appellant proved.

Charge 1

On or around 3 April 2023 the Defendant transferred shares owned by the Complainant in SRWM to herself, without his agreement.

Charge 2

The Defendant's conduct set out in Charge 1 was contrary to:

a) Paragraphs 2.6.2 and/or Paragraph 2.6.3 of the PRPG;

(b) Paragraph 2.2.1 of the PRPG in that it:

(i) was dishonest as the Defendant knew she did not have the Complainant's permission to make the transfer of shares but did so anyway, which conduct was dishonest by the standards of ordinary decent people; and/or

(ii) lacked integrity.

Charge 3

From 4 August 2023 to 1 March 2025, the Defendant failed to provide documents reasonably requested by the Complainant and/or his agents Numo Accountants, contrary to Paragraphs 2.6.2 and/or 2.6.3 and/or 10.1.5 of the PRPG.

BACKGROUND:

6. The Appellant is a member of the ATT. At the time of the complaint she owned Sterling Rees Tax Accountancy ('SRTA'). The Complainant, Paul Storer, owned Merlyn Financial Services ('MFS') and Severn Financial Limited ('Severn'). Together, they were business partners, owning a wealth management company called Sterling Rees Wealth Management ('SRWM'). Through SRTA, the Appellant operated as an accountant for SRWM, MFS and the Complainant in a personal capacity, through her company SRTA. The Complainant was a 60% shareholder and the Appellant a 40% shareholder in SRWM. SWRM was an appointed representative of Quilter Financial Services Ltd and Quilter Mortgage Planning Ltd ("Quilter").

7. At the beginning of 2023, the relationship between the Appellant and the Complainant broke down, and the parties began negotiating the breakup of SRWM, which involved the proposed transfer of the Complainant's shares to the Appellant for a proposed payment, and associated administrative measures, such as the removal of the Complainant from the company bank account. These proposals were set out in emails between the two in March 2023.

8. On 2 April 2023 the Appellant emailed the Complainant, indicating that she believed that they had entered into a legally binding agreement for the sale of the Complainant's shares in SRWM to her for an amount of £10,612. She said that 'Quilter have approved my position as sole Shareholder and Director and therefore this is being effected on Monday 3 April 2023.' This was followed by an email on 3 April saying 'the agreed share transfer has now been completed. Payment of £10,612 has been made to your personal account…'.

9. On 31 May the Complainant emailed Quilter, a third party with whom both parties worked, confirming his resignation as CF1 of SRWM.

10. On 31 July 2023 the Complainant's new accountants (Numo Accountants) sent an email to the Appellant asking whether a CT600 had been filed for MFS, and indicating that they believed this should have been filed when she was 'responsible for' the company. Following this the Complainant and his new accountant, Mr Davies, sent several emails over the following months to the Appellant requesting professional clearance/information relating to the Complainant's/MFS's accounts and/or tax liability.

11. the Appellant did not provide the requested information, but did reply to some of the emails, indicating, inter alia, that she did not have access to the documents, that the Complainant was able to access the documents he needed via his sign in to Free Agent, that she did not have access to the information requested and that there was an outstanding complaint.

12. The TDB investigated the Complainant's complaint, and corresponded with him and the Appellant during the investigation. Details of the complaint were first sent to the Appellant on 14 March 2023. the Appellant denied all charges during the investigation. It is of note that there was an extended period/process in relation to the referral of the matter to the Disciplinary Tribunal, as the charges were considered by two Investigation Committees, with Charges eventually being referred to the DT by an Investigation Committee sitting on 29 November 2024.

13. the Appellant completed the TDB Response Form, dated 16 May 2025, indicating that she contested all the Charges.

DECISION OF THE DISCIPLINARY TRIBUNAL:

14. At the Disciplinary Tribunal hearing the TDB was represented by Mr Grey of Counsel and the Appellant appeared in person. The Disciplinary Tribunal heard oral evidence from the Appellant and the Complainant, and submissions from Mr Grey. It was provided with a detailed bundle of documents, which was also available to the Tribunal as part of the Appeal Bundle. The documents put before the Disciplinary Tribunal included correspondence between the Appellant and the Complainant; a CS01 Confirmation Statement document from Companies House (at page 414), which showed Shareholding 2 and 3, comprising 40 B and 20 C shares held by the Complainant had been transferred on 3 April 2023; and a PSC07 document with cessation details for the Complainant dated the same day. An undated Supplemental Hearing Bundle, containing the Member's Response form, the Complainant's

statement and further documents from the Complainant was also provided to the Disciplinary Tribunal and the Appellant.

15. The Disciplinary Tribunal Hearing took place on 27 and 28 August 2025. At paragraphs 55-56 of its judgment the Disciplinary Tribunal set out its approach in respect of the burden and standard of proof, and the test for dishonesty. The Disciplinary Tribunal referred to *Ivey v Genting Casinos (UK) Limited (t/a Crockfords Club) [2017] UKSC 67*. No issue is taken on this appeal in respect of the relevance of the burden of proof or of the case of *Ivey*.

16. The Disciplinary Tribunal found all the Charges against the Appellant proved. It set out its findings in paragraphs 58-65 of its judgment. It said as follows:

'Charges 1 and 2

58. Following the breakdown of the business relationship there were extensive negotiations between the Defendant and the Complainant about how to best separate their business interests. The transfer of the shares was contingent on reaching an agreement about all the terms of the separation. The transfer of the shares was not a freestanding matter. This is evidenced by the content of the many emails between the Defendant and the Complainant and, in particular, the email exchange of 15 March 2023 (pages 32 and 33) which refers to sorting out "the other issues" and the email dated 16 March 2023 (page 32) which refers to starting the conversation with Quilter.

59. Notwithstanding that an agreement was reached about the price for the transfer of the shares on 15 March 2023, it was contingent on other steps being taken. The Complainant afterwards made it clear that he did not give his agreement to the transfer of the shares and did not give his permission to the transfer of the shares on 3 April 2023. This is on the basis of the emails from the Complainant dated 30 March 2023 (pages 153, 154 and 162).

60. The Defendant did not genuinely hold a belief that the Complainant had agreed and given permission to the transfer of the shares on 3 April 2023. She did not seek any legal advice but believed on the basis of her studies of contract law that she and the Complainant had a legally binding agreement. She chose to act on 3 April 2023 relying on the agreement of the 15 March 2023 and chose to ignore the clear indications from the Complainant that he did not agree to transferring his shares. If the Defendant had held a belief that the Complainant had agreed and given permission to the transfer of his shares on 3 April 2023, she would not have written to him in the terms that she did in her email of 3 April 2023 (page 50).

61. The Defendant did not tell the Complainant the truth in her email of 3 April 2023 (page 50) when she wrote "The agreed share transfer has now been completed." She could have told him what had actually happened, namely: she had used her authority to access Companies House Register to indicate a change of shareholdings and intended to send the stock share transfer form to him for signature. She wrote in these

terms because she wanted to bring the negotiations to an end, separate their business interests before the end of the financial year and resolve the dispute between her and the Complainant.

Charge 3

62. On 4 August 2023 the Complainant's accountant Numo Accountants requested documents from Ms Rees in her capacity as the Complainant's former accountant for MFS and in his personal capacity The Defendant failed from 4 August 2023 to provide documents reasonably requested by the Complainant and his agents, Numo Accountants (pages178 and 179).

63. The Defendant did not have a reasonable reason to withhold the documents. She was obstructive and mistaken in asserting that she could withhold the transfer of documents on the grounds there was an outstanding fine for which the Complainant and his accountant had alleged she was responsible. .

64. The Defendant failed to act for the reasons as stated to the Information Commissioner: "We do not give professional clearance for the appointment of Numo Accountants on the basis that the client has made several allegations and complaints which we have not been given the opportunity address as we do not have an explanation of the nature of the grievance despite having requested details on multiple occasions" (page 151).

65. The Defendant breached the professional duty to provide the documents, explain the position in relation to FreeAgent, seek to rectify the situation and self-report to ATT.'

GROUNDS OF APPEAL:

17. By his decision dated 12 November 2025, the Disciplinary Assessor gave permission to appeal on five grounds:

    (a) That there was a serious procedural or other irregularity in the proceedings before the Disciplinary Tribunal (regulation 21.4(a) of the Disciplinary Regulations) because (i) Ms Rees was served by the TDB with a 'Legal Principles' note part-way through the hearing; (ii) Ms Rees was provided with 'particulars of the case' the day before the hearing; (iii) Ms Rees was given late notification in respect of the TDB's costs application and (iv) Ms Rees had been advised that the process was 'relatively informal' hence she had not sought representation. (Ground 1)

    (b) That the finding of the Disciplinary Tribunal was wrong (regulation 21.4(b)(ii) of the Disciplinary Regulations) because the share transfer alleged in the first charge could not, as a matter of law, have been made. (Ground 2)

(c) Misdirection on dishonesty (regulation 21.4(a) and 21.4(b)(i)) because the Disciplinary Tribunal found at paragraph 60 that Ms Rees believed that she and the Complainant had a legally binding agreement, and, if that was her state of mind, that the Disciplinary Tribunal could not reasonably have found, applying the Ivey test, that Ms Rees considered she was doing something she was not permitted to do and/or that the general public would regard her conduct in the circumstances as dishonest. (Ground 3B)

(d) Error of law: contract formation (Regulation 21.4(a)) because the Disciplinary Tribunal was wrong to find there was no binding agreement reached in the March 2023 emails, and that the Disciplinary Tribunal's finding on this contract law point led it into error in applying the Ivey test. (Ground 4)

(e) Irrationality: Charge 3 (Regulation 21.4(a)) and Error of law: failure (Regulation 21/4(b)(i)) because in relation to the charge that Ms Rees failed to provide documents to the Complainant that had been reasonably requested, the Disciplinary Tribunal had found that the Complainant had actually had access to the financial information for his personal tax affairs and those of MFS at all times through the FreeAgent software, and therefore it was arguably inconsistent that Ms Rees had failed to provide documents which had been 'reasonably requested' or that she was under a duty to provide documents, because the Complainant already had access to them. (Grounds 5A and 5B)

18. The Disciplinary Assessor did not give permission to the Appellant to appeal on sanction, but noted that 'In the event that the Appellant's appeal is successful on any of the grounds for which I have given permission, it is in any event open to the Appeal Tribunal to revisit the issue of sanction under regulation 24.3 of the Disciplinary Regulations.'

DECISION:

Approach

1. The burden of establishing the appeal is on the Appellant. The Tribunal considered the grounds of appeal separately.

2. For a procedural irregularity to provide a sufficient basis for an appeal the irregularity must have been a serious one and it must have rendered the decision unjust (*Hussain v. General Pharmaceutical Council [2018] EWCA Civ 22*).

3. For an appeal tribunal to find a decision was 'wrong', it must be satisfied that it is plainly wrong (*Gupta v. General Medical Council [2002] 1 WLR 1691*). It is not sufficient for the Appeal Tribunal to conclude it was probably wrong, or that it would itself have come to a different decision. As the Court of Appeal said in *Prescott v Potamianos [2019] EWCA Civ 932*:

   '… on a challenge to an evaluative decision of a first instance judge, the appeal court does not carry out a balancing task afresh but must ask whether the decision of the judge was wrong by reason of some identifiable flaw in the judge's treatment of the question to be decided, 'such as a gap in logic, a lack of consistency, or a failure to take account of some material factor, which undermines the cogency of the conclusion.'

4. Where the appeal is on the ground that a finding of fact was wrong, the courts have given the guidance as to how the appellate body should approach its task. The following principles are taken from *Gupta* (see above), *Southall v GMC [2010] EWCA Civ 407* and Bhatt v GMC [2011] EWHC.

   (a) The appellate tribunal should be slow to interfere with the decisions on matters of fact taken by the first instance body.

   (b) The trial tribunal enjoys an advantage which an appeal tribunal does not have, namely the benefit of seeing the witnesses give evidence. Although the appeal tribunal may have a transcript of the evidence, a tribunal is in a better position to judge the credibility and reliability of the evidence given by the witnesses if it has seen them.

   (c) Findings of fact founded upon an assessment of the credibility of witnesses are close to being unassailable, and must be shown with reasonable certainty to be wrong if they are to be departed from.

   (d) The appellate tribunal, either because the reasons given by the trial tribunal are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that it has not taken proper advantage of having seen and heard the witnesses. Then the matter will become at large for the appellate tribunal.

(e) Where a question of fact has been tried by the first instance tribunal, and there is no suggestion that it has misdirected itself, an appellate tribunal which is disposed to come to a different conclusion having only seen the printed evidence, should not do so unless it is satisfied that any advantage enjoyed by the trial tribunal by reason of it having seen and heard the witnesses could not be sufficient to explain or justify its conclusion.

(f) The appellate tribunal should only reverse a finding on the facts if it can be shown that the findings were sufficiently out of tune with the evidence to indicate with reasonably certainty that the evidence had been misread.

Decision on Ground 1

5. It was accepted by the TDB that the Legal Principles document was served during the hearing, the 'Particulars of the Case' the day before the hearing and details of the costs sought by the TDB during the hearing.

6. The Tribunal had the benefit of both the judgment of the Disciplinary Tribunal and the transcript of the hearing. It could therefore see the documents provided to the Appellant, the timing of that provision and the noted effects upon her during the hearing, insofar as they were referred to during the hearing and in the judgment.

7. For a procedural irregularity to provide a sufficient basis for an appeal the irregularity must have been a serious one and it must have rendered the decision unjust (*Hussain v. General Pharmaceutical Council [2018] EWCA Civ 22*).

8. The Tribunal considered carefully the circumstances of the Appellant, and specifically that she was self-represented before the Tribunal. It considered that the proceedings were at times technical in nature, and referred to legal concepts which might be unfamiliar to a layperson, specifically when considering the test for dishonesty as per *Ivey* and to technical issues of contract law. It also noted that Ms Rees was demonstrably nervous during the proceedings at times, was noted to be 'upset' (paragraph 35 of the judgment), and referred to what the Disciplinary Tribunal in its judgment noted to be 'health and personal problems'.

9. The Tribunal considered Mr Lloyd's argument that the correct approach for it was to consider the cumulative approach of the lack of legal representation, the relative formality of proceedings and the late provision of information/arguments raised before the Tribunal, rather than to consider the issues in isolation. It adopted that approach, and consider the cumulative approach of these factors and whether that accumulation constituted a serious irregularity.

10. The Tribunal considered that the Appellant had been given reasonable notice of the hearing and of the Charges. She was clearly aware of the right to instruct a legal representative and to take legal advice. That right had been specifically referred to in correspondence. She had chosen to self-represent, as is her right. She had also been told that the proceedings would be 'relatively informal'. the Appellant is a native speaker of English, and a relatively sophisticated Tribunal user. She has 25 years' experience in her chosen occupation. In many ways her position before the Tribunal was similar to that of Mrs Hussain in ***Hussain***. In that case it is noted that Mrs Hussain had failed to establish a serious irregularity rendering the proceedings unjust.

11. The Tribunal considered the late provision of documents to an unrepresented Defendant was sub optimal. Those documents could, and should, have been provided to the Appellant earlier (with the exception of the costs schedule, which is necessarily a document which will require updating up to the date of the hearing). Similarly, the assurance of a relative informality, whilst apparently designed to distinguish it from more formal proceedings such as criminal charges, could give an unrepresented Defendant an unhelpful impression of the way in which proceedings would be conducted on the day. The process before the Disciplinary Tribunal was in fact, as is usual, relatively formal and at times legalistic.

12. However, the proceedings were notified to the Appellant in good time, she had considered and responded to the allegations in writing and in her evidence in a comprehensive and detailed way and was able to advance her arguments and reasons to the Disciplinary Tribunal. The documents which were provided to her late were brief and were a summary of the case and legal position, rather than an introduction of new evidence to which she was expected to respond.

13. In all the circumstances, and even considering the cumulative effects of the various elements of the hearing and process referred to by the Appellant, the Appeal Tribunal did not find the process adopted to amount to a serious procedural irregularity.

Decision on Ground 2

14. As a starting point the Tribunal had reference to the wording of the Charge as put to the Appellant. That ground was:

    'On or around 3 April 2023 you transferred shares owned by Paul Storer in Sterling Wealth Management to yourself, without his agreement.'

15. No application was made, either before or at, the hearing before the Disciplinary Tribunal for the wording of the Charge to be amended. The TDB was therefore required to prove, at the hearing, that the shares had actually been transferred in order to prove the Charge. The transfer was integral to the Charge.

16. In finding that the Charge was proved, and that the shares had been transferred, the Disciplinary Tribunal erred in law, because as a matter of law and fact the shares had not been transferred. The Disciplinary Tribunal were aware, or at least should have been aware, of this since the Complainant confirmed in his email to the TDB on 29 May 2025, which was before the Disciplinary Tribunal, that 'to date' he had not received a stock transfer form'. In fact, the Disciplinary Tribunal noted at paragraph 33 of their judgment that 'At no time did he [the Complainant] receive a stock transfer form from the Defendant. He has not signed a stock transfer form for his shares in SRWM.' Without a stock transfer form the shares could not have been transferred to the Appellant.

17. The Tribunal considered the argument made by Mr Grey that the Appellant had taken all steps she could to transfer the stock, short of obtaining the Complainant's signature on the relevant form, and that the Disciplinary Tribunal were 'entitled to infer it occurred as part of the process begun by the Appellant on 3 April 2023, when the Complainant's legal rights were removed, and he was paid a sum of money the Appellant asserted was for the purchase of the shares.'. We did not find that argument to be persuasive. The Charge stated that the shares were 'transferred'. The clear meaning was that there must have been a legal transfer of the shares. If the Disciplinary Tribunal did 'infer' that the transfer had been made then they were wrong to do so.

18. The decision of the Disciplinary Tribunal was therefore wrong by virtue of its being so unreasonable that no reasonable Tribunal acting reasonably could have made it. We therefore overturn the decision of the Tribunal in relation to Charge One.

Decision on grounds 3B and 4

19. Both grounds 3B and 4 allege that the Disciplinary Tribunal, as the Appeal Assessor summarised 'fell into error in reaching its finding that Ms Rees's conduct was dishonest. In respect of Ground 3B, it is contended that the Disciplinary Tribunal erred in law in its approach to the issue of dishonesty and in applying the *Ivey* test. Ground 4 alleges that it erred in finding that, as a matter of law, the exchange of emails in March 2023 did not constitute a binding agreement for the purchase of the Complainant's shareholding.'

20. These grounds relate to Charge 2 but Charge 2 is dependent on Charge 1 being proved. Charge 2 states 'Your conduct at Paragraph 1 above was contrary to…'. In order to find Charge 2 proved the behaviour as detailed in Charge 1 must first be proved. Without it there is no behaviour which is alleged to be dishonest, or lacking in integrity. A mere assertion of dishonesty or lack of integrity would be unsustainable, and impossible to answer.

21. Having found that the behaviour complained of in Charge 1 - specifically that the Appellant transferred shares - did not occur Charge 2 must also fail. There is no freestanding Charge, or allegation of dishonesty, and we do not believe that the Disciplinary Tribunal found that to be the case. If they had so found then that would have been wrong in law.

22. We therefore overturn the decision of the Disciplinary Tribunal in relation to Charge 2 because by the overturning of the finding in relation to Charge 1, it is rendered wrong by virtue of its being so unreasonable that no reasonable Tribunal acting reasonably could have made it.

23. Notwithstanding the above finding, we did consider in more detail the grounds of appeal raised on behalf of the Appellant in relation to Charge 2. Specifically, the first of these was that:

    'The Tribunal 'convicted' the Appellant on a factual basis not pleaded. The charge alleged an actual transfer of shares without consent, yet the Tribunal's reasoning

appears to rest on an alleged representation (to Companies House; alternatively, the Complainant) that the transfer was complete when it was not.'

24. This is a development of the argument that Charge 2 fails if Charge 1 does. However, *if* the reasoning of the Disciplinary Tribunal was that Charge 2 was made out because there was a misrepresentation by the Appellant to the Complainant about the transfer of the shares, then that must be wrong, for the reasons set out above. That was not the basis on which the Charge was put. Charge 2 specifically states that 'the Defendant's conduct set out in Charge 1 was…' dishonest/lacked integrity'. It does not state that other behaviour, such as representations allegedly made to the Complainant, were dishonest.

25. In relation to Ground 3B Mr Lloyd argued that the DT had failed to properly apply the *Ivey* test, and that therefore the requirements of Regulations 21.4(a) (procedural irregularity) and 21.4 (b) (i) (was wrong by virtue of its being so unreasonable that no reasonable Tribunal acting reasonably could have made it) were met and the findings should be overturned. the Appellant's grounds of Appeal stated:

'The Tribunal failed to make findings on the Appellant's asserted genuine belief that a binding agreement had been reached and that the Companies House update reflected that agreement. Without findings on the Appellant's actual state of mind, the Ivey test could not be applied or satisfied properly. The conclusion that she "knew she did not have permission" was speculative and unsupported by evidence. The Tribunal therefore erred in law and reached a perverse conclusion on dishonesty (and integrity).'

26. Mr Grey, for the TDB, submitted that this was clearly not the case, as demonstrated by the DT's findings at paragraph 60, in which it addressed the belief of Ms Rees, and concluded that:

'The Defendant did not genuinely hold a belief that the Complainant had agreed and given permission to the transfer of the shares on 3 April 2023. She did not seek any legal advice but believed on the basis of her studies of contract law that she and the Complainant had a legally binding agreement. She chose to act on 3 April 2023 relying on the agreement of the 15 March 2023 and chose to ignore the clear indications from the Complainant that he did not agree to transferring his shares. If the Defendant had held a belief that the Complainant had agreed and given

permission to the transfer of his shares on 3 April 2023, she would not have written to him in the terms that she did in her email of 3 April 2023 (page 50).'

27. He submitted in his Response for the TDB that this paragraph of the judgment made it clear that the Disciplinary Tribunal found that the 'Appellant did not hold a genuine belief that the Complainant had agreed to the transfer of shares. That was a clear finding that she did not believe the agreement on 15 March 2023 was a binding contract by 3 April 2023.' He said that it was therefore clear that the Tribunal had indeed applied its mind to the state of the Appellant's purported belief that there was a genuine contract on 3 April 2023, and that therefore the requirements of the Ivey test had been properly considered.

28. We considered both sets of submissions carefully. We agreed that the part of the Disciplinary Tribunal's judgment at paragraph 60 regarding the Appellant's belief that she and the Complainant had a legally binding agreement potentially lacked some clarity of expression.

29. We noted that paragraph 56 of the Disciplinary Tribunal's decision clearly applied, or sought to apply, the ***Ivey*** test, stating that:

'When considering the question of dishonesty, the Tribunal has borne in mind the test for dishonesty in the case of Ivey v Genting Casinos [2017] 3 WLR 1212 that the Tribunal must first ascertain subjectively the state of the Defendant's knowledge or belief as to the facts. The reasonableness or otherwise of the Defendant's belief is a matter of evidence but it is not an additional requirement that the belief must be reasonable, the question is whether it is genuinely held. The question of whether the conduct was honest or dishonest is to be determined by applying the objective standards of ordinary decent people. There is no requirement for the Defendant to appreciate what she has done by those standards to be dishonest.'

30. The Disciplinary Tribunal therefore correctly ascertained that it should first consider whether the first part of the Ivey test was met, specifically 'the Tribunal must first ascertain subjectively the state of the Defendant's knowledge or belief as to the facts.' They had set out this test. What is complained of is that at paragraph 60 the Disciplinary Tribunal then stated firstly that the Appellant 'did not genuinely hold a belief that the Complainant had agreed and given permission to the transfer of the shares on 3 April 2023' and then in the same paragraph that she 'believed on the

basis of her studies of contract law that she and the Complainant had a legally binding agreement.'

31. It is indeed initially difficult to reconcile these two statements. If the Appellant had a genuine belief that a contract had been formed permitting transfer of the shares then it is not easy to see why her purported belief of entitlement to transfer the shares was not genuine, if it was based on what she believed to be a genuine contract. However, further guidance is given elsewhere in paragraph 60 and in the Disciplinary Tribunal's judgment at paragraph 70. The final sentence of paragraph 60 makes it clear that the Tribunal found that the Appellant's purported belief that she had the right to transfer the shares was not genuine because, if it had been, she would not have sought to write to the Complaint as she did on 3 April, indicating that the shares had been transferred (when in fact they had not).

32. At paragraph 70, the Disciplinary Tribunal addresses the same point regarding the Appellant's state of mind/belief when it says 'The Defendant was dishonest as she knew she did not have the Complainant's permission to make the transfer of shares but did so anyway, which conduct was dishonest by the standards of ordinary decent people, and she lacked integrity.'

33. From both paragraphs 60 (read in its entirety) and paragraph 70 we find that the Disciplinary Tribunal did address the test in ***Ivey*** and found that the Appellant's behaviour was dishonest. Part of that assessment was that she did not believe that she had the right to transfer the shares, despite her assertions that she acted as she did because she believed that she had a genuine contract allowing her to transfer them. The reference to the purported contract in paragraph 60 must, taken in context, be a reference to her *assertion* that she believed she had a genuine contract, and not a finding by the Disciplinary Tribunal that there was in fact a binding contract in place, or that she genuinely believed that there was.

34. The two statements in paragraph 60 can in any event be reconciled. The Disciplinary Tribunal found that the Appellant believed on the basis of her studies of contract law that there was a legally binding agreement on 15 March. Even accepting that she believed there to be a legally binding agreement it does not automatically follow that she believed she was entitled to execute the transfer of the shares as a freestanding matter, at a date of her choosing. In paragraph 58, the Disciplinary Tribunal referred to the Appellant stating, "*We need to sort out the other*

issues as well…" (Bundle, C18p33). This supports the conclusion that the two statements in paragraph 60 are not contradictory. The Appellant may have genuinely believed there to be a legally binding contract without also genuinely believing that she had the right to execute the transfer on 3 April, and it was not unreasonable for the Disciplinary Tribunal to find that this was the case.

35. For the above reasons we would have found that the requirements of Regulations 21.4(a) and 21.4 (b) (i) were not met in respect of this ground. There was no procedural irregularity, nor was the decision on dishonesty under this ground one which no reasonable Tribunal acting reasonably could have made. This ground of appeal is not made out and is rejected.

36. Ground 4 is that the Disciplinary Tribunal made an error of law in relation to contract formation, thus breaching Regulation 21.4(a)). Mr Lloyd submitted that there was in fact a binding contract reached between the Appellant and the Claimant based on the emails between them in March 2023. We do not propose to consider in detail the relevant provisions in contract law; this Tribunal is not the appropriate venue for such considerations, and in any event for the reasons stated above we have found that both the Disciplinary Tribunal's findings in respect of Charges 1 and 2 were wrong.

37. However, for clarity we have considered that the question for this Tribunal is whether the Disciplinary Tribunal was demonstrably wrong in its findings regarding the contract. We find that it was not. Firstly, because it did not in fact find that there was a valid contract in place for the transfer of shares. It found that 'Notwithstanding that an agreement was reached about the price for the transfer of the shares on 15 March 2023, it was contingent on other steps being taken.' If there were other steps to be taken, then the contract could not have been concluded/complete; as Mr Grey puts it in the TDB's Response ''it [the DT] could not have properly found there to be such a contract, given the equivocal status of the outstanding issues at the time, as it found them to be.' We agree.

Decision on Ground 5

38. Ground 5 alleges that there was an error of law: failure and/or Irrationality in relation to Charge 3 in the Disciplinary Tribunal's judgment because, in relation to the Charge that the Applicant failed to provide documents to the Complainant that had been reasonably requested, the Disciplinary Tribunal found that the Complainant had

access to financial information for his personal tax affairs and those of MFS at all times through the FreeAgent software, and therefore it was arguably inconsistent that the Applicant had failed to provide documents 'reasonably requested' or that she was under a duty to provide documents, because the Complainant already had access to them. The second part of ground 5 (referred to in the papers as 'Ground 5B') alleges that the Disciplinary Tribunal fell into error because it 'nowhere identified the legal or professional source of any such obligation' (to act to provide the documents).

39. The Disciplinary Tribunal stated, at paragraph 81 of its judgment, that the Complainant had paid for access to his personal financial information, and that of MFS, through the FreeAgent software. It said: -

'The Tribunal considered whether there should be an order for compensation to the Complainant on the basis of a lack of professional competence or failure to take due care. The Tribunal considered there should be no order for compensation taking into account that the Complainant paid for the services of FreeAgent, had access to the financial information for his personal tax affairs and those of MFS at all times through that software and, on the basis of the evidence, it was not established that the debt recovery letter from HMRC was due entirely due to the conduct of the Defendant.'

40. However, this paragraph appears in the section where the Disciplinary Tribunal was determining sanction, and specifically whether there should be an order of compensation made in favour of the Complainant, rather than the findings or decision section. It should be read in that context.

41. Paragraph 81 does not consider the issue of whether the request for the documents made by the Complainant was rendered 'unreasonable' because he had, at least putative, access to the documents through FreeAgent. The Disciplinary Tribunal decided only that, because the Complainant had access through FreeAgent, the issue with HMRC was not 'entirely' due to the conduct of the Applicant, and therefore compensation was not payable.

42. Elsewhere in the judgment the Disciplinary Tribunal made findings in relation to the alleged misconduct of the Applicant in relation to Charge 3. At paragraph 71 it said: -

'From 4 August 2023 to 1 March 2025 (and to date) the Defendant failed to provide documents reasonably requested by the Complainant and his agents, Numo

accountant contrary to paragraphs 2.6.2 and 2.6.3 and 10.1.5 of the PRPG. The Defendant was asked to hand over relevant papers to the Complainant, her former client and a successor, Numo Accountants, and she did not co-operate in providing copies of documents relevant to the Complainant's ongoing tax affairs.'

43. That was a clear finding that the Applicant had failed to provide documents that had been reasonably requested by the Complainant, and that that failure breached the PRPG. In the following paragraph the Disciplinary Tribunal went on to consider the defence that was offered to the Charge by the Applicant; that she had relied on the provision of Rule 10.1.5 that there was a risk of legal claim and therefore that she was not obliged to provide the documents. It found that this argument was 'not reasonable'.

44. The finding of the Disciplinary Tribunal in relation to Charge 3 was clear; the breach of the PRPG was proved on the basis that the Applicant failed to provide documents that had been reasonably requested, and that it was not reasonable for her to rely on Rule 10.1.5 by contending that she did not provide the documents because she thought there may be a legal claim. The Disciplinary Tribunal noted that the Applicant admitted that she had failed to provide the documents requested. They had also heard evidence from the Complainant (page 907-Transcript) that he had had his FreeAgent authority removed, and that it could only be restored by the Applicant. The Disciplinary Tribunal's comments in the later 'Sanction' section of the judgment related not to whether or not there had been a 'reasonable request' for documents, but to whether the Complainant was entitled to compensation in circumstances where the loss he sought to remedy was not entirely due to the Applicant's failure to provide the documents (noting that there seems to be a typographical error in the final sentence of paragraph 81).

45. The Tribunal therefore finds that the decision of the Disciplinary Tribunal was not so unreasonable that no reasonable Tribunal acting reasonably could have made it.

46. In relation to ground 5B the Tribunal considered the provisions of 10.1.5. of the PRPG, together with the findings of the Disciplinary Tribunal. Reading the judgment of the Disciplinary Tribunal, taken as a whole, it is clear that it considered the Charge in full - indeed it is replicated at page 6 of the judgment. The Charge in full alleges a failure to provide documents breaching, not only 10.1.5, but also 2.6.2 and/or 2.6.3.

47. The findings of the Disciplinary Tribunal were that the failure to provide the documents was contrary to all of the paragraphs set out in the Charge. In the opinion of the Tribunal the Disciplinary Tribunal was sufficiently clear as to its findings in that regard - it considered and set out the Charge wording, including the wording of the Rules of the PRPG which were alleged to be breached. The Disciplinary Tribunal specifically addressed Rule 10.1.5 in more detail, presumably because that is the Rule that gives the specific guidance in relation to professional clearance and also details limited instances in which documents might be withheld. That Rule contains matters to consider when a member is asked for papers by a former client. It sets a member's obligations in that regard, stating that some documents may belong to a client, and that 'a member is therefore required to provide these' and also that 'where documents belong to a member. A member should co-operate in providing copies of documents relevant to the client's ongoing tax affairs.'

48. The Disciplinary Tribunal was not required to further set out and analyse the duty to provide records in any further detail. The obligation was set out in the Charge and the Judgment. The basic obligation was not contested by the Applicant, who relied only on one potential exception, contained in Rule 10.1.5 in her defence; that 'If there is a risk that the former client may use the information provided to support a claim against a member, a member should consult their professional indemnity insurers and consider whether to take legal advice.'. That defence was considered in paragraph 72 of the Disciplinary Tribunal's judgment, and it was rejected.

49. In all, the Tribunal finds that the Disciplinary Tribunal's judgment is clear that the failure of the Applicant to provide the documents breached paragraphs 2.6.2, 2.6.3 and 10.1.5 of the PRPG. That is a finding that it was reasonable for the Disciplinary Tribunal to make, and it was sufficiently articulated within their judgment, when read as a whole.

SANCTION

50. Having upheld the appeal in part the Tribunal proceeded to consider the question of sanction for Charge 3 de novo. It invited and heard representations on sanction from Mr Grey for the TDB and from Mr Lloyd for the Applicant

51. In determining what, if any, sanction to impose the Tribunal had regard to the Indicative Sanctions Guidance ('ISG'), all the evidence in the case and the submissions that had been made.

52. The Tribunal bore in mind the purpose of a sanction is not to punish a member, albeit it may have that effect. The purpose is to promote the public interest, which includes not only protecting the public but upholding the proper standards of conduct in the profession and maintaining its reputation.

53. Any sanction imposed by the Tribunal must be appropriate and proportionate, considering the member's own interests and should be the least onerous measure that adequately meets the facts of the Charges found proved.

54. The Tribunal identified the following mitigating factors: -

    (a) The misconduct was limited to one client relationship.

    (b) The Applicant had experienced some difficult personal issues throughout the period covered by Charge 3.

    (c) The Applicant is of good character and has had no previous disciplinary findings against her. She had expressed remorse for her behaviour.

55. The Tribunal identified the following as aggravating features: -

    (a) The scale of the breach - the complete failure to provide documents and the amount of requests for documents, specifically that the failure extended over some 18 months and had not been remedied at the time of the Disciplinary Tribunal hearing, and that during this time a number of requests had been made by both the Complainant and his new accountants.

    (b) The failure to provide documents had been deliberate and had caused intentional inconvenience to the Complainant.

56. The Tribunal had reference to the ISG, and specifically considered sections (8), which relates to 'other breaches of byelaws or regulations' and (9), which relates to 'Professional Behaviour'. It noted that the guideline for breaches under heading 8 for 'Failure to provide professional clearance or transfer information in accordance with the provisions of PRPG' was censure and a fine of £1,000, and that the guideline for

'failure to behave in a professional manner at all times' was censure and a fine of £3,000.

57. The Tribunal considered the options available to it from the bottom upwards on the scale of seriousness.

58. The Tribunal considered that imposing no sanction would be inappropriate as it would not appropriately mark the nature and seriousness of the Applicant's conduct, as it was not minor

59. The Tribunal considered that an order to rest on file, or a warning would be inappropriate as it would not appropriately mark the nature and seriousness of the Defendant's conduct, which was not minor

60. The Tribunal considered imposing a censure and fine and noted that that was the starting point for two of the breaches it considered relevant in the ISG. We considered that the failure to provide documents over a significant period of time was serious and would be appropriately marked by a sanction of a fine of £3,000 and censure.

COSTS:

61. Mr Grey, on behalf of the TDB applied for costs in the sum of £9,970.00. Mr Lloyd opposed the application. He submitted that there should be no order for costs or, at worst, that there should be a substantial reduction in any costs awarded. He highlighted that the appeal had been partially successful, and the decision of the Disciplinary Tribunal had been overturned in respect of Charges 1 and 2. He said that had the TDB conceded the appeal on Charges 1 and 2 and the appeal been restricted to consideration of Charge 3 the time taken would have been half a day.

62. Mr Grey conceded that there should be some reduction in costs awarded, but that this should be by no more that 50%. He submitted that this was a case which had been considered by the Investigation Committee, who had found a prima facie case, and that the Appellant had also appealed under Ground 1, which was unsuccessful. He submitted that it would be disingenuous to suggest that Grounds 1 and 5 could have been considered in a half day hearing.

63. The Tribunal noted that the appeal had been partially successful. In all the circumstances we found that the correct approach, in the absence of definitive guidance on appeal costs, was to do justice between the parties. We found that the

most proportionate and just decision, taking into account all the circumstances of this case, was to award 50% of the costs of the appeal, being £4,985.00.

64. In respect of the Applicant's application for her costs to be paid by the TDB, we had reference to Regulations 20.5 and 24.10, which provide that the Tribunal may not award costs against the Board unless it is of the opinion that the charge against the member was brought maliciously or without justification. The fact that a charge is dismissed by a Tribunal does not in itself constitute grounds for concluding that the charge was brought without justification.

65. The Tribunal did not find that there was any evidence that the Charges had been brought maliciously. We noted that one of the Charges remained proved. Charges 1 and 2 were not brought without justification. The behaviour complained of was serious and the charges were referred by an investigation committee which found a prima facie case. This was a case where Charges 1 and 2 were not found on the specific wording of the Charge, not where there was no justification for charges being brought at all, or where there was no basis for concern regarding the Applicant's behaviour.

66. The Tribunal also noted the body of case law addressing the issue of costs in regulatory proceedings, particularly in relation to the potential 'chilling effect' of an order for costs in such proceedings, and the decision in *Competition and Markets Authority (Respondent) v Flynn Pharma & Pfizer (Appellants)* [2022] UKSC 14. We make no order for costs against the TDB.

ORDER:

1. The Appeal is partially upheld, under Regulation 21.4 (b)(i). The Appeal in relation to Charges 1 and 2 is upheld. The Appeal in relation to Charge 3 is dismissed.

2. The findings of the Disciplinary Tribunal in respect of Charges 1 and 2 are overturned under Regulation 24.3(a).

3. The findings of the Disciplinary Tribunal in respect of Charge 3 are upheld.

4. The sanction decision of the Disciplinary Tribunal is set aside and, the Tribunal substitutes a sanction of censure and a fine of £3,000 under Regulation 24.3 (c).

5. The Appellant shall pay 50% of the costs of the Appeal claimed by the TDB, limited to £4,985.00.

6. Pursuant to regulation 27.1 of the Disciplinary Regulations, the costs are payable within 28 days of the service of this order.

7. This Order and written reasons shall be published under regulation 28.1 of the Disciplinary Regulations, naming the Appellant.

Annabel Joester
Chair
19 March 2022