Civil Appeal No. 13 of 2025

IN THE COURT OF APPEAL (CIVIL DIVISION)

ON APPEAL FROM A DISCIPLINARY TRIBUNAL APPOINTED UNDER SECTION 22 OF THE BERMUDA BAR ACT 1974

IN THE MATTER OF A BARRISTER AND ATTORNEY

AND IN THE MATTER OF THE BERMUDA BAR ACT 1974

Before:

THE HON. IAN KAWALEY, THE PRESIDENT

THE HON. SIR ANTHONY SMELLIE, JUSTICE OF APPEAL

and

THE HON. NARINDER HARGUN, JUSTICE OF APPEAL

- -

Between:

AB

Appellant

and

BERMUDA BAR COUNCIL

Respondent

Mr Peter Sanderson of Beesmont Law Limited for the Appellant
Mr Saul Froomkin KC for the Respondent
Hearing date: 4 March 2026
Draft judgment circulated: 11 March 2026
Judgment delivered: 20 March 2026

INDEX

Disciplinary proceedings against a barrister and attorney- rules of natural justice-whether the respondent had adequate notice of the allegations found by the tribunal to have been proved-complaint based on breach of contract-threshold for misconduct when acting in a private capacity-recusal application-Bermuda Bar Act 1974-Bar Disciplinary Rules 1997-Barristers' Code of Professional Conduct 1981

JUDGMENT

IAN KAWALEY P:

Introductory

1. In October 2020 the Appellant, a non-Bermudian, vacated her residential rental property in Bermuda having lost her employment with a local law firm, to seek employment abroad. She left owing rent and with an unresolved dispute as to whether the premises should have been painted. Offers and counter-offers thereafter failed to achieve a resolution. On or about 6 January 2020, the Appellant's former landlord (the "Complainant") made a complaint about this dispute to the Respondent. On 7 February 2020 the Bar Professional Conduct Committee (the "PCC") gave notice of the Complaint and an opportunity to comment on it to the Respondent. On 11 February 2020 she was given 14 days to respond to it. On 24 February 2020 she responded essentially contending that the matters complained of did not engage the Bar's disciplinary jurisdiction at all, and that the Complainant had appropriate civil remedies. By letter dated 18 March 2021, the PCC communicated its decision to lay charges against the Appellant. On 16 October 2023 the Complainant signed a witness statement and on 6 November 2023, the then Chief Justice appointed a Disciplinary Tribunal consisting of Hon Juan Wolffe (Chair), Ms Cristen Suess and Mr Marvin Hanna (the "Tribunal").

2. The Appellant was charged with 5 offences but only the third was ultimately pursued: "*Improper conduct contrary to section 17 (1) (d) of the Bermuda Bar Act 1974 as read with section 6 (ii) of the Barristers' Code of Professional Conduct 1981*". The particulars of the alleged offence are set out below. The Tribunal heard an application to dismiss the charges on 16 December 2024 (on the grounds of a lack of jurisdiction and delay). This application was dismissed in a preliminary ruling on 17 December for the reasons provided on 20 December 2024. The substantive hearing took place on 28 February 2025 and on 11 April 2025 (for reasons given on 10 July 2025), the Tribunal found the charge had been proved. A hearing on sentence took place on 11 July 2025, and on 7 August 2025 the Tribunal imposed (1) a reprimand and (2) a fine of $2500, additionally requiring the Appellant to pay $2500 in costs.

3. By a Notice of Appeal dated 30 July 2025 filed by the Appellant acting in person (as amended on 30 July 2025 after sentence), the Appellant appealed to this Court on the following principal grounds:

    (1) the Tribunal erred in law or in applying the law to the facts by finding the charge proved;

    (2) the Tribunal took into account irrelevant matters and/or failed to take into account relevant matters;

    (3) the Tribunal should have found in its preliminary ruling that delay contravened the rules of natural justice;

    (4) the Tribunal showed apparent bias against the Appellant;

    (5) the penalty imposed was grossly disproportionate and wrong in principle.

4. At the beginning of the hearing of the appeal, out of an abundance of caution, we drew to counsel's attention the fact that the Tribunal had been appointed by then Chief Justice Hargun who was a member of the current appeal panel. Counsel were invited to consider whether any objections could be raised. Mr Sanderson after taking instructions argued that apparent bias concerns might exist if Hargun JA participated in the present appeal. This recusal application was rejected by the Court and the reasons for that decision are set out below.

5. As far as the merits of the appeal are concerned, Ground (4) was sensibly not pursued as a freestanding ground of appeal and oral argument focussed on Grounds (1) and (2), with Ground 2 being addressed first. Ground (3) was relied upon both against conviction and in support of the sentence appeal.

The relevant statutory provisions

6. Section 17 of the Bermuda Bar Act 1974 (the "Act") provides in salient part as follows:

"***Improper conduct***
17 (1) For the purposes of this Act, it shall be improper conduct if a barrister—

(a) makes a statement which to his knowledge is false in any material particular for the purpose of procuring his admission to practise law or the admission of any other person so to do, or for the purpose of obtaining a certificate of recognition for a company;

(b) employs any disqualified or unqualified person, or permits any disqualified

or unqualified person in his employ to engage, in any business, matter or thing in contravention of this Act;

(c) contravenes any rule made under this Act;

(ca)contravenes the AML/ATF Regulations;

(cb) fails to comply with any requirement imposed—

(i) under section 5 or Part 4A of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008; or

(ii) by the Barristers and Accountants AML/ATF Board acting in the performance of its functions under section 5 or Part 4A of that Act; or

(d) is otherwise guilty of conduct unbefitting a barrister."

19. (1)Where the Committee determines that a case of improper conduct has been made out and formal measures are appropriate, it shall, after causing charges to be formulated against that person, refer the complaint to a disciplinary tribunal appointed by the Chief Justice under subsection (2).

(2)When invited so to do by the Committee, the Chief Justice shall appoint a disciplinary tribunal to sit to determine a complaint of improper conduct against a barrister, professional company or registered associate in accordance with the Rules.

(3)A disciplinary tribunal shall consist of a Chairman, who shall be a Judge of the Supreme Court selected for appointment by the Chief Justice to preside over disciplinary hearings, and two other members recommended for appointment by the Bar Council from among the members of the Bar Association:

Provided that, where the Bar Council is the complainant, the three members of a disciplinary tribunal shall be selected for appointment by the Chief Justice." [Emphasis added]

7. Section 19 (2) makes it clear that the disciplinary regime applies to registered associates as well as barristers in the strict legal sense. For shorthand, and in accordance with local legal parlance in disciplinary cases, the term "barrister" in this wider sense is used in the present Judgment (and those which follow). Section 6 (ii) of the Barristers Code of Professional Conduct 1981 provides:

"*6. It is the duty of every barrister—*

(i) ...

> *(ii)not to engage in conduct (whether in pursuit of his profession or otherwise) which is dishonest or which may otherwise bring the profession of barrister into disrepute, or which is prejudicial to the administration of justice…*" [Emphasis added]

8. Section 19 of the Act pertinently provides as follows:

> *"(5) The standard of proof required in proceedings before a disciplinary tribunal shall be the same as that required in criminal proceedings*."

9. Section 22 of the Act provides:

> "***Convening Notices***
> *22 (1) The Chief Justice shall, where the Committee determines that formal treatment of a complaint is necessary and disciplinary charges in respect of a person complained against are forwarded to him, issue and cause to be served upon that person a Notice, in this Act and the Rules made hereunder referred to as a "Convening Notice", informing the person about the matters and rights set out in the Rules.*
>
> *(2) Upon the appointment of a disciplinary tribunal, the Chief Justice shall send a copy of the Convening Notice to the Committee to inform the Committee of the composition of the tribunal that shall determine the charge or charges formulated against a person complained against.*
>
> *(3) Upon receipt of a copy of the Convening Notice, the Committee shall forward to the disciplinary tribunal a copy of the charge and any documentary evidence to enable the tribunal to sit to hear and determine whether the complaint constitutes improper conduct by a person complained against.*"

10. The Bar Disciplinary Tribunal Rules 1997 provide so far as is relevant as follows:

> "*5 (1) A disciplinary tribunal may, at any time before or during a hearing, permit either party to the disciplinary proceedings to amend a charge, and this shall include, but shall not be limited to, circumstances where the charge to be amended falls outside the scope of the complaint considered by the Committee.*
>
> *(2) After considering whether to permit an amendment to a charge under paragraph (1) of this rule, a disciplinary tribunal—*

> *(a) may permit the amendment if it is satisfied that a respondent will not by reason of such an amendment suffer any substantial prejudice in the conduct of his defence;*
>
> *(b) shall, if so requested by the respondent, adjourn the disciplinary proceedings for such time as is reasonably necessary to enable him to defend the amended charge.*
>
> *(3) Where a disciplinary tribunal determines that a charge should be amended and permits such amendment, the tribunal shall make such order as to the cost occasioned by the amendment, or of any consequential adjournment of the proceedings arising therefrom, as it considers appropriate…*
>
> *11 (1) The proceedings of a disciplinary tribunal shall be governed by the rules of natural justice…*
>
> *18…(3) A disciplinary tribunal may impose any of the following sentences upon a respondent—*
>
> *(a) admonition or reprimand;*
> *(b) disbarment;*
> *(c) striking off the Roll or removal from the Register of Associates;*
> *(ca)restriction in every aspect of the practice of the respondent, or part only of the respondent's practice;*
> *(d) suspension;*
> *(e) suspension or revocation of a professional company's certificate of revocation; or*
> (f) *a fine.*"

11. Section 23 of the Act provides so far as is relevant as follows:

> "***Appeal to the Court of Appeal***
> *23 (1) A barrister, professional company or a registered associate aggrieved by a finding, sentence or order of a disciplinary tribunal may appeal to the Court of Appeal against such finding, sentence or order within twenty-one days of being notified of it.*
>
> *(2) Section 8 of the Court of Appeal Act 1964 [title 8 item 4] shall apply mutatis mutandis in relation to an appeal under subsection (1) as it applies in relation to a judgment or order of the Supreme Court in a civil cause or matter.*"

12. The following provisions of the Act are relevant to confidentiality:

> "***Registrar may publish charge, finding and sentence***
> *24B (1) Subject to the provisions of this section, a charge, finding or sentence of a disciplinary tribunal may be published in the Gazette.*
>
> *(2) Where, at the end of disciplinary proceedings, a disciplinary tribunal finds that a complaint does not constitute improper conduct by a person complained against, the Registrar shall publish in the Gazette a notice of the complaint, charge and the finding if the person complained against requests such publication.*
>
> *(3) Where the sentence is one of disbarment, suspension or a fine and a period of six weeks from the date of the decision of the disciplinary tribunal has expired, the Registrar shall-*
>
> *(a) cause a note of any charge proved against the respondent and the sentence imposed in respect of that charge to be entered, as the case may be—*
> *(i) in the Roll against the name of the barrister concerned,*
> *(ii) in the Register of Associates against the name of the registered associate concerned, or*
> *(iii) in the Register of Professional Companies against the name of the professional company concerned; and*
>
> *(b) file the order made in respect of the sentence.*
>
> *(4) After filing such an order under paragraph (3), the Registrar shall cause a notice stating any charge proved and the sentence imposed against the respondent, to be published in the Gazette.*
>
> *(5)Where the sentence is one other than disbarment, suspension or a fine and the respondent has not appealed against his sentence to the Court of Appeal, the Registrar shall—*
>
> *(a) cause a note of the effect of the order of the disciplinary tribunal to be entered, as the case may be—*
>
> *(i) in the Roll against the name of the barrister to whom the order relates,*
> *(ii) in the Register of Associates against the name of the registered associate to whom the order relates, or*
> *(iii) in the Register of Professional Companies against the name of the professional company to which the order relates; and*

> *(b) if the tribunal so recommends and the respondent so requests, cause a notice stating the effect of the order to be published in the Gazette.*
>
> *(2)Where a respondent has appealed to the Court of Appeal against the finding or sentence or both such finding and sentence in respect of the complaint made against the respondent, such finding or sentence or both shall not be published until the appeal is withdrawn, struck out or determined by the Court of Appeal.*
>
> ***Confidentiality***
> *25 Subject to section 24B of this Act, every disciplinary proceeding under this Part of the Act shall be treated as confidential by every person having access thereto."*

Reasons for refusing recusal application

13. In fairness to Mr Sanderson, it must be acknowledged that the recusal application was not advanced with great conviction and was presumably based on the instructions of an understandably anxious client. Had serious concerns existed, an objection would have been made as soon as the composition of the panel was announced in a draft Cause List before the start of the Session, it being obvious on the face of the record that Hargun CJ (as he then was) had appointed the Chair. Nonetheless, the point taken was that (as I formulated the test in the course of argument) a "reasonable and informed" observer would fear that there was a real risk that Hargun JA would be biased based on the bare fact that he had administratively chosen the Chair of the Tribunal. The suggestion was that, having chosen the Chair, Hargun CJ would be apparently biased in favour of the Respondent because of a risk that he would wish to avoid criticising his own judicial appointee. Mr Froomkin KC summarily opposed the objection raised on the grounds that it was "*nonsense*". *In VSE-v- TRT* [2023] CA (Bda) 9 Civ, Dame Elizabethe Gloster JA (Smellie JA and Clarke P concurring) summarised those principles as follows:

> "*31. The Court is most grateful for the professionalism demonstrated by Mr. Elkinson and the guidance provided by him on the law in these proceedings. On considering a recusal application the test to be applied is indisputably that of the fair-minded and informed observer as established in the well-known House of Lords case of Porter v Magill.*
>
> *32. Sir Christopher Clarke, President of the Court of Appeal of Bermuda, delivering the judgment in The Queen v Rebecca Watlington provides further guidance as to the characteristics of this notional observer. Citing Saxmere Company Limited et al v Wool Board Disestablishment Company Limited [2009] NZSC 72 Blanchard J, Sir Christopher Clarke stated:-*
>
> > *[Paragraph 34] – 'The observer must also be taken to understand three matters relating to the conduct of judges. The first is that a judge is expected to be independent in decision-making and has taken the judicial oath to "do right to all manner of people after the laws and usages of New Zealand*

> *without fear or favour, affection or ill will". Secondly, a judge has an obligation to sit on any case allocated to the judge unless grounds for disqualification exist. Judges are not entitled to pick and choose their cases which are randomly allocated. Thirdly, our judicial system functions on the basis of deciding between litigants irrespective of the merits or demerits of their counsel.'*
>
> *(Paragraph 36] – 'Bias may take many forms. It may arise from some connection (either amicable or hostile) of the judge, or those close to or connected to him, to one of the parties, or to a witness, or because of his membership of some organisation or devotion to some cause'*." [Emphasis added]

14. That was a case where it was held that recusal ought to have taken place based on a close blood relationship. The observation that a fair-minded and informed observer would be aware that judges deal with cases on their merits without regard to "*the merits or demerits of their counsel*" in my judgment applies to appellate judges, by way of analogy, to the merits or demerits of the trial judge and on the facts of this case, to the merits or demerits of a judicial member of a tribunal . This of course assumes there is no disqualifying relationship.

15. In *Re International Air Finance Limited* [2025] CIGC (FSD) 65 where there was a recusal application based on comments made in the context of case management decisions, I noted:

> " *11….[my] approach was also informed by the insightful framing which Mr Robinson KC provided of the way in which the character of the recusal complaint informs the analysis. Most cases where recusal was required were either instances of:*
>
> *(a) lack of independence cases based on connections or relationships; or*
>
> *(b) predisposition cases based on complaints in relation to final decisions…*
>
> *52…*
>
> *(a) where there is no actual or potentially disqualifying relationship between a judge and one of the parties, the need for a precautionary approach does not usually arise."*

16. The United Kingdom Supreme Court '*Guide to Judicial Conduct (2019)*' applies a very narrow approach to the sort of relationship with a lower court judge which would be

automatically disqualifying for an appellate judge. The potential circumstances for apparent bias are of course very broad. The Guide provides:

> "*3.8 Circumstances will vary infinitely and guidelines can do no more than seek to assist the individual Justice in the judgment to be made, which involves, by virtue of the authorities, considering the perception the fair-minded and informed observer would have. What follows are merely signposts to some of the questions which may arise.*
>
> *3. 9 A Justice will not sit in a case where:*
>
> *(i) he or she has a close family relationship with a party or with the spouse or domestic partner of a party;*
> *(ii) his or her spouse or domestic partner was a judge in a court below;*
> *(iii) he or she has a close family relationship with an advocate appearing before the Supreme Court*." [Emphasis added]

17. Applying the highest possible standards of impartiality, it might be said that the following provision in our own '*Guidelines for Judicial Conduct*' would apply by analogy to relationships between an appellate and lower court judge:

> "*72. Conflict of interest arises in a number of different situations. The Judge must be alert to any appearance of bias arising out of connections with litigants, witnesses or their legal advisors. The parties should always be informed by the Judge of facts which might reasonably give rise to a perception of bias or conflict of interest…*
>
> 74. *Judges should disqualify themselves if they have a close relationship with litigants, legal advisors or witnesses in the case. It is impossible to be categorical about the relationships which may give rise to concerns about impartiality. Clearly, close blood relationships or domestic relationships are disqualifying.*"

18. Even applying this strict approach to automatic disqualification, it may readily be seen that the mere fact that an appellate judge was previously involved in nominating the judicial chair of a disciplinary tribunal, whose decision is subject to appeal, does not come close to constituting an actual or potential disqualifying relationship (or connection) between the former and the latter. It is clear on the face of section 19 of the Bermuda Bar Act that this appointment power is wholly administrative in character. Exercising the power did not amount to involvement in the substance of the matter which is presently before the Court, which clearly would require recusal by analogy with the rule prohibiting adjudicating disputes with which a judge was previously involved when in practice.

19. When all the circumstances are considered in the context of the Judicial Codes of Conduct, it is clear, by application of the *Porter v McGill* test (as articulated by this Court in *VSE v TRT* (above), that no fair-minded and informed observer could conclude that there was a basis for recusal here.

The proceedings before the Tribunal

Pre-hearing events

20. The Statement and Facts and Charge Sheet are undated but provided as follows. The Statement of Facts alleged that the Appellant was admitted to the Bermuda Bar and was employed with a local law firm until July 2019. She entered into a short term residential lease (the "Lease") with the Complainant who owned a property (the "Property") under which she agreed to pay $4000 per month and provide a $4000 deposit with a 90 day notice to quit clause. The term of the Lease ran from mid-September 2019 until the end of September 2020; however it was alleged that the Appellant vacated the Property on 4 October 2019 without "*(1) any agreement between the Complainant and the Respondent to vary the said agreement; or (2) any honest and forthcoming discussions between the pair regarding any change in the Respondent's circumstances, at any time prior to 4 October 2019.*" In addition it is alleged that the Appellant in further breach of the Lease failed to pay the September and October rent, failed to paint the interior of the Property to a professional standard and left furniture in the Property after vacating it, breaching the obligation to deliver up the Property "*in a proper and fit condition*". It is further alleged. *inter alia*, that:

> "*7. By emails From the Complainant to the Respondent dated 9 October 2019 and 10 February 2020 the Complainant made demands for the following among other things in relation to the Tenancy Agreement: (1) $4000 per month was due and owing to the Complainant for October 2019; (2) $840 for the cost associated with cleaning and painting the Property; and (3) $170 for the cost associated with removal and trucking of the furniture left in the Property by the Respondent. The $4000 deposit amount paid by the Respondent in accordance with the terms of the Tenancy Agreement was applied to the Respondent's $4000 rental arrears for September 2019…*
>
> *9. To date the Respondent has not made payment to the Complainant despite the numerous emails exchanged between the pair and particularly the Complainant's various demands for the monies due and owing to the Complainant by the Respondent as a result of the Respondent's breach of fundamental tenant obligations under the tenancy agreement …*"

21. The Charge Sheet was ultimately laid and pursued in relation to the following offence:

> "***IMPROPER CONDUCT*** *contrary to section 17 (1) (d) of the Bermuda Bar Act 1974 as read with section 6 (ii) of the Barristers' Code of Professional Conduct 1981.*
>
> ***PARTICULARS***
>
> *The Respondent has engaged in conduct which may bring the profession of barrister into disrepute in that the Respondent contrary to the terms of a short residential tenancy in relation to… [the Property]… (1) failed to observe fundamental tenant obligations to make payment of monthly rent in advance and to deliver up the premises in a proper state in condition to the said [Complainant] or his agent on determination of the tenancy; (2) failed to give due notice of her intention to terminate the contract of tenancy in relation to said property and (3) has exhibited conduct which is unbefitting of a barrister through her sustained disregard for her derogation from the said fundamental tenant obligations and the impact of such conduct on the said complainant contrary to section 17 (1) (d) of the Bermuda bar act 1974 as read with rule 6 (2) of the Barristers' Code of Professional Conduct 1981.*"

22. Although it is clearly alleged that the Appellant's conduct amounted to professional misconduct, the particulars of offence could readily be relied upon as particulars of breach of contract in a Magistrates Court civil claim. The resemblance of the charge to a civil claim for damages is reinforced by the averments in the Statement of Facts in relation to demands for payment made by the Complainant. The last demand was said to have been made on 10 February 2020, which was (a) just over a month after the 6 January 2020 complaint to Bar Council was made; and (b) only three days after the Complainant was copied with a PCC letter to the Appellant informing her of his professional conduct complaint. Both the Statement of Facts and the Charge rely solely on breaches of contract, save that the Charge Sheet in one sub-paragraph refers to the failure to have "*any honest and forthcoming discussions between the pair regarding any change in the Respondent's circumstances, at any time prior to 4 October 2019.*"

23. On 11 February 2020, the PCC gave the Appellant 14 days to comment on the complaint. She responded on 24 February 2020 contending that the complaint related to a private dispute which fell outside of the PCC's disciplinary jurisdiction. The PCC communicated its decision to prosecute the complaint on March 2021. The Tribunal was appointed on 6 November 2021, shortly after the Complainant signed his Witness Statement. On the same date the Appellant signed her Witness Statement. The hearing of the complaint was scheduled for 31 October 2024, but adjourned on the Appellant's application on medical grounds to 17-18 December 2024. In November, the Appellant's counsel and the PCC's counsel exchanged written submissions in relation to the Appellant's summary dismissal application which contended that further proceedings were not justified by reason of (1) delay and (2) the failure of the matters complained

of to reach the threshold of professional misconduct. On 16 December 2024 the Appellant signed a Second Witness Statement in which she described, *inter alia*, suffering from "*indescribable*" anxiety in connection with the matter.

The summary dismissal hearing

24. The summary dismissal application was heard on 16 December 2024 and it was dismissed at the end of the hearing for reasons promptly delivered on 17 December 2024. The Tribunal found that although there had been unexplained delay between March 2021 and October 2023, the Appellant was not prejudiced in her ability to defend the charge. The 'fair trial is no longer possible' test is certainly one recognised basis for evaluating a delay complaint and seems at first blush a logical test to apply when the delay complaint is raised only when a case is actually ready for trial. The 'jurisdictional' dismissal ground was rejected on the concisely expressed basis that the Barristers' Code of Conduct explicitly embraced private conduct as well as professional conduct. On the face of it, this was an unsurprising response to what the Tribunal understood to be a jurisdictional challenge. However, a careful reading of the 'Respondent's Submissions on Dismissal' shows that the main thrust of the application was an elaborate "*threshold of misconduct*" argument. This argument could not fairly have been summarily rejected.

The substantive hearing

25. It appears that the substantive hearing was initially scheduled for 20 January 2025, because on that date the Tribunal granted the Appellant's second adjournment application on terms that the hearing would continue on 27-28 February 2025 in any event, barring exceptional circumstances. In the event, the resumed hearing took place on 28 February 2025 and the Tribunal gave its decision on 11 July 2025. The parties' Witness Statements were accepted as evidence-in-chief, and they were each cross-examined.

26. The Complainant's Witness Statement consists of 15 paragraphs. It essentially details why he contends the Appellant breached her obligations under the Lease and failed to voluntarily make the payments he required her to make and why it was reasonable for him to reject the offers she did make. In paragraph 5 the averment set out in the Statement of Facts and set above (at [20]) appears. It is asserted that she vacated the Property "*absent…any honest and forthright discussions*" about her change in circumstances and plans to move abroad. Mention is made that the Complainant learned of her departure from his agent whom the Complainant emailed on 4 October 2019 stating: "…*I'd appreciate if you didn't mention anything to the landlord at this stage as I'm still working things out.*" No suggestion is made that this was dishonest and no mention of this email was made in the Statement of Facts. Also not mentioned in the Statement of Facts is the following averment in the final paragraph of the Witness Statement:

> "*15. I rented the property to the Respondent believing her to be a person of integrity. This belief was in part based on the fact that she is a barrister. She breached her tenancy agreement with me, hid the fact that she was leaving the island and then, in effect, told me that if I act properly I can make up for a breach of the agreement by mitigating my loss. This is no way any professional let alone a barrister should behave. I want the respondent prosecuted by the Bermuda Bar Association for improper conduct because of the principle of the matters set out above which remain unresolved at the time of signing this statement.*"

27. The Complainant essentially avers that the Appellant's conduct amounted to improper professional conduct because of the manner in which she breached her obligations under the Lease, including (implicitly) the notice to quit clause. The assertion that she "*hid the fact that she was leaving the island*" does not appear in the Statement of Facts or Particulars of Charge. It is advanced in evidence as a seemingly incidental detail in the broader complaint that it was improper for the Appellant to have breached her contractual obligations and failed to settle the amounts the Complainant considered to be due. The most eyebrow-raising aspect of his oral evidence is recorded in the Finding as follows. After explaining that he was legally advised not to invoke the arbitration clause in the Lease, "*three (3) lawyers told him that it would cost a lot of money to take the Respondent to Court…and that he should take the matter to the PCC*" (paragraph 21). This potentially explained why the way in which the Complaint was initially filed and pursued by the Complainant looked remarkably like a debt collection exercise (akin to the abuse or threatened abuse of winding-up proceedings in the company law sphere).

28. The Appellant's Witness Statement is dated 16 December 2024. She adopts her February 2020 response to the initial complaint and then avers that she has suffered financial loss as result of the long running disciplinary proceedings, which have caused her to give up legal work because of her disclosure obligations. She also complains that in February 2020 the Complainant emailed her then overseas employers and informed him about "this matter", seemingly his present disciplinary complaint. She also avers that she has received therapy for the anxiety generated by the disciplinary proceedings. Seemingly inconsistently with averring that she has given up on legal work, she states she is currently in a legal job with limited annual leave, presumably to explain why she was not attending the proceedings in person. In her 24 February 2020 response to the initial complaint, the Appellant stated that this was a civil dispute in relation to which the Complainant had civil remedies. However, she also responded to the 'no notice' complaint by asserting that her overseas work permit was only approved on 1 October 2020 and she could not give notice of her intended departure before then. She was unemployed in Bermuda and unsure where and when she would next work. Once the work permit approval was received in early October, she had to "*move quickly*". This seems inconsistent with the 4 October 2020 email to the agent in which she stated she was "*still working things out*", although it is unclear from these documents precisely

when she learned of the work permit approval. The Tribunal's Finding helpfully summarises her cross-examination. As to why she asked the agent on 4 October 2019 not to tell the Complainant she was leaving, she is recorded as saying this:

> "38. *In respect of the balance of the defence the Respondent stated that she never intended to be dishonest or to deceive anyone and that she tried to settle with the Complainant. She explained that she panicked in a very difficult situation and that she does not have a formal defence. She said that it was out of panic that she told* [the agent] *on the 4th of October 2019 not to tell the Complainant about her moving her belongings. She added that at the time she was working out how she was going to pay the Complainant, that she was ashamed that she did not have any money, that she had to leave on short notice to earn money, that everything came through suddenly and that she did not know what else to do. Further that her emails to* [the agent] *on the 4th and 5th October 2019 were a reflection of her trying to work things out and deal with the situation.*"

29. Paragraph 40 of the Finding records the Appellant as being unable to recall details of the dates on various matters relating to the overseas employment and work permit approval, but her Witness Statement was treated as her evidence-in-chief and she had recorded in the Witness Statement (read with the attached 24 February 2020 response to complaint letter) that she was offered her overseas job in August 2019 and that the work permit had only been approved on 1 October 2019. So any lack of recollection of those details relating to events over 5 years ago under cross-examination would appear on the face of it to be simply that. It occurred in the context of proceedings in which neither the Charge nor the Statement of Facts made any suggestion that her failure to give three months' notice had been deliberate and premediated and that this was the main gravamen of the complaint she chose to contest. It is surprising, therefore, that the Complainant's failure to give advance notice of her actual or potential plans was placed at the heart of the Tribunal's findings of professional misconduct:

> "*45. For the reasons set out herein after we find that the Respondent as a barrister engaged in conduct which constituted improper conduct namely conduct which in the eyes of the public brought the profession of barrister into disrepute*
>
> *46. Simply put as a barrister the Respondent knew better and should have acted better in her dealing with the Complainant (who we found to be a reliable and credible witness). There is no doubt in our mind that the Respondent is a highly intelligent person and we would not be surprised if she was and probably still is a very competent attorney. One only need to look at her letter to the PCC dated the 24th February 2020 to easily reach the conclusion that the Respondent not only has a solid understanding of the law*

but that she is also able to legally rationalise a given set of facts. From this we find that she well knew the content and legal effect of all terms of the lease agreement and that she knew all too well how to circumvent them.

47. Most telling for us in this regard is the e-mail from the Respondent to [the agent] *on the 4th October 2019 in which she audaciously attempted to get* [the agent] *to relinquish her own agency obligations to the Complainant by not reporting to him that the Respondent was packing up and vacating the premises by this e-mail we find the Respondent knew exactly what she was legally and ethically doing when she vacated the premises that is:*

(i) To vacate the premises without giving any notice whatsoever to the Complainant or to [the agent] *although she knew and understood she was under a contractual obligation to provide notice.*

(ii) To escape paying her rent for which she knew she owed to the Complainant for September 2019 and which she knew she would be required to pay for breaching the lease agreement their respondent admitted that she was at the material time impecunious.

(iii) By relocating to another jurisdiction, she knew that she would be legally and procedurally difficult for and costly for the Complainant to pursue her for any claim which he may have against her for breaching the lease agreement (whether it is a Bermuda or [overseas] court).

48.In short the Respondent intended and did exactly what [the agent] said that she was doing in her e-mail to the Respondent on the 5th of October 2019. To leave the complainant 'high and dry'. Moreover the Respondent's suggestion to [the agent] *on the same day that everyone should just 'move on' is a clear indication of her attempt to wipe her hands of the mess which she had created in Bermuda and to do so with no care that she left the Complainant in a financial predicament this, as* [the agent] *correctly stated in her e-mail, is not behaviour that one should have expected from anyone, especially a barrister.*

49. What compounds this is that the Respondent had ample time and opportunity to inform the Complainant and or [the agent] *about her supposedly dire circumstances of work and about the possibility that she may have to vacate the premises at some point over the coming months she could have said something in July 2019 when she had to resign from the Bermuda law firm she was working at. She did not. She could have said something when she was searching for work in Bermuda and [overseas] presumably*

from July 2019. She did not. She could have said something in early August 2019 when she was offered an employment opportunity [overseas]. She did not. She could have said something on the 1st of October 2019 after her work permit was approved. She did not. The Complainant is therefore absolutely correct in his written communication to the Respondent on the 6th October 2019 when he said that she must have known about her move long before the 4th of October 2019 (as it would have no doubt included job searches and interviews and significant relocation planning on her part) and that the right thing for the Respondent to have done was to at least make a courtesy call to him informing him about his place her plans or potential plans.

50. In her letter to the PCC dated the 24th February 2020 the Respondent expressed concern about losing her professional reputation as a result of these disciplinary proceedings quite frankly the Respondent should have thought about her reputation when she was clandestinely orchestrating her departure from Bermuda without giving the Complainant notice that she was vacating the premises. She could have kept her reputation intact by simply letting the Complainant know of her plans in advance. She chose not to. We thoroughly understand the Respondent's desire to immediately seize upon the employment opportunity [overseas] and we also understand the stress and strain which one may experience when having lost a job and having to seek to secure another in an overseas location. However, this does not provide reasonable justification for the Respondent acting as she did towards the Complainant and most certainly it should have been at the literal and figurative expense of the Complainant.

51. For the avoidance of doubt we do not accept the prospects of the premises being rented quickly or the Respondent's furniture being sold to offset any amounts owed by the Respondent to the Complainant as justification for her not giving the required 90 day notice to quit the premises in fact had the response and acted in accordance with the lease and or informed the complainant of her plans then any potential loss to the Complainant would have been mitigated. Unfortunately the Respondent chose a surreptitious route to resolving her financial woes…

54. We should conclude by pellucidly expressing that this finding is strictly confined to whether the Respondent's conduct, during her dealings with the Complainant and in the circumstances surrounding her vacating the premises in October 2019, amounted to improper conduct unbefitting a barrister. Specifically, whether her conduct was such that it may bring the profession of barrister into disrepute. Therefore we were not concerned with, nor do we render any decision as to, the merits of any monetary claim for loss and damage which the Complainant may have against the Respondent

in relation to the sums which he says [are] owed to him by the Respondent for the premises (such as for rent, painting, cleaning, agent's fees etc.)." [Emphasis added]

30. In summary, the offence which the Tribunal found to have been proved to its satisfaction was based on the manner in which she vacated the Property on or about 4 October 2019, not the alleged contractual breaches. In particular her failure to give the Complainant courtesy notice in the summer of 2019 that she might be leaving Bermuda and deliberately seeking to conceal her departure from the Complainant when the agent saw her packing on 4 October 2019.

The sentencing hearing

31. The sentencing hearing focussed primarily on whether there should be a penalty more serious than a reprimand. Oddly, the Ruling dated 7 August 2025 following a hearing on 11 July 2025 (described as the "Sentence") makes no mention of the Appellant's age or the year of her first qualification. Maturity or youth and length of professional experience are usually relevant factors when assessing culpability for offences which do not obviously call for suspension or disbarment at one end of the scale or an admonition at the other. However, the severe and somewhat paternalistic tone of the sentencing Ruling (together with the general tenor of the Complainant's evidence) suggest that the Appellant is more likely a younger rather than a seasoned practitioner. The appropriateness of the fine sought by the PCC was accepted by the Tribunal primarily based on, *inter alia*:

(a) applying by analogy the sentencing principles set out in sections 54-55 of the Criminal Code;

(b) the "*deceptive nature of her departure*";

(c) her "*attempt to get the rental agent to breach her own fiduciary duties towards the Complainant*";

(d) the Complainant's "*defiance and arrogance*" in not paying the $4000 she at one point offered to pay to settle the case and then offering a substantially lesser amount; and

(e) the Complainant's foregoing "*multiple opportunities over a period of months…to give notice…that she was vacating*"; and

(f) contesting the charge; and

(g) an absence of genuine remorse.

32. Assuming those findings were properly open to the Tribunal, the penalties imposed of (1) a reprimand; and (2) a fine of $2000 appear at first blush to be entirely proportionate and principled. However, the findings recorded at (b) to (e) in particular were relied upon by the Appellant's counsel to demonstrate how far away from the scope of the Charge the Tribunal had roamed.

The grounds of appeal

The Tribunal took into account irrelevant matters and failed to take into account relevant matters (natural justice)

33. The first ground of appeal was addressed in the Appellant's Skeleton Argument clearly and concisely. Mr Sanderson essentially submitted that the Tribunal convicted the Appellant of conduct which fell outside of the scope of the Charge:

> "*3.4. The particulars of the charge are set out in Count 3 at Tab 1, pp 8-9 of the Record.*
>
> *3.5. It is important to refer to the particulars, as this sets out the scope of the charge. The Appellant was accused of:*
>
> > *a) failing to observe tenant obligations to make payment of monthly rent in advance and deliver up the premises in a proper state and condition;*
> >
> > *b) failing to give due notice of her intention to terminate the contract;*
> >
> > *c) exhibiting unbefitting conduct through sustained derogation from the tenant obligations and the impact on the landlord.*
>
> 3.*6. Although disputing that she had left the premises in an improper state, the Appellant had essentially conceded that she had failed to pay her rent monthly in advance (albeit relying on a deposit held by the landlord), and that she had failed to give due notice of termination. What she disputed was whether this amounted to unbefitting conduct.*
>
> *3.7. Nowhere in those particulars does the charge refer to an intention to 'leave the Complainant high and dry', being the essential finding of the tribunal at [48] of their findings, nor does it refer to the compounding factor found by the tribunal at [51] that the Appellant had chosen a 'surreptitious route' to resolve her financial woes. These go far beyond a mere failure to observe tenant obligations and stray into the realm of dishonesty.*

> *3.8. If there is any doubt as to whether the Tribunal was treating the Appellant as dishonest, regard can be had to their Sentence ruling, where reference is made to the 'deceptive' nature of her departure at [13], as well as an attempt to get the rental agent to breach her own fiduciary duties.*"

34. These assertions were easy to demonstrate for the reasons set out above (at [19] to [21]) when considering the nature of the formally pleaded case against the Appellant. The Particulars did not even hint at dishonesty. One sentence in the Statement of Facts, alleging a failure to have "*any honest and forthcoming discussions*" did hint at dishonesty but only in the faintest way. Equivocally suggesting matters which should be either positively asserted or not asserted at all frequently provokes judges to quote Alexander Pope's words in his '*The Epistle to Dr Arbuthnot*', "*willing to wound, and yet afraid to strike, just hint a fault and hesitate dislike*"[1]. Mr Sanderson however did not rely on poetry to support this ground of appeal, but rather on very familiar and fundamental legal principles:

> "*3.9 It is a fundamental principle of natural justice that a respondent should understand the charges against them. O'Reilly v Mackman [1982] 3 All ER 1124, HL, was a case concerning discipline of a prisoner. At 1127, Lord Diplock, with whom the other Lords agreed, said:*
>
> > *Rule 49 is applicable to such inquiry by the board. It lays down expressly that the prisoner 'shall be given a full opportunity of hearing what is alleged against him and of presenting his own case'. In exercising their functions under r 51 members of the board are acting as a statutory tribunal, as contrasted with a domestic tribunal on which powers are conferred by contract between those who agree to submit to its jurisdiction. Where the legislation which confers on a statutory tribunal its decision-making powers also provides expressly for the procedure it shall follow in the course of reaching its decision, it is a question of construction of the relevant legislation, to be decided by the court in which the decision is challenged, whether a particular procedural provision is mandatory, so that its non-observance in the process of reaching the decision makes the decision itself a nullity, or whether it is merely directory, so that the statutory tribunal has a discretion not to comply with it if, in its opinion, the exceptional circumstances of a particular case justify departing from it. But the requirement that a person who is charged with having done something which, if proved to the satisfaction of a statutory tribunal, has consequences that will, or may, affect him adversely, should be given a fair opportunity of hearing what is alleged against him and of presenting his own case, is so fundamental to any civilised legal system that it is to be presumed that*

[1] E.g. *The Abidin Daver* [1984] AC 398 at 415 where Lord Diplock quoted the poem in relation to an affidavit which should have contained "*cogent evidence*" but instead contained only "*tenuous innuendos*". Also see *Lehman Commercial Conduit & Anor.-v-Gatedale Limited* [2012] EWHC 3083 (Vos J at [3]-[4].

> *Parliament intended that a failure to observe it should render null and void any decision reached in breach of this requirement.*
>
> *3.10. These principles are enshrined in the Bermuda Bar Act, at s.22(2), setting out that a tribunal shall determine the charge or charges formulated against a person, as read with r.5 of the Bar Disciplinary Tribunal Rules, which sets out the circumstances in which a charge may be amended. At no point was an application made to amend the charge. It is not the role of a tribunal to go on a roaming or inquisitorial exercise to concoct other charges against a Respondent. The tribunal has seized on these more scurrilous elements perhaps because the charges as pleaded against the Appellant were otherwise more than a little lacking when looking at the guidance on what amounts to professional misconduct.*"

35. Mr Froomkin KC unsurprisingly did not dispute this statement of the fundamental rules of natural justice. Nor was it surprising that he was unable to advance any coherent response to the substantive objections that the findings of the Tribunal were based on allegations akin to dishonesty which did not form part of the Charge, Particulars or Statement of Facts. No such allegations had been made. Accordingly, the submission (advanced both in writing and orally) that the Appellant had never asked for particulars was a woefully weak response to the Appellant's submissions amounting to a tacit concession. It is no answer to a complaint that a respondent had inadequate notice of the case against her to say that further particulars should be sought. What form should such a request have taken? "Please confirm that you are only pursuing your pleaded case. Can you please let me know the basis of any facts and matters you wish to rely on which are not part of your pleaded case"? That suggests an '*Alice Through the Looking Glass World*' in which charges and pleadings mean nothing and trial by ambush is *de rigueur*. It would also require one to ignore the legislative framework governing disciplinary proceedings under the Bermuda Bar Act.

36. Firstly, as noted above (at [10]), rule 11(1) of the Bar Disciplinary Rules expressly provides that disciplinary proceedings are governed by the rules of natural justice. They would otherwise apply as a matter of common law. Secondly, and more pertinently for present purposes, the scheme of the Act and Rules clearly contemplates that the formulation of charges are intended to serve a practical rather than purely abstract function. The starting point is section 22 (3) of the Act, which provides that upon receipt of the Convening Notice, the PCC "*shall forward to the disciplinary tribunal a copy of the charge and any documentary evidence to enable the tribunal to sit to hear and determine whether the complaint constitutes improper conduct by a person complained against.*" Implicit in this statutory requirement is the notion that both the tribunal and the respondent are entitled to understand the nature of the case the tribunal has been established to determine. That the initial charge is not intended to be something "writ in water" or merely a rough and ready guide to what the PCC considers at that point the charge should mean is confirmed by the Rules. Not only is provision made for applications to amend by rule 5 (set out in full at [10] above), but paragraph

2 provides for the amendment jurisdiction to be exercised in the following way. A tribunal:

> *"(a) may permit the amendment if it is satisfied that a respondent will not by reason of such an amendment suffer any substantial prejudice in the conduct of his defence;*
>
> *(b)shall, if so requested by the respondent, adjourn the disciplinary proceedings for such time as is reasonably necessary to enable him to defend the amended charge.*"

37. As one would expect in proceedings which potentially impact on the livelihoods of barristers and attorneys, an amendment may only be granted if the relevant tribunal is "*satisfied that a respondent will not by reason of such an amendment suffer any substantial prejudice in the conduct of his defence*". If tribunals were entitled to make findings on any matters falling outside the charge which emerged in evidence at the final hearing of a complaint, these provisions would have to be ignored. The statutory code purposively read:

    (a) requires the PCC to amend the charge if it wishes to pursue matters falling outside of its scope as formulated at the date of the amendment application;

    (b) presumes that any amendment application will at least be potentially prejudicial to the respondent; and so

    (c) requires the tribunal when evaluating an amendment application to ensure that it is (1) not prejudicial at all, (2) not too prejudicial to be allowed at all or (3) that any prejudice ought fairly to be accommodated through an adjournment.

38. In the present appeal it is unclear precisely what closing submissions were made (if any) at the end of the evidential hearing on the scope of charge issue. The Appeal Record only contained submissions for the preliminary hearing. The Finding does not make any reference to closing submissions and suggests that the only issue the Tribunal considered which was potentially relevant to the scope of conduct falling for consideration was the distinction between (1) contractual breaches (which were purportedly ignored) and (2) the Appellant's conduct (which <u>was</u> taken into account). The strongest indicator that the Tribunal was not addressed by counsel on the scope of charge issue is the fact the Finding does not recite the terms of the Charge at all. It makes reference to "Count 3 on the Charge Sheet", section 17 of the Act and rule 6 before defining the ambit of what the PCC was required to prove as follows:

> "*4…Therefore, the PCC must prove beyond a reasonable doubt the following elements of the charge:*
>
> *(i)That the Respondent is a barrister.*
>
> *(ii)That the Respondent engaged in conduct (whether in pursuit of her profession or otherwise) which brought the profession of barrister into dispute.*"

39. In a footnote to this portion of the Finding, the Tribunal notes: "*On the 20th December 2024 the Tribunal ruled that it had jurisdiction to hear complaints about the conduct of barristers within and outside of the professional sphere and whether in pursuit of their profession or otherwise*." That was a fair characterisation of the application made and the submissions of the Appellant in the context of that application did not deal with the scope of charge issued raised by the present ground of appeal. The following sentence in the final paragraph of the Appellant's preliminary hearing submissions did state: "*The actions complained of do not meet the threshold of misconduct*". This was not enough to alert the Tribunal to the need to consider, when the complaint was heard on its merits, whether allegations canvassed in evidence did or did not fall within the scope of the Charge. The Tribunal would have been assisted by closing submissions after the evidential hearing at which it ought to have been common ground that the Charge fell to be evaluated solely on the basis of the Charge, Particulars and Statement of Facts.

40. However, as the case was left to the Tribunal at the end of the 28 February 2025 hearing, the Appellant was only legally liable to be convicted on the basis of the Charge as framed, not on an alternative un-pleaded basis of which she had no or no reasonable notice. The appeal on this ground must be allowed because the Finding was clearly based to a substantial extent on various allegations which fell beyond the scope of the Charge, including:

    (a) the Appellant wanted to leave her landlord "*high and dry*" and surreptitiously moved to another jurisdiction where she knew it would be difficult for him to legally pursue her;

    (b) the Appellant should have at least told her landlord of her potential plans to leave in July and/or her actual plans to leave as soon as they were finalised in early October; and

    (c) the Appellant in asking the agent not to tell the landlord of her departure was pressuring the agent to breach her obligations to her principal.

41. It is obviously not necessary to consider whether these findings would have been properly open to the Tribunal to reach if the Charge had been amended and these allegations had been fully contested. However, it seems appropriate to point out that there are inconsistencies between some of the findings reached and others are not clearly supported. Most strikingly, there is conflict between the findings (1) "*that the right thing for the Respondent to have done was to at least make a courtesy call to him informing him about his place her plans or potential plans*" and at least told him after her overseas work permit was approved, and (2) the findings that the Appellant wanted to leave her landlord "*high and dry*" and used her legal knowledge to "*surreptitiously*" leave the jurisdiction. The first set of findings suggest the Tribunal accepted the Appellant's evidence that her plans were uncertain until her work permit was approved on 1 October 2019; the second set of findings suggest that they rejected that evidence and found that she was scheming a surreptitious departure for a longer period of time. It is unclear on what basis the Tribunal rejected the Appellant's potentially straightforward explanation for leaving without telling the landlord and not wanting the agent to tell him she was leaving: embarrassment about leaving while unable to meet all of her undisputed contractual obligations because of impecuniosity. She had seemingly undeniably spent some three months unemployed in a country where she had no unrestricted right to work or reside. However, these issues were never properly canvassed before the Tribunal because they fell outside of the scope of the Charge.

42. The further and overlapping adverse findings recorded in the Sentence make it clear beyond sensible argument that the Tribunal focussed its attention on considerations beyond the scope of the Charge. It was clearly open to the Tribunal to find that when the Complainant appeared before them on 28 February 2025 the complaint was being pursued as a matter of principle. However, it is surprising that no adverse comment was made about the seemingly undisputed fact that in February 2020 he had revealed the fact of his having made a professional misconduct complaint to the Appellant's then employer. If this occurred, it was potentially a breach of the confidentiality provisions of the Act (section 25). It would also constitute an abuse of the disciplinary process. The Appellant complained about this in her initial 24 February 2020 response to the complaint (paragraph 5.7-5.8) and paragraph 3 of her 16 December 2024 Witness Statement. In evaluating why she had not paid what she accepted was due during the pendency of the disciplinary proceedings, was the fact that she considered the disciplinary proceedings were being used as "leverage" to enforce payment, not a relevant factor to take into account?

The offence charged did not reach the threshold for professional misconduct

43. As I observed in another unusual case some years ago:

> "*Everything must be like something, so what is this like?", E.M. Forster once asked. This is a question which, at first blush, is difficult to answer in relation to the facts of the present case*."[2]

44. Mr Froomkin KC (who celebrated the 48th anniversary of his admission to the Bermuda Bar the day before the hearing) confirmed that he had come across no previous professional misconduct charge based solely on a lawyer's private contractual dealings. He also very properly, if somewhat reluctantly, conceded in the course of argument that if the matters extraneous to the pleaded Charge could not be taken into account, the contractual breaches complained of did not reach the requisite threshold for professional misconduct.

45. What threshold must be reached to prove a case of professional conduct in relation to matters occurring in the private sphere is a very nuanced question which has confounded disciplinary tribunals in England and Wales. I initially found Mr Sanderson's submission that Oliver Wendell Holmes said that a contractor is "*free from interference until the time for fulfilment has gone by, and therefore free to break his contract if he chooses*"[3] to be an appetizing intellectual proposition. But mature reflection was required before that 'morsel' could be confidently swallowed. This ground of appeal in my judgment also succeeds on the basis that all that could properly have been established against the Appellant amounts to no more than the unfulfillment o her contractual obligations. I gratefully adopt the cogent reasoning set out in the Judgment of Hargun JA below on a question of considerable importance for delineating the proper parameters of the disciplinary regime in relation to the private lives of barristers and attorneys under Bermuda law.

Should the Charge be dismissed on the grounds of delay?

46. This ground of appeal was advanced in the Appellant's Notice of Appeal/Amended Notice of Appeal against the Finding and Sentence. It was in reality an appeal against the Tribunal's interlocutory refusal of the preliminary application to dismiss on the grounds of delay. Mr Froomkin KC's written response to this ground of appeal was limited to pointing out that no appeal had been filed against that decision which was *res judicata*.

47. This objection was correct on a straightforward reading of the Notice of Appeal in which the impugned Finding and Sentence were the only decisions explicitly appealed. In light of the findings on the main grounds of appeal against conviction, I see no justification for considering (1) whether an extension of time should now be granted to

[2] *Kelly-v-Point Dock Corporation* [2007] SC (Bda) 58 Civ at [1].
[3] '*The Common Law*' (1881), page 301.

pursue a ground which is somewhat academic and (2) the merits of a point which was not fully argued before this Court. My preliminary view in any event is that as the application to dismiss on the grounds of delay was only made when the PCC were ready to proceed to trial, and the Appellant herself made more than one application to adjourn at that juncture, the Tribunal were correct to apply the 'fair trial is still possible test'. Because of the inherent prejudice generally caused to barristers by having disciplinary proceedings pending against them, that test may well be inapposite in other circumstances.

Appeal against sentence

48. Having decided that the appeal against conviction should be allowed on the above grounds, it follows that the sentence of a "Reprimand" and a fine of $2500 should be set aside as a matter of course.

Summary

49. For the above reasons the Appellant's appeal against the finding recorded on 11 April 2025 by the Tribunal that the charge of professional misconduct had been proved (for reasons set out in the Finding dated 10 July 2025) is allowed in full and the relevant finding is set aside and/or quashed. The Appellant's appeal against the sentence imposed by the Tribunal is also set aside and/or quashed. Both grounds of appeal which have been allowed have succeeded on the basis of arguments which the Tribunal either did not have the benefit of or which were advanced before us in an entirely different way.

50. Unless either party applies by letter to the Registrar to be heard as to costs within 21 days of the date of delivery of the present decision, I would also set aside the costs order made by the Tribunal and 11 April 2025 and direct that the Appellant's costs of the present appeal should be paid by the Respondent to be taxed if not agreed on the standard basis.

Sir Anthony Smellie JA

51. For the reasons given respectively by the President and by Hargun JA, I agree that the appeal should be allowed and that the decisions of the Tribunal as to professional misconduct and sentence should be quashed. I also agree with Hargun JA's elucidation upon the required fair balance to be properly struck between a barrister's right to respect for private life (and other rights that might be engaged) and the public interest in the regulation of the legal profession.

Narinder Hargun JA

52. I agree with the Judgment of Kawaley P.

53. In this Judgment I propose to consider the Appellant's ground of appeal contending that the conduct complained of in Count 3 was purely private in nature and the Tribunal should have concluded that as a matter of legal analysis it was incapable of amounting to improper conduct contrary to section 17(1)(d) of the Act as read with Rule 6(ii) of the Code.

54. As noted by Kawaley P the Appellant was charged with 5 offences but only the third was ultimately pursued. It is to be noted that the "PARTICULARS" provided for all 5 Counts of improper conduct with which the Appellant was initially charged were in identical terms. The factual "PARTICULARS" of improper conduct with which the Appellant was charged before the Tribunal stated:

> *"*The Respondent has engaged in conduct which may bring the profession of barrister into disrepute in that the Respondent, contrary to the terms of a short residential tenancy in relation to a property …, owned by [the Complainant]: **(1) failed to observe the fundamental tenant obligations to make payment of monthly rent in advance and to deliver up the premises in a proper state and condition to the said [Complainant] or his agent on the termination of the tenancy; (2) failed to give due notice of her intention to terminate the contract of tenancy in relation to the said property**; and (3) has exhibited conduct which is unbefitting of a barrister **through her sustained disregard for her derogation from the said fundamental tenant obligations** and the impact of such conduct on the said [Complainant], contrary to section 17(1) of the Bermuda Bar Act 1974 as read with Rule 6(ii) of the Barristers Code of Professional Conduct 1981[the "Code"].*"* [Emphasis added]

55. Before the Tribunal the Appellant argued, by way of a preliminary jurisdictional challenge, that the conduct with which she was charged could not amount to professional misconduct on the grounds that (i) it could not reach the necessary threshold of conduct reasonably regarded as disgraceful or dishonourable by barristers of good repute or competency; and (ii) in any event the conduct relied upon related to her private affairs and was incapable of amounting to improper misconduct. In support of her contention that it was purely a private matter incapable of amounting to professional misconduct the Appellant relied, *inter alia*, on the ***English Bar Standards Board, Guidance on the regulation of non-professional conduct*** ("BSB Guidance") which states that: "A dispute about a private financial arrangement is unlikely to be sufficiently relevant or connected to the practice or standing of the profession and therefore we are unlikely to have a regulatory interest in this conduct". In summary, the Appellant contended that a breach of a private obligation could not amount to improper

conduct, unless a judgment has been obtained and, even then, only if there is no reasonable excuse as to why the judgment has not been satisfied.

56. By Ruling dated 17 December 2020 the Tribunal dismissed the Appellant's application and held that the allegations in the Complaint can amount to improper conduct. In coming to this conclusion, the Tribunal stated:

> "13. Section 4 of the Barristers' Code, as read with section 5, speaks about the conduct of a Barrister "within or outside of the professional sphere". Further, section 6 of the Barristers' Code provides that a barrister should not engage in conduct, whether in pursuit of his profession or otherwise, which is dishonest or which may otherwise bring the profession of barrister into disrepute. Therefore, we find, that the Barristers' Code stipulates that offences can be committed by a barrister whose conduct may be deemed to be unbefitting of a barrister even though the conduct is not associated with the duties of the barrister to a specific client. We further find that the nature of the allegations made by the Complainant that the Respondent took evasive steps to avoid what was duly owed to him (by way of rental arrears and damages to his property) to fall within the jurisdiction of the Tribunal to hear and resolve. In other words, we conclude that the alleged conduct is not just a simple contractual dispute between the Complainant and the Respondent but that falls within the type of offences charged under the Barristers Code' and the Act."

57. Mr. Sanderson for the Appellant made the same application before this Court contending that the Tribunal should have dismissed the Complaint against the Appellant as the conduct particularised in Charge 3, on proper legal analysis, could not amount to improper conduct.

DISCUSSION

58. It seems reasonably clear that parts of the Code are based upon the legal regime relating to professional conduct of solicitors in England and Wales in 1981, when the Code was adopted in Bermuda. In considering whether the private conduct of a barrister in Bermuda amounts to professional misconduct the Tribunal is concerned with two related issues: (i) whether the conduct complained of is serious enough to amount to professional misconduct; (ii) whether the nature of the private conduct complained of is capable of amounting to professional misconduct.

59. In ***Halsbury's Laws of England*** (2020)Vol 66 paragraph 603 it is noted that prior to the introduction of the Solicitors' Code of Conduct 2007, where a complaint was made to the Solicitors Disciplinary Tribunal in respect of a solicitor it was customary to allege that the solicitor had been guilty of conduct unbefitting a solicitor whether or not the conduct impugned was a breach of an express practicing requirement. Prior to 2007,

for the purpose of such misconduct the conduct of a solicitor had to be judged by the rules and standards of his profession, and it had to be shown that he had done something which would be reasonably regarded as disgraceful or dishonourable by solicitors of good repute and competency.

60. The current threshold for professional misconduct was recently discussed by Bourne J in ***AB, a barrister v Bar Standards Board*** [2020] EWHC 3285 (Admin) where it was held that a departure from professional rules must reach the threshold of being "serious" before it can be regarded as professional misconduct:

> "124. Ms Evans, on the other hand, cites ***Preiss v GDC*** [2001] 1 WLR 1926 (per Lord Cooke at 1936C), cited in ***Walker***, for the proposition that "serious professional misconduct does not require moral turpitude". She also refers to ***Khan***, cited above, in which Mr Beaumont appeared and argued for a test of "serious and reprehensible". Warby J said at [36]:
>
> > "The authorities make plain that a person is not to be regarded as guilty of professional misconduct if they engage in behaviour that is trivial, or inconsequential, or a mere temporary lapse, or something that is otherwise excusable, or forgivable. There is, as Lang J put it, 'a high threshold'. Only serious misbehaviour can qualify. I am not sure that the threshold of gravity is quite as rigid or hard-edged as Mr Beaumont suggests. I do not believe that in ***Walker*** Sir Anthony May was seeking to crystallise an exhaustive definition of professional misconduct. Rather, he was reaching for a touchstone to help distinguish the trivial or relatively unimportant from that which merits the 'opprobrium' of being labelled as professional misconduct. Nor do I read Lang J's decision in ***Howd*** as seeking to set out precise parameters for what can and cannot qualify as professional misconduct. Indeed, in the passage cited she used three separate terms, 'reprehensible, morally culpable or disgraceful'. I think it is perhaps unhelpful for this principle to be tied too firmly to particular phraseology."
>
> 125. I agree with Warby J. In my view it is clear from the authorities, in England and Wales as in Scotland, that a departure from professional rules must reach the threshold of being "serious" before it will be regarded as professional misconduct. I do not think that any other gloss is needed. Nor do I think that the word "reprehensible" (whose meaning in the Oxford English Dictionary is simply "deserving of reprehension, censure or rebuke; reprovable; blameworthy") adds anything to that test."

60. Ordinarily a claim against a barrister for breach of contract which does not touch upon her practice of the legal profession is unlikely to reach the threshold of "serious"

misconduct. Indeed, Mr. Froomkin KC, who appeared for the PCC, accepted that a breach of contract complaint without more against a barrister was unlikely to be characterised as improper conduct under the Code.

61. In addition to considering the filter of whether the conduct complained of reached the threshold of being "serious", the Tribunal was bound to consider the relevance of the fact that the conduct related to an alleged breach of the lease agreement of residential premises by the Appellant and did not concern the core duties of her profession. The Appellant contended before the Tribunal and this Court that the conduct which is private in nature and does not concern the barrister's profession should not ordinarily be characterised as improper conduct under the Code.

62. The ***BSB Guidance*** (20 September 2023) seeks to clarify where regulatory boundaries lie in relation to conduct which occurs outside of the barrister's professional practice. The Guidance recognises that regulation of the profession needs to strike the right balance between the public interest in preserving public confidence in individual barristers and the profession as a whole, and a barrister's rights guaranteed under the Human Rights Act 1988 and under article 8 of the European Convention on Human Rights (the "Convention") (the right to respect for private and family life, home and correspondence). The Guidance recognises that other rights may also be engaged, such as under Article 10 (the right to freedom of expression) and under Article 11 (the right to freedom of assembly and association).

63. The ***BSB Guidance*** sets out the following relevant "General Principles":

> "15. While barristers cannot be held to unreasonably high standards and are not to be viewed as "paragons of virtue", barristers are nevertheless held to a higher standard of conduct than ordinary members of the public.
>
> 17. When a barrister's conduct in their non-professional life is incompatible with the high standards the public expects of them, we may take regulatory action in the public interest. This approach has long been recognised by the courts.
>
> 18. The case law is clear that the closer non-professional conduct is to professional practice, the greater the justification for regulatory action is likely to be. We are of the view that the closer any non-professional conduct is to a barrister's professional activities, workplace or relationships and/or the more it reflects how they might behave in a professional context, the more likely we are to have a regulatory interest in it. However, we may also have a regulatory interest where the nature of the conduct is so serious that it is capable of diminishing public trust and confidence in the barrister or the profession, regardless of the context and environment.

19. We are unlikely to have a regulatory interest where we receive information about conduct in a barrister's personal/private life which has little or no impact on their professional practice, or on public trust and confidence in the profession."

64. Helpfully, the ***BSB Guidance*** provides several case studies to illustrate when the BSB is likely or unlikely to have regulatory interest. Relevant to the present case is the hypothetical scenario in Case Study 3:

> "We receive a report about a barrister's (**B**) failure to repay a substantial loan provided by a friend (**F**), and there is evidence to show that B had agreed to repay the loan on a number of occasions. In this case, there is no evidence that B has acted dishonestly. The loan has no relevance to B's professional practice.
>
> A dispute about a private financial arrangement is unlikely to be sufficiently relevant or connected to the practice or standing of the profession and therefore we are unlikely to have a regulatory interest in this conduct.
>
> However, we may take a regulatory interest in B's conduct if a judgment/order has been obtained by F in relation to the debt and B failed to pay the debt in accordance with that order. In those circumstances, B would be in breach of an order of the court, and although it would very much depend on the reasons for this breach, B's conduct may potentially engage **CD5**[4] and/or **rC8**[5].
>
> Whether or not action would be taken in relation to such conduct would depend on the reasons for B's non-compliance, including their means to pay. We are more likely to have a regulatory interest where the issues have been explored during a civil hearing in relation to the debt, and B has simply ignored the final order, or where B has exhausted the appeal process and still refuses to comply with the order."

65. Further assistance in relation to the circumstances in which private conduct of a barrister may constitute professional misconduct is provided by the decision of Dame Victoria Sharp P and Swift J in ***Beckwith v Solicitors Regulation Authority*** [2020] EWHC 3231 (Admin). The Appellant, a partner in a major City firm, had a sexual encounter with an associate in the firm. The Appellant was a supervising and appraisal partner. The SRA

[4] CD5 states: "You must not behave in a way which is likely to diminish the trust and confidence which the public places in [a barrister] or in the profession."
[5] rC8 states: "You must not do anything which could reasonably be seen by the public to undermine your honesty, integrity (CD3) and independence (CD4)."

alleged that the appellant breached SRA Principles 2 (integrity) and 6 (public trust in profession), claiming he knew or ought to have known that she was vulnerable due to intoxication and that his conduct was inappropriate and an abuse of position. The Tribunal rejected any abuse of authority or that the encounter was non-consensual but found that the sexual encounter was inappropriate in the circumstances and that the Appellant had breached Principles 2 and 6. On appeal, the Court analysed the concept of "integrity" in Principle 2 and held at paragraph 30:

> "Three points of principle can be drawn from this summary. The first is that in the context of the regulation of a profession there is an association between the notion of having integrity and adherence to the ethical standards of the profession. This is consistent with the ordinary meaning of the word, namely adherence to moral and ethical principles. The second is that on matters touching on their professional standing there is an expectation that professionals may be held to a higher standard than those that would apply to those outside the profession. The third is that a regulatory obligation to act with integrity "does not require professional people to be paragons of virtue"

66. Having regard to the findings of the Tribunal the Court held that the Appellant could not be held to have breached Principle 2 (integrity). At paragraphs 38-39 the Court held:

> "38. Given the detailed findings the Tribunal had made as to the events of the evening, we consider the Tribunal was clearly right to conclude that no abuse of authority had occurred. However, the Tribunal then fell into error by categorising those events as it had assessed them, to be a breach of Principle 2. In the context of the course of conduct alleged in Allegation 1.2, the requirement to act with integrity obliged the Appellant not to act so as to take unfair advantage of Person A by reason of his professional status. On the findings made by the Tribunal, that had not happened. In the premises, the Tribunal's final statement that the Appellant had "fallen below accepted standards" is not coherent. Whatever "standards" the Tribunal was referring to as ones which identified what, in the circumstances of this case, the obligation to act with integrity required, were not ones properly derived from the Handbook.
>
> 39. There is one further matter to note. **Our analysis is premised on the need to define the content of the obligation to act with integrity, which might otherwise be an obligation at large, by reference to the standards set out in the Handbook. Confining the obligation in this way preserves the legitimacy of the regulatory process by maintaining the necessary and direct connection between the obligation to act with integrity and rules made in exercise of the power at section 31 of the 1974 Act.** Yet the approach we have taken in this case is not any form of permission to expand the scope of the obligation to act with integrity simply by making rules that

> extend ever further into personal life. Rules made in exercise of the power at section 31 of the 1974 Act (in the language of the Handbook, the "outcomes" and the "indicative behaviours") cannot extend beyond what is necessary to regulate professional conduct and fitness to practise and maintain discipline within the profession." [Emphasis added]

67. The Court noted that in relation to Principle 6 (public trust in profession) the Tribunal explained that the Appellant had acted in breach of Principle 6 because "members of the public would not expect a solicitor to conduct himself in the way the [Appellant] had". The Tribunal had also stated that the Appellant's conduct "affected not only his professional reputation but the reputation of the profession". The Court considered that the Tribunal's conclusion on the application of Principle 6 on the facts as found by the Tribunal was flawed and could not stand. At paragraphs 43 and 45 the Court held:

> "43. We consider the same general approach must also apply when determining the scope of Principle 6. The content of Principle 6 must be closely informed by careful and realistic consideration of the standards set out in the 2011 Code of Conduct. Otherwise, Principle 6 is apt to become unruly. **There is a qualitative distinction between conduct that does or may tend to undermine public trust in the solicitor's profession and conduct that would be generally regarded as wrong, inappropriate or even for the person concerned, disgraceful.** Whether that line between personal opprobrium on the one hand and harm to the standing of the person as a provider of legal services or harm to the profession *per se* on the other hand has been crossed, will be a matter of assessment for the Tribunal from case to case, but where that line lies must depend on a proper understanding of the standards contained in the Handbook.
>
> 45. **However, for the reasons we have set out already (paragraph 37 above), the facts as found and assessed by the Tribunal are not capable of supporting the conclusion that the Appellant acted in breach of Principle 6. What the Appellant did affected his own reputation; but there is a qualitative distinction between conduct of that order and conduct that affects either his own reputation as a provider of legal services or the reputation of his profession.** The Tribunal asserted that the Appellant's behaviour crossed this line but provided no explanation. At paragraphs 25.189 – 25.190 the Tribunal stated that "Members of the public would not expect a solicitor to conduct himself in the way the [Appellant] had. Such conduct … would attract the [dis]approbation of the public". However, the Tribunal had already concluded that the Appellant's conduct did not amount to an abuse of his seniority or authority over Person A. On the application of Principle 6 to the facts of this case, that conclusion is a critical conclusion and, as we have already said, on the facts of this case it was a conclusion that was clearly correct. Conduct amounting to an abuse by a solicitor of his professional position is

clearly capable of engaging Principle 6. But, as the Tribunal concluded, that was not this case." [Emphasis added]

68. The Appellant in ***Beckwith v SRA*** also argued that if regulatory rules such as Principles 2 and 6 reach wide enough to apply to conduct outside work and outside the practice of profession, then they may interfere with his right to respect for private life under article 8(1) of the Convention. It was contended that therefore, the existence (per se) of such rules must be justified to the standards required in article 8(2). In particular, rules that interfere with the right to respect for private life must meet the "in accordance with the law" requirement set out in article 8(2) as well as striking a fair balance between the individual right and legitimate public interests. The Court recognised the need to strike a fair balance between the right to respect of private life and the public interest in the regulation of solicitors' profession. At paragraphs 50 and 54 the Court held:

> "50. We accept the starting point of these submissions, namely that the requirements to act with integrity and to act so as to maintain public trust in the provision of legal services, are requirements which will, on occasions require the SRA or the Tribunal to adjudicate on a professional person's private life. Common sense dictates that such cases must and will arise. The Appellant's submissions give rise to two related issues. The first is whether the requirements imposed by Principle 2 and Principle 6, respectively, meet the minimum standard of legal certainty, which is one part of the article 8(2) justification requirement. The second concerns the extent to which Principle 2 and Principle 6 may reach into private life and whether, at the level of principle that is consistent with the required fair balance between the public interest and private rights. These are significant matters. **It is one thing to accept that any person who exercises a profession may need, for the purposes of the proper regulation of that profession in the public interest, to permit some scrutiny of his private affairs; to suggest that any or all aspects of that person's private life must be subject to regulatory scrutiny is something of an entirely different order.**
>
> 54. There can be no hard and fast rule either that regulation under the Handbook may never be directed to the regulated person's private life, or that any/every aspect of her private life is liable to scrutiny. **But Principle 2 or Principle 6 may reach into private life only when conduct that is part of a person's private life realistically touches on her practise of the profession (Principle 2) or the standing of the profession (Principle 6). Any such conduct must be qualitatively relevant. It must, in a way that is demonstrably relevant, engage one or other of the standards of behaviour which are set out in or necessarily implicit from the Handbook**. In this way, the required fair balance is properly struck between the right to respect to private life and the public interest in the regulation of the solicitor's profession. Regulators will do well to recognise that it is all too easy to be dogmatic without knowing it; popular

outcry is not proof that a particular set of events gives rise to any matter falling within a regulator's remit." [Emphasis added]

69. The distinction between public and private conduct of a barrister is recognised and emphasised in ***AB v Bar Standards Board*** [2020] EWHC (Admin). In that case Bourne J held at paragraph 70 and 74:

> "70. The public/private distinction is in my view a filter which a disciplinary tribunal is bound to apply in any case clearly involving a barrister's conduct in his or her private life rather than in his or her practice as a barrister. If the tribunal's decision could be shown to be wrong in that regard as a matter of law, it would be surprising if this Court nevertheless left that decision undisturbed. I therefore consider that the Appellant should be allowed to rely on this ground of appeal.
>
> 74. It seems to me that, applying the guidance, conduct in a person's private or personal life is in general not likely to be treated as a breach of CD5 but nevertheless can be so treated for good reason. The reason could be that the conduct, though personal or private, clearly is or is analogous to conduct which contravenes other provisions of the Code."

70. Whilst the principles set out in the English ***BSB Guidance, Beckwith v SRA*** and ***AB v BSB*** are set out in the context of the Code of Conduct appearing in the BSB's Handbook and the SRA Principles in the SRA Standards and Regulations, they apply, in my judgment, equally to the regulatory regime applying to barristers in Bermuda. There is no reason in principle why the threshold for conduct amounting to professional misconduct under the Bermuda regulatory regime should differ from the position prevailing under the English regimes. Likewise, there is no reason in principle why the English approach that the regulatory regimes may reach into private life only when the conduct that is part of a person's private life realistically touches upon his/her practice of the profession should not apply in the context of the Bermuda regulatory regime. It is to be noted that, in relation to any claim for a right to private and family life, as the Convention has been extended to Bermuda by the United Kingdom Government, its terms apply to Bermuda at the international level. As a consequence, litigants in Bermuda have a legitimate expectation that the rights protected by the Convention will be adhered to by the relevant authority in Bermuda (see ***Davis and Davis v Governor and Minister for National Security*** [2012] Bda LR 29 at [31] per Kawaley J (as he then was)). It follows that a barrister practising at the Bermuda Bar has a legitimate expectation that the rights protected by article 8 of the Convention (and indeed any other of the protected rights) will be adhered to by the PCC and the Tribunal appointed under the regulatory regime and that in interpreting and applying the Act and the Code, the PCC and the Tribunal will strive to give effect to article 8 of the Convention (see ***Simmons v Attorney General*** [2005] Bda LR 2 at page 6 (Ground CJ) cited in ***Davis v Davis*** at [32]).

71. Accordingly, the position under the Act and the Code in relation to non-professional conduct (conduct that does not occur during a barrister's professional activities as a barrister) can be summarised as follows:

    1. A departure from professional rules must reach the threshold of being "serious" before it will be regarded as improper conduct (***AB v BSB*** at [125]).

    2. While barristers cannot be held to unreasonably high standards and are not to be viewed as "paragons of virtue", barristers are nevertheless held to a higher standard than ordinary members of the public (***BSB Guidance*** paragraph 15; ***Beckwith v SRA*** at [30]).

    3. Conduct in a barrister's private or personal life is in general not likely to be treated as improper conduct but nevertheless can be so treated for good reason. The reason could be that the conduct, though personal or private is analogous to conduct which contravenes provisions of the Code. Improper conduct may reach into private life of a barrister only when the conduct that is part of the person's private life realistically touches on his/her practise of the profession or the standing of the profession. It must, in a way that is demonstrably relevant, engage one or other standards of behaviour which are set out in or necessarily implicit from the Code (***BSB Guidance*** paragraph 18, 19 and Case Study 3; ***AB v BSB*** at [74] and [75]; and ***Beckwith v SRA*** at [54]).

72. As set out in [55], the Tribunal concluded that the alleged conduct "is not just a simple contract dispute between the Complainant and the Respondent but that falls within the type of conduct that falls within the offenses charged under the Barristers Code and the Act." In coming to this conclusion, the Tribunal relied heavily upon the "deceptive" nature of the Appellant's conduct including (i) the email from the Appellant to the agent in which she "audaciously" attempted to persuade the agent to relinquish her own agency obligations to the Complainant by not reporting to him that the Appellant was packing up and vacating the premises; (ii) the Appellant's intention to leave the Complainant "high and dry"; (iii) the Appellant was "clandestinely orchestrating" her departure from Bermuda without giving the Complainant notice that she was vacating the premises; and (iv) it was the "deceptive" nature of a departure which elevated the Appellant's improper conduct to one of mid-level seriousness. As Kawaley P has noted in his Judgment none of these factual allegations which the Tribunal used to distinguish this conduct from a "simple contractual dispute" are to be found in the "Particulars" underpinning the relevant charge of improper conduct. Accordingly, as Kawaley P has held, the Tribunal ought not to have made these findings against the Appellant unless they had been properly pleaded in support of the charge of improper conduct.

73. Had the Tribunal confined its inquiry to the factual allegations set out in the Complaint, it seems reasonably clear that the Tribunal was bound to conclude that this was a "simple contractual dispute" and did not properly engage the disciplinary regime

against the Appellant. Accordingly, the Tribunal should have concluded that the allegations made in the Complaint against the Appellant were personal and private and could not rise to the level of professional misconduct.

74. I note in passing that the Complainant himself gave evidence that after the Appellant had left Bermuda, he sought legal advice in relation to the recovery of damages under the lease agreement. His evidence to the Tribunal, as recorded in paragraph 21 of the Finding dated 10 July 2025 is as follows:

> "He accepted that there is an arbitration clause embedded in paragraph 4(d) of the lease agreement and that he did not invoke it. He explained that he went to several lawyers, and they did not advise him to go down the road of arbitration. If they did, he would have followed their advice. Further, that three (3) lawyers told him that it would cost a lot of money to take the Respondent to Court (i.e. to spend $10,000 to get $9,000), that there would have been an issue getting her in Court if she was not in Bermuda, and that he should take the matter to the PCC".

75. It appears from paragraph 21 of the Finding that it was the Complainant's own evidence that he received the surprising legal advice that he should "take the matter to the PCC" as an alternative to arbitration or court proceedings. It appears that the Complainant followed this legal advice and made the Complaint to the PCC. The Complainant also accepted that he contacted the Appellant's previous Bermuda employers and carbon copied her new employers overseas in relation to the Complaint. This conduct on the part of the Complainant would appear to be a clear breach of his confidentiality obligation under section 25 of the Act. In light of this evidence the Appellant contended that the Complaint had been made to the PCC as leverage to extract the amount of approximately $9,000 which he alleged was due to him under the lease agreement. Despite the evidence outlined above the Tribunal came to the surprising conclusion that this allegation was "unsubstantiated".

CONCLUSION

76. For the reasons set out in this Judgment and the Judgment of Kawaley P I would allow the appeal and make the orders proposed by Kawaley P.