SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11163-2013

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

PAUL FRANCIS FALLON Respondent

Before:

Mr D. Green (in the chair)
Mr J. N. Barnecutt
Mrs L. McMahon-Hathway

Date of Hearing:
12th to 14th March 2014, 17th to 19th March 2014, 31st March 2014 & 1st April 2014

Appearances

Rupert Allen, Counsel of Fountain Court Chambers, Fountain Court, Temple, London EC4Y 9DH instructed by Capsticks Solicitors LLP, 1 St George's Road, Wimbledon, London SW19 4DR for the Applicant.

The Respondent appeared save on 1 April 2014.

JUDGMENT

Allegations

1. The allegations against the Respondent, Paul Francis Fallon made on behalf of the Solicitors Regulation Authority as amended with the consent of the Tribunal, were that, while in practice as a member and/or as the Sole Principal of City Law Financial LLP (" the firm"):

1.1 On dates between around 26 April 2012 and 19 October 2012, he:

1.1.1 failed to pay to counsel, promptly or at all, sums received from clients in whole or in part for the express or specific purpose of settling fee notes raised by counsel in respect of work done for the relevant clients;

1.1.2 transferred client monies, including monies received from clients for the express or specific purpose of settling counsel's fees, from the firm's Client Account to the firm's Office Account and the firm's Office Business Reserve Account;

1.1.3 used client monies, including monies received from clients for the express or specific purpose of settling counsel's fees, for his own purposes and/or those of the firm

and thereby breached all or alternatively any of Principles 2, 4, 5, 6, 7 and 10 of the SRA Principles 2011 and further or alternatively failed to achieve all or alternatively any of outcomes O(1.1) and O (1.2) of the SRA Code of Conduct 2011 and further or alternatively breached all or alternatively any of Rules 1.2 (a), 1.2 (c) and 20.1 of the SRA Accounts Rules 2011.

1.2 On dates between about 23 April 2012 and 1 June 2012, he made false statements to clients as to the settlement of counsel's fees on their behalf, and thereby breached all or alternatively any of Principles 2, 4, 5 and 6 of the SRA Principles 2011 and further or alternatively failed to achieve all or alternatively any of outcomes O(1.1) and O(1.2) of the SRA Code of Conduct 2011.

1.3 On a date between about 19 and 26 October 2012, he misappropriated sums due to the firm in that he gave instructions, or caused instructions to be given, to the City of London to redirect sums payable to the firm to a bank account other than one controlled by the firm, and thereafter used part of these monies belonging to the firm for his own purposes, and thereby breached one or both of Principles 2 and 8 of the SRA Principles 2011.

1.4 On or about 24 April 2012, 25 April 2012 and 28 May 2012, he exercised or purported to exercise rights of audience by appearing on behalf of clients before proceedings in the High Court of Justice when he was not qualified or entitled to do so, and thereby breached all or alternatively any of Principles 1, 4, 6 and 7 of the SRA Principles 2011 and further or alternatively failed to achieve outcome O (HR4) of the SRA Higher Rights of Audience Regulations 2011 and further or alternatively failed to achieve outcome O(1.3) of the SRA Code of Conduct 2011.

1.5 In relation to an adverse costs order made against a client by the High Court of Justice on 28 May 2012, he:

1.5.1 failed to notify the client in writing or otherwise within seven days of receiving notice of the order, or at any time thereafter, in breach of his duty under rule 44.8 of the Civil Procedure Rules 1998;

1.5.2 on or about 1 June 2012, made false statements to the client as to the existence of the adverse costs order

and thereby breached all or alternatively any of Principles 2, 4, 5, 6 and 7 of the SRA Principles 2011 and further or alternatively failed to achieve all or alternatively any of outcomes O(1.1), O(1.2), O(1.3), and O(1.16) of the SRA Code of Conduct 2011.

1.6 On or about 29 May 2012 and thereafter, he failed to account to a client for, and used for his own purposes and/or those of the firm, a duplicate payment which was made to the firm by the client in error, despite indicating to the client that the sum would be repaid, and thereby breached all or alternatively any of Principles 2, 4, 6, 7 and 10 of the SRA Principles 2011 and further or alternatively breached all or alternatively any of Rules 1.2(a), 1.2 (c), 14.3 and 20.1 of the SRA Accounts Rules 2011 and further or alternatively failed to achieve all or alternatively any of outcomes O(1.1), O(1.2), and O(1.16) of the SRA Code of Conduct 2011.

1.7 Between around 16 August 2012 and 22 October 2012, he practised as a solicitor without a valid practising certificate in breach of one or both of sections 1 and 20 of the Solicitors Act 1974 and thereby breached all or alternatively any of Principles 1, 4, 5 and 6 of the SRA Principles 2011 and further or alternatively failed to achieve all or alternatively any of outcomes O(1.2), and O(1.3) of the SRA Code of Conduct 2011.

1.8 From around April 2012 to 19 October 2012, he failed to make adequate arrangements for the financial stability and proper management of the firm, including in particular:

1.8.1 not appointing a new member of the firm or making an application for recognition as a sole practitioner following Mr H's departure from the firm on or about 9 February 2012 in breach of Rule 16.3 of the SRA Practice Framework Rules 2011;

1.8.2 not making proper arrangements for the management of client files following the forfeiture of the lease at the firm's offices at 1 Kings Arms Yard, London, EC2R 7AF

and thereby breached all or alternatively any of Principles 1, 4, 5, 6, 7, 8, and 10 of the SRA Principles 2011 and further or alternatively breached Rule 16.3 of the SRA Practice Framework Rules 2011 and further or alternatively failed to achieve all or alternatively any of outcomes O(1.1), O(1.2), O(7.2), O(7.3), and O(7.4) of the SRA Code of Conduct 2011.

Dishonesty was not an essential ingredient to all or any of these allegations, and it was open to the Tribunal to find the allegations proved with or without the element of dishonesty. However it was the Applicant's position that the Respondent acted dishonestly in respect of all or alternatively any of allegations 1.1, 1.2, 1.3, 1.5.2 and 1.6 above.

Documents

2. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 24 June, 2013 with exhibits DWRP1 in three volumes consisting of:
    - Applicant's documents
    - Witness statements
    - Other documents
- Volume 4 consisting of:
    - Supplemental witness statement of David Grief dated 26 July 2013 with exhibit DG7
    - Witness statement of Peter Ling dated 30 July 2013 with exhibits PGLl to PGL3
    - Signed transcript of RA dated 25 July 2013 of manuscript notes at exhibits RA2 to RA4 of the witness statement of RA dated 21 June 2013
    - Response to the Rule 5 Statement dated 3 March 2014
    - Document appended to Response to the Rule 5 Statement
- Correspondence bundle
- Skeleton argument of the Applicant by Mr Allen dated 10 March 2014
- Witness statement of Stephen Middleton-Cassini, Investigation Officer dated 13 March 2014 with exhibit SMC1
- Bundle of e-mails between David Grief and TP of D dated from 8 March 2012 to 13 March 2012
- Rules and regulations bundle
- Claims management-Compensation Fund decisions of Adjudicator on the applications of G QC, and B and F of counsel
- Judgment in the case of Financial Services Authority v Fox Hayes [2009] EWCA civ 76
- Extract from the Limited Liability Partnerships Act 2000, section 4A
- Applicant's schedule of costs dated 27 March 2014

Respondent

- Response to the Rule 5 Statement dated 3 March 2012 [2014]
- Respondent's skeleton argument dated 10 March 2012 [2014]
- Personal financial statement of the Respondent dated 7 March 2012 [2014]
- E-mail from the Respondent to the Tribunal office and Capsticks dated 4 March 2014 with enclosure
- E-mail from the Respondent to Capsticks and the Tribunal office dated 7 March 2014
- E-mail from the Respondent to Capsticks and the Tribunal office dated 16 March 2014
- Bundle of internet press cuttings dated January and February 2014
- E-mail exchanges between the Respondent and the Tribunal office on 1 April 2014

Preliminary Issues

Applicant's application to amend the allegations

3. For the Applicant, Mr Allen applied for permission to amend the allegations by removal from:

    - Allegation 1.1.3 of the reference to Principle 8 of the SRA Principles 2011;
    - Allegation 1.4 of the reference to outcomes O(HR1), O(HR2) of the SRA Higher Rights of Audience Regulations 2011 and outcomes O(5.1), O(5.4) and O(5.6) of the SRA Code of Conduct 2011;
    - Allegation 1.6 of the reference to outcome O(1.13) of the SRA Code of Conduct 2011;
    - Allegation 1.8 of the reference to Principle 2 of the SRA Principles 2011.

4. Mr Allen submitted:

    In respect of allegation 1.1.3, Principle 8 related to a solicitor running his business or carrying out his role in the business effectively and in accordance with proper governance and sound financial and risk management principles. The allegation did not relate to risk management issues and the other breaches alleged covered the matter.

    In respect of allegation 1.4, outcome O(HR1) required the solicitor to have achieved the standard of competence required of higher court advocates and outcome O(HR2) that he had demonstrated this competence through objective assessment, both of which the Respondent had done. Outcome O(5.1) required a solicitor not to attempt to

deceive or knowingly or recklessly mislead the court and there was no doubt about the Respondent's integrity in respect of the allegation. The Respondent asked for clarification as to whether in respect of outcome O(5.1), Mr Allen was saying that there had been no mental ingredient in the alleged misconduct in which case he submitted there was a substantial rowing back from the allegation and the Applicant would be left with carelessness. Mr Allen responded that the Applicant's position was that the Respondent did not have the required qualification but exercised higher rights. The Applicant disputed the Respondent's evidence that he had spoken to its Ethics Department on 27 April 2012. At best he might have been careless but the Applicant did not disavow the suggestion that he might have been reckless but it was felt that an allegation that he had misled the court did not add anything. It would be for the Tribunal to determine if what the Respondent had done amounted to misleading on the facts found but the Applicant did not rely on a mental element. If the Tribunal thought such an element was necessary then it would have to decide if that element was satisfied in law. Outcome O(5.4) required a solicitor not to place himself in contempt of court; it was the Applicant's view that what the Respondent was alleged to have done could constitute contempt of court but there was no court finding to that effect. Outcome O(5.6) required a solicitor to comply with his duties to the court and the allegation was based on obligations under the Applicant's rules rather than duties to the court.

In respect of allegation 1.6, O(1.13) related to discussing whether the potential outcomes of the client's matter were likely to justify the expense or risk involved, including any risk of having to pay someone else's legal fees. Mr Allen considered this to be entirely inapposite in the circumstances.

In respect of allegation 1.8 and Principle 2; the Applicant was not making the case in respect of integrity regarding the mismanagement of the firm. At best the Respondent had been negligent but the conduct did not rise to the level of lack of integrity.

5. The Tribunal agreed to the amendment of the allegations, there being no objection from the Respondent.

Witnesses

6. It had originally been the intention of the Applicant to call MB as witness by video link but by agreement by the parties this was dispensed with. The Applicant also wished to call DA. Contact had been established with him and he had been asked to be available during the period of the trial. On the fourth day of the hearing, Mr Allen informed the Tribunal that the Applicant had heard nothing further from DA since the beginning of the previous week when he indicated that he was willing to attend and that the Applicant was not in a position to call him. Mr Allen asked the Tribunal to admit DA's witness statement into evidence but when looking at it to bear in mind that he had not been subject to cross-examination by the Respondent. The witness statement was fairly limited in scope and largely included in order to allow the Applicant to exhibit e-mails sent by the Respondent to DA. There was no issue that the monies involved had been received and not used to pay counsel in respect of which it was for the Tribunal to make its determination. Mr Allen also asked the Tribunal bear in mind the unsatisfactory circumstances in which the Applicant was asked to make the witnesses available. The Respondent had not complied with the

Tribunal's directions timetable; had said that he did not need the witnesses and then said that he did need some of them and DA was only identified as one such on 4 March 2014. DA had indicated that he had to attend to matters with the FSA (now the FCA) at the end of the previous week.

7. The Respondent submitted that he was slightly surprised that the allegation relating to DA was not being withdrawn as DA was the cornerstone of it and it was not his fault that DA had not appeared. He referred to DA's witness statement as a scrap of paper in the file for what it was worth.

8. The Tribunal considered the submissions for the Applicant and for the Respondent and determined that DA's statement should be admitted in evidence but that if he did not appear, the Tribunal would give such weight to his statement as it considered appropriate.

Application of the Respondent to admit documents relating to Compensation Fund Claim

9. On the fourth day of the hearing, the Respondent made an application for disclosure by the Applicant of the reasoned findings made in respect of applications to the Compensation Fund by the barristers at EC Chambers in support of his submissions that the Applicant was bringing both a generic and specific allegation against him and that the evidence of DG, a chief clerk of EC Chambers was polluted by reason of having been based on second-hand evidence taken from Ms TP (a lawyer in Athens for D) and Ms EX (D's Chief Financial Officer) a lawyer for and an employee of the firm's client [D] respectively. He also submitted that as the grounds for an application to the Compensation Fund were either dishonesty or hardship and it did not appear likely that hardship was available to the barristers in question, the application must have been based on alleged dishonesty.

10. For the Applicant, Mr Allen submitted that the claim had been accepted on the basis of dishonesty in the allocation of client monies received by the firm from D that had been allocated for the purposes of paying counsels' fees but that the standard of proof used by the Compensation Fund was the balance of probabilities rather than the criminal standard used in the Tribunal. He also submitted that the Compensation Fund finding was not put forward by the Applicant for the purposes of allegation 1.1. The fact that the Compensation Fund accepted the claim on a wider basis was of no relevance to the Tribunal's decision and Mr Allen had only raised it with DG because the Respondent had referred to it in his response. Mr Allen understood that the Respondent was saying that DG was seeking to support the allegation in order to get a finding of dishonesty but he had no reason to do that because the payment of compensation had already been made and the Applicant did not rely on it. Mr Allen also submitted that while DG said he had a healthy scepticism about what he was told, he did not positively assert that TP and EX were lying. In his statement of 19 June 2013, DG stated:

> "It became apparent that it was her [TP's] understanding that funds had been sent to [the firm] in order for Counsel's fees to be paid.... It was stated to me very clearly that [D] were of the view that they had settled outstanding payments to third parties with [the firm] specifically with regard to Counsel's fees."

Mr Allen submitted that the Tribunal had DG's evidence upon which he had been cross-examined.

11. The Respondent submitted that DG having given evidence that he had a healthy scepticism about e-mails received from EX and TP, if he had relied on them in the application to the Compensation Fund that should be put into the balance in assessing his credibility. The Respondent had not been involved in the application or told of the finding (at the time).

12. The Tribunal considered the submissions for the Applicant and by the Respondent. The Tribunal thought that the decisions of the Compensation Fund might be relevant to its assessment of the credibility of DG as a witness. It noted that the Respondent had not been involved in the application process. In giving evidence, DG had made some concessions in that he now regarded what D's people said with healthy scepticism. The Tribunal also had in mind the seriousness of the allegations against the Respondent and the potential impact on him if they were found proved. The Tribunal therefore decided to ask the Applicant's representatives to obtain the decisions and they were admitted into evidence.

Application of the Respondent to admit documents after submissions and evidence had closed and the Tribunal had commenced deliberations on its findings

13. The Tribunal adjourned to consider its findings on the afternoon of 19 March 2014, the parties having been required to return to the Tribunal to hear those findings not before 12 noon on 31 March 2014. On 24 March 2014 at 16.11, the Respondent communicated with the Tribunal office and the Applicant's representatives by e-mail indicating that he wished to introduce new documentation into evidence to which the Applicant's representatives objected. The Tribunal was advised of the application without being informed of the nature and detail of the material and determined that it would hear a formal application from the Respondent at 9:30 am on 31 March 2014. The Tribunal bore in mind that although an advocate, for the purpose of these proceedings, the Respondent was a litigant in person and the Tribunal wished to do all it could to be fair to both parties. The Respondent submitted that he had only discovered the material on 21 March 2014 after the hearing was adjourned, as a result of an internet search and sent it to those instructing Mr Allen. The material had been publicly available since January 2014 [the first item was dated 9 January and the second 5 February 2014). The Respondent submitted that if it was publicly available why should it not be available to the Tribunal? He referred to case law including relating to cases where judges had undertaken their own research during deliberations and referred to Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

14. Mr Allen submitted that the material had been in the public domain since January 2014 and could have been obtained with reasonable diligence prior to or during the hearing. He also submitted that the material was not evidential but reported on facts. If the Respondent was adducing the material to prove facts then he was seeking to put in new evidence in which case he should prove the facts. The material did not meet the criteria for evidence that should come in at a late stage and the Applicant considered that the material was wholly irrelevant. The Respondent submitted that he did not ask the Tribunal to make factual findings on the primary issues reported; but

asked the Tribunal to accept that they were part of the factual matrix and material to the findings that the Tribunal had to make. Having heard submissions from Mr Allen for the Applicant and from the Respondent, the Tribunal asked if the parties had any objection to its seeing the material in order to make its determination. There were no objections. Having seen the material, the Tribunal determined that it would admit into evidence the new material which consisted of a bundle of press cuttings about the arrest of certain persons in Greece including Mr C of D. The Tribunal then once more adjourned to deliberate.

Absence of the Respondent on the final day of hearing

15. On the penultimate day of the hearing 31 March 2014, when the Tribunal had announced its findings and was ready to proceed to hear mitigation from the Respondent, he asked that the hearing be adjourned until the following morning to allow him to prepare and it was agreed that the hearing would resume at 10.00 the following day 1 April 2014. At that time, the Respondent did not appear but he contacted the Tribunal office by e-mail at 09.25 before the hearing was due to resume asking that a copy of the Tribunal's "reasoned decision" be sent to him as soon as it was available and enquiring how long it would take to produce. A reply was sent to that e-mail by the Tribunal office. When it became apparent that the Respondent was not present within the precincts of the Tribunal, the Tribunal directed that he be contacted by e-mail enquiring whether he intended to appear and advising him that the Tribunal was prepared to wait until 10.45 but after that it would proceed. There was no reply and a further e-mail was directed to be sent informing the Respondent that the Tribunal would now proceed to consider, having regard to R v Haywood, R v Jones, R v Purvis [2001] All ER (D) 256 Jan, whether to proceed in his absence on the basis that he had waived his right to be present by deliberately and voluntarily absenting himself in circumstances where the hearing had been fixed with his agreement and at his request. Again no reply was received. The Tribunal invited Mr Allen to make submissions. Mr Allen referred to the seriousness of the findings of fact and law made against the Respondent and submitted that it was difficult to avoid the conclusion that the Respondent had deliberately absented himself. He had fully participated in the hearing so far and it was only after findings were announced that he did not appear. The Tribunal was extremely concerned to be fair to the Respondent particularly having regard to the seriousness of the allegations which had been found proved against him which could lead to his right to practise being interfered with. However in all the circumstances, it considered that the Respondent had deliberately and voluntarily absented himself without tendering any good reason in spite of being specifically reminded of the continuing hearing which had been arranged at his convenience and had plainly waived his right to attend. The Tribunal was also of the view that to delay the matter would not be in the interests of justice, particularly as the only communication from the Respondent had been to enquire when the detailed reasons for the Tribunal's findings would be available and an adjournment would delay his receiving the findings. The Tribunal determined to proceed. An e-mail was sent to the Respondent to that effect at 11.57. The email included a reference to the findings of dishonesty and that the sanctions available to the Tribunal included striking off. At 11.59 having not responded to the earlier e-mails about his nonappearance, the Respondent replied that he looked forward to receiving the reasoned decision on those points as well. The Tribunal then continued with the hearing.

Factual Background

16. The Respondent was born in 1961 and admitted to the Roll in 1985.

17. From around 1 April 2009 until around 9 February 2012, the Respondent was a member of the firm, the other members being Ms M until around 12 October 2011 and Mr H until around 9 February 2012. From around 9 February 2012 onwards, the Respondent was the only remaining member and the Sole Principal of the firm.

18. On 17 October 2012, the SRA Panel of Adjudicators Sub-Committee resolved to intervene into the firm. The intervention was effected by the Applicant's intervention agents, Devonshires Solicitors on 19 October 2012.

19. The Respondent did not currently hold a practising certificate.

Counsel's fees - EC Chambers allegation 1.1

20. Mr G QC, Mr B and Mr F of EC Chambers ("EC") were instructed by the Respondent on behalf of D SA ("D") in an arbitration matter. Mr G QC was instructed in November 2008, Mr B in October 2009 and Mr F in September 2010.

21. Between November 2008 and July 2011, EC issued fee notes to the firm at regular intervals for Mr G QC's fees in this matter totalling £241,675. Payments were made to EC by the firm in respect of Mr G QC's fees between about 2 July 2009 and about 13 December 2010 in the total sum of £56,075.

22. Between October 2009 and July 2011, EC issued fee notes to the firm at regular intervals for Mr B's fees in this matter totalling £80,300. Payments were made to EC by the firm in respect of Mr B's fees between about 10 November 2010 and about 13 December 2010 in the total sum of £15,450.

23. Between September 2010 and July 2011, EC issued fee notes to the firm at regular intervals for Mr F's fees in this matter totalling £39,125. No payments were received from the firm in relation to Mr F's fees.

24. No payments were made to EC by the firm in relation to this matter after 13 December 2010.

25. The monies which remained invoiced but unpaid to each counsel in respect of this matter were:

    - Mr G QC-£185,600, Mr B-£64,850; and Mr F-£39,125.

26. Mr David Grief, ("DG") Senior Clerk at EC, engaged in correspondence with the Respondent and D in relation to the outstanding fees on behalf of the three counsel.

27 In an e-mail to DG on 16 January 2012 at 10.25, the Respondent stated:

> "The position is deeply unsatisfactory for us too and, as I mentioned last month, the sums we are being paid are only sufficient to (just), our overheads;

> we have been paid £100,000 in all. If there was sufficient over to meet something of what is due to counsel then I would of course do so.
>
> You should have in mind that these issues arose with the client only in February of last year and by reason of the economic conditions in Greece. They are not exactly within the normal parameters of credit management but we are handling them as best we can. See latest e-mail below."

28. In an e-mail to DG on 7 March 2012 at 16:38, Ms TP on behalf of D, stated as follows:

> "… We were very unpleasantly surprised by the fact that the barristers' fees were not duly paid by [the firm], since we have sent the funds for the settlement of such fees. We will discuss this with [the firm] and internally with our client and inform you on (sic) our proposals."

29. On 30 July 2012 at 13:29, the Respondent sent an e-mail to Ms EX of D which included the following request for payment:

> "Please confirm the payment is on line for tomorrow so that I can tell the suppliers (who are chasing ceaselessly)"

30. EX replied to the Respondent by e-mail on 30 July 2012 at 16:51 as follows:

> "We will transfer to your account the amount of 273,440 pounds tomorrow. The amount of 173,440 pounds concerns invoices of third [party] suppliers including the barristers and the amount of 100,000 pounds concerns part of your fees."

31. Payment was subsequently made to the firm's client account by D on 1 August 2012 in the sum of £273,440.

32. On 1 August 2012, an online transfer was made from the firm's client account to the firm's office account business reserve in the sum of £273,440, leaving the firm's client account with a nil balance.

33. Prior to the transfer in on 1 August 2012, the firm's office account business reserve showed a nil balance. The office account started on 31 July 2012 with an overdrawn balance.

34. During the period 1 August 2012 and 21 September 2012, various transfers were made from the firm's office account business reserve to the firm's office account and vice versa. Save for the following payments into the office account business reserve when the office account had been credited from third parties, which totalled £12,720.80 all monies transferred between the office account business reserve and the office account during that period were D monies:

- £8,290.80 transferred in from the firm's office account on 8 August 2012, which consisted of monies paid into the firm's client account by NI on 3 August 2012 and CI on 7 August 2012;

- £3,500 payment into the firm's office account on 24 August 2012 as "Refund re Fraud"

- £330 CHAPS payment into the firm's office account on 28 August 2012 from S Ltd

- £600 BACS payment into the firm's office account on 17 September 2012 from a variant on the name of S Ltd

35. The payments recorded as being made out of the firm's office account following the transfer in of monies from the firm's office account business reserve during the period 1 August 2012 to 21 September 2012 included in particular:

    - A total payment of £5,330 to BM a firm of estate agents on 1 August 2012 referenced as "17 [C] House" understood by the Applicant to be the Respondent's residential address at the time;

    - A payment of £120,520 on 2 August 2012 referenced as "City Law" to the City of London to whom the firm paid business rates;

    - A payment of £93,604.02 on 10 August 2012 to HK LLP acting for the landlord for the firm's premises at 1 King's Arms Yard;

    - A total payment of £7,545.95 to PF (by way of separate transfers on 1 August 2012 and 10 August 2012), the Respondent's former wife;

    - A total debit of £17,228.83 on 14 August 2012 in relation to City Law Payroll.

36. By 21 September 2012, the firm's office account business reserve showed a nil balance and the firm's office account showed a balance of £0.33.

37. No payment was made to EC in relation to any of the outstanding fees for Mr G QC, Mr B or Mr F on 1 August 2012 or at any time thereafter.

<u>Counsel's fees - FC Chambers allegation 1.1 and 1.2</u>

38. In September 2011, Mr B-W QC and Mr Y were instructed by the firm on behalf of CM Ltd ("CM") and CI Ltd ("CI"). From the end of March 2012, the Respondent was the instructing partner.

39. Between around October 2011 and December 2012, Mr B-W QC and Mr Y issued fee notes to the firm at regular intervals for fees totalling £9,530 plus VAT and £13,365 plus VAT respectively.

40. On 23 April 2012 at 09.11, the Respondent wrote an e-mail to DA of CM in which he stated:

> "I paid £21,000 to the Barristers this morning so please ensure our month end payment gets to us by Wednesday this week so that we are not out of pocket; I

> don't mind being in pocket for you but we need to cover the outgoings as they arise"

41. A further e-mail chasing reimbursement of counsel's fees was sent to DA by the Respondent on 25 April 2012 at 20:08 in which the Respondent stated:

> "Please do make the payment tomorrow. We are now £21 K out from the fees paid"

42. Payment was made by CI to the firm on 26 April 2012 in the sum of £30,000.

43. The firm's client account showed a transfer in on 26 April 2012 in the sum of £30,000 from CI USA Ltd.

44. On 26 April 2012, an online transfer was made from the firm's client account to the firm's office account in the sum of £32,737.50 which included the monies transferred in from CI USA Ltd. It left the client account with a nil balance.

45. Neither Mr B-W QC nor Mr Y received any payment from the firm in connection with this matter either prior to, on or at any time after 26 April 2012.

46. At the time of the intervention on 19 October 2012, the intervention agents ascertained that all of the accounts held by the firm's bankers in the name of the firm were closed between 12 and 15 October 2012. At the time of the closure, the account named "Client Account Casual Dining" had a balance of £0.65. All other accounts including the firm's office account, client account and office account business reserve had a nil balance at the time of closure.

<u>Counsel fees- E Chambers allegation 1.1 and 1.2</u>

47. Mr S QC and Mr G of E Chambers ("E") were instructed by the firm on behalf of AAM SA ("AM") in relation to litigation against IBRC Ltd ("IB").

48. AM was the sole party to the claim but two professional colleagues of Wolfgang Klopfer ("WK") of AM, Mr Domenico Rizzuto (" DR") of DR Finance (" DRF") and Dr MB ("MB"), had a financial interest in the outcome of the litigation. It was therefore agreed between them that they would split the costs associated with the litigation in the following proportions: AM 69%; DRF 29% and MB 2%.

49. Mr S QC commenced work on the matter in December 2010 and Mr G in January 2011.

50. Between around January 2011 and June 2012, Mr S QC and Mr G issued fee notes to the firm at regular intervals for fees totalling £28,800 and £19,350 respectively.

51. During the period January 2011 and 22 September 2011, payments were received by E from the firm in the sum total of £5,800 for Mr S QC and £5,200 for Mr G. No payments were received from the firm in relation to this matter after 22 September 2011.

52. On 21 May 2012 at 10:47, Mr SW, the clerk to Mr S QC and Mr G contacted the Respondent by e-mail to confirm the brief fees and refreshers for respective counsel for the trial in June 2012. The e-mail confirmed the agreement reached between Mr SW and the Respondent that 50% of the brief fee for both counsel would be incurred on 28 May 2012 (the first stage) and 50% on 6 June 2012 (the second stage). The first stage amounted to a total sum of £33,705, comprising £22,500 for Mr S QC and £11,250 for Mr G.

53. In response, the Respondent sent an e-mail on 21 May 2012 at 11.03 in which he stated as follows:

> "Thanks Mark.
> That is fine.
> We will be in funds for the brief before delivery.
>
> Paul"

54. On 21 May 2012 at 17:55, WK sent an e-mail to the Respondent which contained the following:

> "we understood that if we pay the GBP 40.000 now there are no fees left for CityLaw (sic) as stated on your fee narrative sent last Thursday, May 17th. In addition you will pass on GBP 30,000, of this to the counsel (S QC) for the fee due to him.
>
> Could you please confirm this in order to proceed on time and make the payment to you."

55. The Respondent replied to WK by e-mail on 21 May 2012 at 18:16 as follows:

> "Yes,
> That is correct [WK]
>
> The £40,000 payment finishes off all liability to my firm.
> Best,
> Paul"

56. The Respondent later forwarded that e-mail to MB and DR on 21 May 2012 at 19:17.

57. On 22 May 2012, at 06.54, WK sent a further e-mail to the Respondent in the following terms:

> "And GBP 30.000, - of that go to [S] QC?"

58. The Respondent replied to WK by e-mail on 22 May 2012 at 09.27, copied to DR and MB, stating:

> "Yes. That is the reason for the urgency. Can you please arrange the transfers today so that I can cover."

59. On 24 May 2012 at 14:27, the Respondent forwarded SW's e-mail of 21 May 2012 to WK, DR and MB. His covering e-mail included the following:

> "I am attaching an e-mail from [S's] clerk which is, and has been, the basis of my request that we are funded on our invoice so as to transfer £30,000 against the first phase of the brief fee…
>
> My intention was to do that on Tuesday to ensure the barristers were ready to start next week (which we need them to be) on Monday.
>
> I do not mind that the fees are diverted from our trial fee. My concern is to keep the trial team intact.
>
> As at the time of writing however, we have only received [DR's] share of the fee.
>
> We will lose [S QC] unless I confirm today that I will pay him from my own money without funding. I am not going to do that.
>
> I have tried to solve this but have no option other than to leave you (between you) to tell me what you want me to do.
>
> I am happy to get on a call this afternoon. But we are running out of time and options.
>
> Let me know what you want me to do please."

60. In an e-mail to the Respondent dated 24 May 2012 at 15.17, MB advised as follows:

> "Paul, I instructed payment the next Morning after the Telco. Bank confirmed payment. Funds are coming from Liechtenstein."

61. In an e-mail to the Respondent dated 30 May 2012 at 10.43, WK stated as follows:

> "I received confirmation from my bank that the money is on your account. The transfer went without any difficulties in the normal timeframe.
>
> a) I understand from your words on my voice mail that you turned down the mandate. Can you confirm.
>
> b) Can you confirm that [S QC] (and the firm he works for) has at least received £30.000,-from you for his work on the case. When was the money transferred to [S QC]?
>
> c) What is the status with [S QC]? Did you turn down this mandate as well. Pls confirm.
>
> d) Pls report about all things happening in our case till your last report. Has there been anything? For example a hearing on Monday as you told me last week…"

62. The Respondent replied to that e-mail on 30 May 2012 at 11:05 to WK, copied to DR and MB, in which he confirmed as follows:

> "We have received the funds-thank you.
> We never declined our mandate, we wanted to keep [S QC] on his. Which we have now done…"

63. During a subsequent conference call between the Respondent, WK and DR on 1 June 2012, the following exchange took place according to a transcript of a recording of the telephone call prepared by Capsticks; "R" is the Respondent:

> "R: ...We are going to be working with [S] and [G] on that. They started work which is all the money issue, which I'm glad is behind us, they started work on that on Monday on the basis that the assurances and payment made to them, and we will now work… there is no more evidence to be filed… so we will now work with them to get the case ready for trial on the 12th.
>
> WK: OK, OK, I just missed that a little bit-but I understood that you have already passed the money to [S QC]
>
> R: Yes
>
> WK: OK it is already there.
>
> R: Yes, it is there to the extent he wanted it- I think he wanted £70,000 but we have given him a half cover which is £30,000.
>
> WK: OK
>
> R: So that won't be the end, but you know… I mean I am sorry we have had some fractious exchange on it but ... [S QC] will be back at the end of the trial, but we have seen them off for the moment."

64. Of the £40,000 requested by the Respondent, £30,000 of which was referable to counsel's fees, MB's liability was £800 (2%), DR's £11,600 (29%) and WK £27,600 (69%).

65. The firm's client account showed the following transfers in:

- 22 May 2012: CHAPS payment in of £11,600 marked as "Fees payment for City Law and [S QC]"
- 24 May 2012: CHAPS payment in of £800 from MB
- 29 May 2012: CHAPS payment in of £27,600 from AM.

66. A duplicate payment of £11,600 was inadvertently made by on behalf of DR on 29 May 2012.

67. On 22 May 2012, an online transfer was made from the firm's client account to the firm's office account in the sum of £11,600. This left the client account with a nil balance.

68. On 24 May 2012, an online transfer was made from the firm's client account to the firm's office account in the sum of £800 which comprised the monies from MB. This also left the client account with a nil balance.

69. On 29 May 2012, an online transfer was made from the firm's client account to the firm's office account in the sum of £27,600 which comprised the monies from AM which also left the client account with a nil balance.

70. Payment was not received by E from the firm in relation to the first stage of counsels' brief fee in May 2012 or at any time thereafter.

Allegation 1.3

71. On or about 11 October 2012, a bankruptcy order was made against the Respondent.

72. Between 12 and 15 October 2012, the firm's bankers Coutts closed the firm's client account, office account, office account business reserve and all other accounts held by that bank in the name of the firm.

73. On 17 October 2012, the resolution to intervene into the firm was made and effected on 19 October 2012. The Respondent was not present at the firm's offices at the time of the intervention.

74. The Respondent was at the latest aware of the intervention by 22 October 2012 when he attended the High Court with an employee of the firm Edward Miller (EM) at which time the intervention was discussed.

75. On 19 October 2012, EM saw the Respondent send two e-mails to the Business Rates Department at City of London at 11.36 and 12.21 respectively. The e-mails were sent from the firm's e-mail account of EM, which the Respondent accessed remotely via EM's iPad.

76. The e-mail of 19 October 2012 sent at 11.36 read as follows:

> "Dear Ms [K]
>
> I called into your office in Wednesday regarding the refund of rates due following termination of the lease to the 5th floor of King's Arms Yard. As I said we would wish that to be paid to our account directly rather than receive a cheque from the Corporation; we have already been out of pocket over two months and I want to make the payment timeline as tight as possible. The bank details are:
> Barclays bank…
>
> Many thanks
> Paul Fallon"

77. On 24 October, EM received a remittance advice from City of London by e-mail confirming that payment of a rate refund in the sum of £64,582.72 would be made on 26 October 2012. EM noted that the account details provided by the Respondent to City of London by e-mail on 19 October 2012 were not the account details of the firm. EM therefore contacted the intervention agents Devonshires on 26 October 2012 to make them aware of the transfer. The Applicant was unable to freeze the monies via the intervention because the Barclays account was not in the name of the Respondent or the firm and on 26 October 2012, the Applicant sought and obtained a freezing injunction against the account holder who was at that time unknown, in respect of the monies.

78. The Barclays account was held by Mrs. PF, the Respondent's former wife. On receipt of the court order dated 26 October 2012, the Respondent's former wife contacted Devonshires and a Settlement Deed was agreed, in which Mrs. PF confirmed that:

- She was the sole holder of the Barclays account;
- £64,582.72 was received into the account on 26 October 2012 and at the time of the Settlement Deed £61,376.01 remained;
- She had made no withdrawals from the account since before 25 October; and
- Her former husband, the Respondent had been provided with a bank card allowing him to make withdrawals from the account.

79. The Settlement Deed was presented to the High Court with an accompanying Tomlin order which was sealed by the court on 15 November 2012.

Allegation 1.4

80. Solicitors are granted rights of audience in all courts when they are admitted. However, they cannot exercise those rights in the higher courts until they have complied with additional assessment requirements and been recognised as holding a higher courts advocacy qualification. The Applicant set the competence standard that solicitors who were to act as higher court advocates must meet and maintain, authorised assessment organisations to test people against those standards, recognised higher court advocacy qualifications and authorised higher court advocates and set the regulations under which the scheme operated. There were separate awards and assessments for higher rights of audience for criminal and civil advocacy.

81. The regulations in force at all material times were set out in the SRA Higher Rights of Audience Regulations 2011 which came into force on 6 October 2011 ("the HRA Regulations").

82. The relevant sections were as follows and included:

Regulation 2:

> "Subject to the provisions of these regulations ***you*** may be authorised by ***us*** to exercise rights of audience in the ***higher courts***."

Regulation 3.1:

> "If ***you*** meet the requirements of these regulations, ***we*** may grant one or both of the following core qualifications, which authorise ***you*** to conduct advocacy in the higher courts:
>
> (a) Higher Courts (Civil Advocacy) Qualification which entitles the *solicitor*… to exercise rights of audience in all civil proceedings in the ***higher courts***, including judicial review proceedings in any ***court*** arising from any criminal cause…"

Regulation 4.1

> "When applying for a ***higher courts advocacy qualification*** you must demonstrate to ***us*** that ***you*** are competent to undertake advocacy in the proceedings in relation to which ***you*** have applied by: (a) successfully completing assessments prescribed by ***us***…"

Regulation 10:

> "10.1 ***You*** shall make an application under these regulations in the manner prescribed by ***us*** and accompanied by the appropriate fee from time to time."

83. On or about 23 April 2012, the Applicant received an application from the Respondent for Higher Rights of Audience (Civil).

84. On 24 and 25 April 2012, the Respondent appeared before Mr Justice Christopher Clarke in the High Court of Justice Queen's Bench Division (Commercial Court) where he represented the claimant and the sixth defendant at trial in a matter involving D.

85. 27 April 2012, Ms DW wrote to the Respondent requesting evidence of his right to exercise rights of audience in the higher courts. She said:

> "A query has been raised with us regarding whether you possess higher rights of audience and consequently whether your appearance in the trial which took place in the commercial court earlier this week behalf of [D] and [the sixth defendant] was inappropriate. We find that suggestion surprising to say the least but, the matter having been put to us, we feel obliged to clarify the position with you. Accordingly we should be grateful if you would please put our clients' minds to rest by providing us with written evidence that you possess current valid higher rights of audience."

86. Following a chaser letter from Ms DW on 1 May 2012, the Respondent responded by e-mail stating:

"I will have the certificate sent."

87. The Respondent did not have a certificate to send to Ms DW at that time.

88. Ms DW sent further correspondence to the Respondent on 4 May 2012 and 8 May 2012 but she received no response or explanation.

89. On 16 April 2013, the sixth defendant was granted conditional permission to appeal against the decision of Mr Justice Christopher Clarke on the basis that the Respondent appeared to lack the necessary higher rights of audience at trial. That appeal was yet to be determined at the date of the Rule 5 Statement.

90. On 8 May 2012, the Applicant considered the Respondent's application and contacted him by e-mail to request a certified copy of the advocacy assessment certificate enclosed with his application form.

91. On 28 May 2012, the Applicant received a letter from the firm enclosing the requested certified advocacy assessment certificate, confirming that the Respondent had passed the relevant assessment at City Law School on 20 April 2012.

92. The Respondent's application was granted by the Applicant on 29 May 2012 and a certificate produced confirming that his qualification had been recognised by the Applicant.

93. The Applicant had no record of the Respondent holding higher rights of audience prior to 29 May 2012.

94. In an unrelated matter, the Respondent also appeared before Mr Justice Morgan in the High Court of Justice Chancery Division on 28 May 2012 when he represented the claimant at an application hearing in relation to a claim brought by AM against IB.

95. On 30 May 2012, one day after the Applicant granted the Respondent's application to be authorised to exercise rights of audience in the higher courts, the Respondent's profile on the website of the firm included the following statement: "appeared as a solicitor advocate on numerous occasions."

Allegation 1.5

96. From around April 2012, the Respondent became the main point of contact for AM in its litigation against IB where the costs were to be divided between three parties as set out above. On or about 3 May 2012, an application for specific disclosure was made by the Respondent on behalf of AM.

97. On 28 May 2012, the Respondent appeared on behalf of AM before Mr Justice Morgan in the High Court (Chancery Division). After hearing oral argument from the Respondent and counsel for the defendant, Mr Justice Morgan directed that the application be dismissed and ordered AM to pay the defendant's costs of the application assessed in the sum of £20,000.

98. In response to the defendant's application for costs following judgment, the Respondent was recorded in the court transcript as stating:

> "No issue of principle, I think my friend is entitled to the costs."

99. WK, DR and MB did not attend the hearing on 28 May 2012. By virtue of rule 44.8 of the Civil Procedure Rules 1998, the Respondent was obliged to notify his client in writing within seven days of receiving notice of the adverse costs order made against his client by Mr Justice Morgan on 28 May 2012, that is by 4 June 2012. He did not do so then or at any time thereafter.

100. Following the hearing on 28 May 2012, the Respondent wrote to WK by e-mail on 1 June 2012 at 10.01. The e-mail did not make any reference to the costs order.

101. DR replied to the Respondent's e-mail on 1 June 2012 at 10.13 as follows:

> "Paul were any costs involved for this??? I mean did [F, the other side's solicitors] ask for any compensation for the time they spent?? and indeed did the judge agreed (sic) on any cost that should be paid by us???"

102. The Respondent replied by e-mail dated 1 June 2012 at 10.15 in which he stated:

> "No on both counts; it is within our existing budget and no order for costs was made"

103. During a subsequent conference call between the Respondent, WK and DR on 1 June 2012, in relation to the disclosure hearing, on the issue of costs associated with hearing the following exchange took place between WK and the Respondent:

> "WK: Now and the fact that you asked for that, has this produced any additional costs or fees or whatever for us?
>
> R: No, no as I was saying when we first spoke about it, this is included in our budget.
>
> WK: OK
>
> R: I'm bound to tell you, if the bank had preserved the entitlement to put all these documents before the court, then we would have pressed hard… we clearly would have pressed for the documents to come out that's why we are doing it, but it has fallen away at the first hurdle, so it hasn't produced any further costs for you, no.
>
> WK: OK-any further costs-neither for you, not for the court, not for [IB] or [F], not anyone?
>
> R: Not for anyone. The only people who have spent time on it, is me doing the application but it is all the same price, and it was worth doing…"

104. A further e-mail was sent to the Respondent by WK or 1 June 2012 at 17:38 in which he sought to clarify the position in respect of AM's costs liability for the hearing in the following terms:

> "… you said in our call this morning that there are no further costs for us out of the hearing on Monday (May 28th)-especially no order against us.
>
> Another friendly hedge fund manager who attended the meeting said differently.
>
> Can you pls confirm that this guy said wrongly."

105. The Respondent replied to that e-mail on 1 June 2012 at 18.36 as follows: "Yes, I can"

Allegation 1.6

106. This allegation also arose out of the litigation in which the Respondent represented AM. On or about 9 May 2012, the firm issued an invoice to DR in the sum of £11,600 as referred to above.

107. The invoice was settled by DRF on 22 May 2012 by way of a payment to the firm of £11,600.

108. On 24 May 2012, DR received an e-mail from the Respondent confirming receipt of payment.

109. DR forwarded a copy of the invoice to a client of DRF, GTA, trustees of another company PTF which was ultimately responsible for reimbursing DRF for the payment. DR informed GTA that he had settled the invoice and asked to be reimbursed for the payment of £11,600 that he had made to the firm.

110. In error, PTF made a payment directly to the firm on 29 May 2012 instead of reimbursing DRF.

111. The firm's client account showed the following transfers in:

- 22 May 2012: CHAPS payment in of £11,600 marked as "Fees Payment for City Law and [S QC]"
- 29 May 2012: CHAPS payment in of £11,600 from PTF marked as "invoice 021101199/09:05.2012"

112. On 22 May 2012, an online transfer was made from the firm's client account to the firm's office account in the sum of £11,600 which comprised the monies transferred in on 22 May 2012 as described above. It left the firm's client account with a nil balance.

113. On 29 May 2012, an online transfer was made from firm's client account to the firm's office account again in the sum of £11,600 which comprised the monies transferred in on 29 May 2012 from PTF.

114. On 29 May 2012 at 13.26 an e-mail was sent to the Respondent by VW of GTA which included the following:

> "As [DR] has explained to you, when we have received the copy of your invoice, we haven't take attention that it was already paid by [DRF] and we have settled it once again.
>
> Could you please proceed to the refund of this amount on the following account…"

115. The Respondent replied to that e-mail on 29 May 2012 at 14.26 stating:

> "Yes he has and we will do. I am on that now."

116. No repayment was made.

117. In July 2012, DRF issued a claim against the firm for restitution in respect of the duplicate payment of £11,600 plus interest. Default judgment was entered against the firm on 1 August 2012 at Northampton County Court.

118. At the date of the Rule 5 Statement, neither DRF nor PTF had received payment from the Respondent or the firm in respect of the duplicate payment or the default judgment.

Allegation 1.7

119. On or about 16 August 2012, the Respondent's practising certificate for the practice year 2010/2011, which was issued free from conditions was revoked by the Applicant because the renewal date for the practice year 2011/2012 had passed and the Applicant took the view that the Respondent had failed to make an application to renew it. This was disputed.

120. The Applicant's records indicated that a practising certificate application was commenced by the Respondent for 2011/2012 on or about 10 February 2012 but that it was never submitted and so the partial application was cancelled by the Applicant.

121. There was no evidence of a payment to the Applicant being made out of the firm's office account during February 2012.

122. In or around April 2012, a senior associate at the firm, Ms RA became aware that her practising certificate had not been renewed by the firm. She was informed by the Applicant that an application had been started but never submitted. RA made her own arrangements with the Applicant to renew her practising certificate and sought reimbursement from the firm for the fee. On 15 May 2012, she sent an e-mail to the Respondent regarding reimbursement.

123. On 9 July 2012 the Applicant sent a letter to the Respondent reminding him that he had not renewed his practising certificate for the 2011/2012 year.

124. On 24 August 2012, the Applicant sent a letter to the Respondent informing him that his current practising certificate had been revoked with effect from 16 August 2012.

125. The Respondent continued to practise as a solicitor after 16 August 2012.

126. In an e-mail dated 6 September 2012 14:44, the Applicant's investigation officer ("IO"), Stephen Cassini, informed the Respondent that his practising certificate for 2010/2011 had been revoked because of his failure to renew. The Respondent replied by e-mail dated 6 September 2012 at 4.58 pm stating that he had renewed his certificate in March 2012.

127. At a meeting on 10 September 2012, the Respondent informed the IO that he would attend to the renewal of his practising certificate that day. According to the Applicant's records a draft application was again commenced via MySRA on 10 September 2012 but was never submitted and was therefore cancelled by the Applicant.

128. There was again no evidence of a payment to the Applicant being made out of the firm's office account during September 2012.

129. The Respondent continued to practise as a solicitor after 10 September 2012.

Allegation 1.8

130. From around 1 April 2009 until around 9 February 2012, the Respondent was a member of the firm, the other members being Ms M until around 12 October 2011 and Mr H until around 9 February 2012.

131. From around 9 February 2012 onwards, the Respondent was the only remaining member and the Sole Principal of the firm. Rule 16.3 of the SRA Practice Framework Rules 2011 provided that "an authorised body which is an LLP must have at least two members". However, Rule 23.2(a) of the SRA Authorisation Rules 2011 provided inter-alia that:

> "If an event which could not reasonably have been foreseen results in an LLP having fewer than two members, and therefore being in breach of Rule 16.3 (requirement to have at least two members) of the SRA Practice Framework Rules, but within six months the situation is remedied, and provided the LLP has remained in a position to comply with the remainder of the SRA's regulatory arrangements including these rules and any conditions imposed on its authorisation, the LLP will be deemed to have remained in compliance with Rule 16.3 of the SRA Practice Framework Rules and to that extent will not be liable to have its authorisation revoked under Rule 22."

132. On 15 February 2012 at 14:27, the Applicant e-mailed the Respondent to confirm that the NM1 leaver form for Mr H had been processed and reminded the Respondent that

he had six months to replace Mr H as a member in order to retain the LLP status of the firm.

133. On 25 June 2012 at 14:32, the Respondent forwarded this e-mail to RA stating that he had until 15 August to bring in a new partner and informing her that he was talking to two candidates.

134. On 8 June 2012, the Applicant's authorisation department contacted the Respondent by e-mail to remind him of the requirements of Rules 16.3 and 18.3 of the SRA Practice Framework Rules 2011. That e-mail asked the Respondent to notify the Applicant if a new member had been appointed and informed the Respondent that if he wished to practice as a sole practitioner he must first seek approval from the Applicant to do so in line with Rule 10.1 of the SRA Practice Framework Rules 2011. No response was received. Accordingly throughout the period from on or about 9 February 2012 until the firm was intervened into on 19 October 2012, the Respondent was the only member of the firm.

135. During the period May to September 2012, RA raised a number of concerns with the Respondent about the management and financial stability of the firm, including non-payment of PLC subscription rates, unpaid business rates to City of London, wages for employees of the firm and the firm's professional indemnity insurance.

136. On 8 August 2012, the lease to the firm's registered office at 1 King's Arms Yard was forfeited by the landlord as a result of an alleged failure by the firm to pay rent which had been outstanding since June 2012.

137. On 8 August 2012, RA contacted the Respondent by e-mail to seek to clarify the position with regards to the office and ongoing working arrangements. No response was received from the Respondent for approximately a week when staff became aware of the Respondent's apparent intention to secure new offices.

138. Between 8 August 2012 and 8 October, 2012, RA experienced difficulties in making contact with the Respondent to discuss her concerns about the management and financial stability of the firm and the arrangements for clients prior to the firm relocating to its new offices. She was also contacted by clients who were unable to contact the Respondent during this period.

139. RA met with the Respondent on two occasions during September 2012. She said in her statement dated 26 June 2013 that he informed her that matters were all in hand and that with regard to clients the firm would be back up and running the following week.

140. From around 8 August 2012, members of staff at the firm were unable to access the office or hard copy client files and contact with the Respondent was limited. Electronically held client documentation was accessible remotely until 17 September 2012 when this facility was switched off by the provider.

141. On 18 September 2012, all clients' files and papers and practice related material including computers and IT equipment were removed from the office and placed into storage by the landlord.

142. On 3 October 2012, the solicitors acting on behalf of the landlord, HK LLP ("HK") contacted the Applicant to explain that the Respondent had failed to respond to requests by them to make arrangements to collect the client files and other practice related material and that, if they had not been collected by 26 October 2012 one of the options open to the landlord was to destroy the documentation and material.

143. The firm was intervened into on 19 October 2012 and the intervention agents were unable to locate any client files at the premises. The files were subsequently retrieved from storage by the intervention agents.

Applicant's Investigation

144. Notice of investigation were sent to the firm on 7 August 2012 and Mr Stephen Cassini, the Investigation Officer ("IO") attended the firm's offices with a colleague on 14 August 2012. He was advised by the reception that the firm was closed, offices were locked and no access was permitted by anyone without the permission of the landlord but that the offices were effectively still occupied and contained office equipment, client files and personal effects belonging to the firm's staff. On 15 August 2012, the IO sent an e-mail to the Respondent using his last known e-mail address at the firm and attached a copy of the investigation notice dated 7 August 2012. The Respondent was asked to contact the IO that day. The Respondent replied to the e-mail and then telephoned the IO on 15 August2012 and stated that he was in the process of moving offices to Cannon Street and that this was planned to take place over the weekend. He stated that he would meet the IO at the firm's offices on 20 August 2012. There was then an e-mail exchange about problems with the Respondent's builders at the proposed new offices. The IO attended on 20 August 2012 and the Respondent did not. It was disputed about how this came about. The IO and the Respondent met on 22 August 2012 at the former firm's offices and an investigation commenced leading to the production of a Forensic Investigation ("FI") Report dated 26 September 2012.

145. On 8 October 2012, the Applicant sent a letter to the Respondent at C House which was believed to be his residential address, enclosing the FI Report and draft recommendation for a Committee of the Adjudication Panel. It was also sent by e-mail to his firm's address but it was possible that he did not receive it because there was a period of server outage. The draft recommendation was that the firm should be intervened into.

Witnesses

146. Mr Stephen Middleton-Cassini the IO gave evidence. He confirmed the truth of the FI Report. During the investigation he had spent not much more than a working day in total with the Respondent and they had met three times in all. He had found the Respondent to be manic; quite disorganised with a lot of things going on. On the last occasion when they met in the Reading Room of the Law Society, when the witness was talking to the Respondent he seemed not to be appreciating the significance of what the witness was saying, not really listening. The witness said things several times and was concerned about the Respondent because he was not getting a grip of what was going on and of the consequences that the witness was trying to set out for him.

147. In the FI Report, the witness noted that the Respondent had failed to provide the requested information and documentation relating to his practice. The Respondent could not give the information because he did not seem to know how to operate the computer system and he said a lot of the information needed was with the accountant. In cross examination, the Respondent wanted to know exactly which documents he was alleged not to have provided. The witness was asked to check his file and during the course of hearing prepared a second witness statement providing more detail. Mr Allen clarified that it was no part of the Applicant's case that the Respondent was deliberately obstructive regarding documents. The Respondent regarded these matters as important because they went to the reliability of the FI report. The witness stated that unfortunately the Respondent had not seen the letter giving notice of the investigation which listed documents required because the Respondent had not had access to the office to which the letter was sent. The witness agreed that he had no reason to believe that he was not given everything by way of documents listed in the letter but that he had a residual suspicion about it. The witness had been told to help himself to documents and this was not how they expected to conduct an investigation.

148. The issue of the Respondent's practising certificate was discussed when the witness met the Respondent at the Law Society's Hall. He was under the impression that the Respondent did not appreciate the significance of what the witness was saying about the practising certificate. The witness recalled saying that he would take a cheque with him to the office but he was not sure if that was permitted; the witness was getting frustrated that it was not being done. He could not recall exactly if the Respondent had offered him a cheque or whether he had offered to take one but he had not taken it back which was probably the right thing because the system was such that it would not have gone through. It was just something they discussed and it seemed fairly straightforward to the witness. In cross examination, the witness stated that he might well have said that the Applicant would not accept a cheque but only electronic payment, because they were looking at a new system.

149. In respect of the new offices, the witness stated that the Respondent told the witness that they were moving to serviced offices on Cannon Street and that he had engaged some builders to do alterations to the premises. The impression the witness was given was that it all seemed very genuine and would go ahead. The witness visited the Cannon Street offices and spoke to reception who knew nothing about it at all and no building work was going on. The witness had not seen a signed lease or any other evidence that the firm was going there. In cross examination, the witness could not recall if he had asked to see a lease of the new offices and stated that probably at the time he did not think that was relevant; he had a lot of other things to look at.

150. As to the firm's former offices, the witness had visited them and they looked as if there had been a fire alarm and people had just left. Both the witness and a colleague who accompanied him were quite taken aback by the expensive layout. The offices seemed quite excessively lavish; they were the plushest offices the witness had ever seen and he had been to all types of practices in his almost 11 years with the Applicant. He described what he believed to be lavish items of furnishing and equipment. The witness did not think that he had said to the Respondent anything to indicate that there were no concerns arising out of investigation.

151. As to the issue of higher rights of audience, the witness did not know a great deal about them although his colleague, who had the higher rights, did. It was a fact-finding conversation. The Respondent said he had discussed the issue with his supervisor by which the witness understood him to mean Mr K of the Applicant. The witness had not reported back to Mr K because events regarding the Respondent's practising certificate overtook the issue. The witness recalled that the Respondent said he had spoken to the Ethics Department of the Applicant about higher rights and that it was okay. The witness was not in a position when he spoke to the Respondent about the matter to say whether there was a problem or not. The general impression that the witness was given at the time of the site meeting was that it might well have been the case that the error sat with the Applicant. The Respondent had been quite persuasive that there was no issue as to whether he had higher rights because he had passed the course. The witness passed the issue onto the Respondent's supervisor (Mr K) whose area of expertise it was. The witness's role was to report back and to be as objective as possible; it seemed to him to be a timing issue. The witness had no knowledge of the practice of the Ethics Department to whom the Respondent claimed to have spoken; he had had the question posed to him before about whether Ethics kept a record of who called them and what they said. When the Applicant in prosecuting this matter said that Ethics had no record of the call that was exactly what the witness would expect.

152. The witness was released in order for him to consult his notes and prepare a supplementary witness statement. The witness statement was dated 13 March 2014 and was of nearly 26 pages with attachments. The witness confirmed in the statement, what documents he had required the Respondent to provide to him as IO at the start of the investigation, as stated in the Notice dated 7 August 2012 and provided under the cover of the investigation notification letter dated 7 August 2012 and set out the detail of which documents of those requested, the Respondent had and had not provided.

153. While the witness was subject to recall, the Respondent cross examined him in detail about the practising certificate issue. The witness had found out about it on 6 September 2012 or thereabouts and they agreed to discuss it at their meeting at the Law Society's Hall on 10 September 2012. The witness did not know whether the fee has been paid in respect of the February 2012 application. As to whether he had offered to take a cheque to the Applicant during that meeting the witness had checked his notes but it was an incidental part of the conversation and not recorded; the conversation was around whether it was the right thing to do for him to take a cheque and they agreed it was appropriate for the Respondent to continue applying online and he was to complete the application process that afternoon. The witness did not know in what way the application was incomplete and had not previously seen the screenshot from the Applicant's system which showed the application as "Denied". Nor did the witness know why on a separate screenshot, the applications of 10 February and 10 September 2012 were described as "Canceled" (sic).

154. In respect of the security of the firm's files at its former offices, the witness agreed that he and the Respondent had not discussed the integrity of documents at their site meeting on 22/23 August 2012. It was certainly not something that the witness considered a risk at the time of the visit; the files were under lock and key and he had persuaded the office manager to let them in and saw that the files were fairly secure. It was quite clear that file destruction was an option and the witness's recollection was

that it prompted him to send the strongly worded e-mail dated 3 October 2012 to PL of the landlord's solicitors HK when he said:

> "I note your reference to destroying client files etc and I would ask that you please provide an undertaking to contact the SRA (either me or Mr [K]) before instructions are given to destroy any client files or client information, including computerised data."

The witness was referred to the e-mail from PL of HK dated 3 October 2012 which predated the witness's e-mail in which PL said:

> "I would invite you to advise [the Respondent] as to the likely consequences should he fail to comply with the deadline with particular reference to client files and computer equipment…"

The witness thought that the point of HK's letter of the same date to the firm and the Respondent seeking the undertaking in respect of the files was that the Respondent really needed to get on with it. He agreed that his evidence was that there was no real risk to the files but the matter needed to be dealt with.

155. In re-examination, the witness stated that he explained to the Respondent at their first meeting on 22 August 2012 that the likely consequence for the practice if he failed to meet the landlord's deadline for removing the files would be intervention. They had discussed the client files and client access to papers. The witness had a note of the meeting which indicated that, which the Respondent did not challenge. The witness agreed that he did not think that there was a real risk files would be destroyed and that the issue was one of safekeeping but stated that powers of intervention did not just relate to the destruction of files.

156. As to the matter of appointing a second member to the LLP, the witness agreed that he and the Respondent had talked about this issue at the site meeting on 22/23 August. He recalled the Respondent advised him that he was in talks with someone else to become a member firm and then at their meeting at Chancery Lane the Respondent advised him that he was seriously considering becoming a sole practitioner. The witness did not recall whether it was also suggested that a company could be the second member; he might well have mentioned it as he had come across practices that had done that. It was the lack of the second member which was one of the principal reasons for the investigation in the first place. The witness had not mentioned their conversation in the FI Report because it was just a conversation with no evidence anything had been done. He rejected the suggestion that the fact there had been more than one conversation about it made the reference in the FI Report misleading.

157. The witness agreed that he did not routinely ask for a statement of intention which the Respondent had produced at the 10 September 2012 meeting and there wasn't anything in it which rang alarm bells which made him ask for further information.

158. **Mr Domenico Rizzuto** gave evidence. He was the managing director of DRF. He confirmed the truth of his witness statement dated 17 June 2013. In it, the witness said:

> "From 21 May 2012 [the Respondent] had been exerting pressure on us to make payments to him as a matter of urgency in respect of counsel's fees for the forthcoming trial. [The Respondent] led me to believe that unless we transfer £30,000 to in order to pay counsel, counsel would cease to act and instructing alternative counsel at that stage would be well nigh on impossible. [The Respondent] also wanted £10,000 on account for the firm's fees…"

In cross examination, the witness confirmed that he understood from e-mail and telephone conversations that it was well-nigh impossible to obtain alternative counsel. It was very clear that they had to have S QC or they were in serious trouble. The Respondent was dealing with normal people not lawyers and he was stating that if he did not receive the money he would have trouble getting S QC to represent them.

159. The witness was referred to the firm's invoice dated 9 May 2012 addressed to him at DRF with the narrative "TO OUR AGREED FEES" in the sum of £11,600 and described as "Due 29%". The witness said that he knew it well, "I am afraid". In his statement he said that he understood that £30,000 of the £40,000 constituted fees to counsel and "the remaining £10,000 comprised money on account" in respect of the firm's total fees in the matter. On that basis it was put to him that if £40,000 was due to the firm and then £10,000 was, as he said in his statement, being regarded as completing the clients' liability to the firm, he would have asked for a credit note, to which the witness replied that he had lost the Respondent; that the Respondent was playing with numbers and that no one told him anything about a reduced amount; the firm took £30,000 to pay S QC. He accepted there was no line in the invoice for barristers' fees. The witness testified that he and WK and MB had wanted to pay counsel direct but were advised that this was not permitted. There had been conversations between WK, MB, the Respondent and himself about an escrow account; he remembered putting the question but he was dismissed pretty quickly. It was clearly not a nice conversation. He was trying to find a solution. They were told by S QC that this was not allowed in England. Accordingly they had no choice but to pay the firm and he had actually paid twice.

160. The witness was referred to an e-mail from the Respondent to him, WK and MB at 15.00 on 21 May 2012 which said:

> "Here is the agreed budget.
> The agreed trial costs are the last two boxes and the second contingency (disclosure)."

It was put to him that attached to the email was a document "Agreed Cost Estimate" setting out stages of the proceedings with estimated costs. The witness rejected the suggestion that the Agreed Cost Estimate document [also referred to as the budget] and the invoice sent to him on 9 May 2012 were linked; the former had been prepared a year and a half before. There had been a very hard and sometimes very nasty discussion about the invoice. The person who had been representing them at the firm (Ms M) had left. The witness spoke to Mr S once before May 2012, exactly the date of the budget and only spoke to the Respondent after Ms M left the firm. The invoice was part of the amount of money agreed with Ms M and the Respondent to do all the preparation work and to pay Mr S as they had discussed many times in the e-mails. The Respondent never referred to the budget in the e-mail exchanges; WK asked the

Respondent repeatedly, was £30,000 for Mr S. In the Respondent's mind, he referred to the budget but it was not in the witness's mind. The one line in the invoice (the narrative) never clicked in his mind. The witness did not accept that the agreed budget was the basis for the 9 May 2012 invoice. He "absolutely" thought that £30,000 of the £40,000 would be paid to Mr S to represent them as a barrister in front of the judge. The witness did not know the exact date when Mr S would be paid but he knew that they needed to act fast as Mr S wanted to be paid. He did not have a discussion with Mr S because he understood this was not the legal practice in the United Kingdom; it was not possible, so he could not know the exact date for payment.

161. The witness was referred to the Respondent's e-mail to the three clients on 24 May 2012 at 14.27 where he said: "I do not mind that the fees are diverted from our trial fee". The witness stated that he did not understand "in a million years" that the Respondent was using the firm's money; to the witness "our trial fee" meant the clients, the Respondent and counsel. The witness had no understanding that the money could be used for any purpose other than paying S QC and it had to be paid to the firm because that was the English way.

162. In respect of the e-mail from the Respondent on 24 May 2012, which included an e-mail from S's clerk, the witness understood the position to be that they were very close to trial of the action. The Respondent was asking for payment and there were very many things which did not add up. The clients did not understand why there was such hurry; as they always paid, why were things happening so fast and why was all this money required. He understood when he was told that if they did not pay S, no one would represent them and they would lose the case. This was how he understood the e-mail from the Respondent to the clients on 28 May 2012 at 19.00 in which he said:

> "Well, calm as I am, we have still received no funds.
> I have lots of things to look after.
> I will have to tell [S] tomorrow that we don't have costs cover. On that basis we will lose representation at the Trial."

The witness stated that all the e-mails he was receiving were about S QC getting paid so that he could represent the clients.

163. Regarding the adverse costs award, in his statement the witness said:

> "Nor do I (re)call [the Respondent] warning that an order for costs could be made against us".

The witness stated that the Respondent requested disclosure; the witness did not remember that the clients asked him to do so but he asked the court for some evidence that IB gave in a different "prosecution". The witness remembered that it was of minor importance to the clients but the Respondent was keen to have this information; the witness did not remember what it was. The judge ordered that the clients had to pay some costs. The witness was reminded of his e-mail of 1 June 2012 at 10.13 sent in response to the Respondent's e-mail at 10.01 reporting on the outcome of the hearing, when the witness asked were any costs involved. He was asked how he could send the e-mail if he had not been warned about adverse costs. The witness replied

that he had been told; the clients asked Ms M if costs were involved and she said some costs were involved. The witness did not remember whether he had spoken directly to Ms M or whether WK had. If he remembered correctly he thought WK told him about it. He asked either WK or Ms M if the information they received was gathered by someone "under the desk" and then they told him that it was public information; that one could go to the court and ask and so the witness thought it was acceptable to ask the Respondent. He rejected the suggestion that this was a lot to happen before 10.00 in the morning as the hearing had taken place three days before. WK had known Ms M from before and he was paying 70% of the costs and was the clients' reference point. The action was AM's and the witness might have referred to him. The contact must have happened very early before witness sent the e-mail. The witness stated that before the email sent at 10.01 on 1 June 2012, reporting on the hearing the Respondent said there would be no costs for the "trial" and he went ahead and he lost. The witness asked the question about costs and was told there were no costs involved. In respect of these e-mails sent on 1 June 2012, the witness was clear that his question about whether any costs were imposed by the judge, had nothing to do with the fees payable to the firm; he was in no doubt what was in the clients' minds. When it was put to him that there were two types of costs in England, the client paying the firm's costs and the client paying the other side's costs, the witness stated "Quite". When the witness sent his email on 1 June 2012 at 10.13 asking:

> "Paul were any costs involved for this??? I mean did [F, the other side's solicitors] ask for any compensation for the time they spent?? and indeed did the judge agreed (sic) on any cost that should be paid by us???"

he was not referring to the fees of the firm and the clients, but extra costs a court of law would impose on them.

164. **Dr Wolfgang Klopfer** gave evidence by video link from Germany. He was the chief executive of an investment company and co-founder of AM a portfolio management firm of funds under the administration of another entity AAM. The witness confirmed the truth of his statement dated 6 June 2013. It was put to the witness in cross-examination that there could be adverse consequences for AM in terminating the firm's contract because of the contents of the retainer letter dated 2 February 2011; at paragraph 23.5 it stated:

> "If you decide that you no longer wish us to act for you, you will pay us for the time we spend based on hourly charges plus any expenses incurred up to the date of our ceasing to act for you."

The Respondent and Ms M's hourly rate was set out at £460. Clause 9 "Estimate" provided:

> "9.1 Following our discussions, we have agreed to cap our fees at £75,000 for the work involved in obtaining declaratory relief…
>
> 9.2 I note that you have agreed with [DR] and [MB] that you will each contribute towards the overall fees. I also note that you have agreed with [DR] and [MB] that [the firm] will be entitled to a bonus in the event proceedings

> are successful, and that details of any bonus are subject to the discretion of you, [DR] and [MB].

The witness explained the role and relationships of AM in representing investment funds which wished to bring the court action and which was the reason why he had not personally signed the retainer letter. However he had read the letter although he was not a lawyer. He could not judge when it was put to him that the hourly rates were quite expensive whether it was expensive, cheap or whatever. He did not know whether what the clients had done in June 2012 (by changing firms) triggered the operation of clause 23.5; that would have to be judged by AM's lawyers. Terminating the contract was done in agreement with AAM. There were a lot of reasons why they terminated the retainer. There were several reasons to terminate without the risk of triggering these clauses and one of them applied here. They had cancelled the contract with the firm for a good reason.

165. The witness was referred to the Agreed Cost Estimate and agreed that it appeared that the total payment shown that £75,000 was for the firm's fees with a £10,000 contingency for disclosure and counsel shown separately at the foot of the page with an estimate beginning at £85,000 to £100,000, with a statement: "Counsel's clerk has not yet provided an estimate as to [S QC] and [G]'s fees for the work involved to go to a full hearing." There was also a statement in clause 10.4 of the retainer letter:

> "If you lose you may have to pay your opponent's costs as well as your own."

The witness stated that this was quite a normal clause; the details were different in Germany but the overall situation was much the same. He had not been involved in litigation in England before; this was his first and only experience.

166. The witness agreed that in his statement he said in respect of the disclosure hearing on 28 May 2012:

> On a date I cannot recall, Ms [M] mentioned to me on the telephone that there could be adverse consequences as a result of the hearing and I queried this with [the Respondent] before the hearing. He did not advise me at any stage that there could be a downside to the hearing, or that I could be liable for costs following the hearing. He told me not to worry and that everything was fine. I therefore understood there to be no risks in going ahead with the disclosure hearing."

The witness agreed that if he had been told about the possibility of adverse costs consequences; it must have been very close to the material events. Everything happened in May.

167. The witness stated that before this hearing, he had not seen the firm's file note of a telephone call with the witness and DR on 12 April 2012. Early on in the call the Respondent had explained that he had stepped in to Ms M's shoes. Later in the call the following exchange was reported:

> "R: Anything in addition you want to ask?

WK: What are the costs and timing around looking for these documents?

R: No, it's within the budget we've agreed. It's what anybody would do, to minimise risk. Time is fine – we've given them 7 days. It may make them see sense…"

The witness stated that he was talking about other costs that he had to reimburse, not his own; he asked for the overall costs and the Respondent said it was all budget. He did not even know that a costs order could be made; if he had a lawyer and a costs order was threatened against him, he expected to be told. As to the warning in the retainer letter, the witness stated that no one had told him; Ms M told him after everything was "in bad shape". Notwithstanding what he said in his statement that Ms M had told him on the telephone about adverse consequences from the 28 May 2012 hearing, he was still of the opinion that the Respondent as his lawyer had to tell him if he asked this question. In respect of what was recorded in the file note, he was talking about any costs and he agreed that when the Respondent said that the costs were within the budget they had agreed, the Respondent was not answering the witness's question. He had understood the Respondent's words during the 12 April 2012 call about being within budget and minimising risk to mean that there were no risks of going ahead and everything would be fine. The Respondent never told him of any sort of risks about the downside to the 28 May hearing. He asserted that the Respondent was "turning round words with a non-native speaker".

168. In his witness statement, witness said:

> "In or around April 2012, [Ms M] called me to explain that she was leaving [the firm]. She was very professional on the telephone and did not give any reasons why she was leaving but I had a feeling that there was a specific reason why she was leaving that she did not want to tell me and that something wasn't right. [MB], [DR] and I discussed whether we should move with [Ms M] to her new firm because she was our main point of contact at [the firm], but we ultimately decided against it due to the proximity of the hearing in June 2012 and because we had an ongoing contractual relationship with [the firm]. I also had no reason to think that there would be a problem continuing the instruction to [the firm]. Following on from this, [the Respondent] became our main point of contact at [the firm]."

It was put to the witness that Ms M had left the firm in October 2011. He did not remember the date she told him that she was leaving; he thought it was April or May 2012. She told him she had already left or was leaving or it might happen that she would leave and after a while she left. She gave him the impression something was not right and he asked what the reasons were but she was not saying anything. He had the impression she could have had something to say and had a bad feeling about the conversation so there could be a problem. The witness did not know if it was relevant that he was still the firm's client and she had left; he did not care about the specific relationship with Ms M or the firm or the Respondent. The witness cared about the case as any professional would do. He could not judge if the reasons that she was not telling the whole story were related to the fact that he was still a client or not. Just between the three of them the clients had discussed whether they should actively talk to Ms M to see if she wanted to have the case or if they should stick to their contract

with the firm. Their contract was with the firm and not with Ms M personally. They were near the hearing and decided to stick with the firm. They did not even get to the stage of discussing the consequences of moving the case; they just thought was it a good idea or not and decided to stick with the firm.

169. The witness was asked about the telephone call from Ms M referred to in his statement when he said that she warned him that there could be adverse consequences from the 28 May 2012 hearing. He stated that it was almost two years ago; there could be additional costs against them; probably Ms M was specific about which costs but the witness did not know the English legal system and so did not know which the different costs were. He agreed that the costs in question could be anything in the range of costs which the Respondent had raised with him earlier. It was suggested that budgeted costs would not be an issue because of the cap but the witness stated that any sort of costs were an issue for him; if there were costs aside from the budget he wanted to be informed.

170. In his statement the witness said:

> "At some point during the afternoon of 1 June 2012, I had a call from [Ms M] who asked me if I had seen what had happened at the hearing. She informed me that there was a costs order against us. I understand that this was as a result of conversation she had had with another hedge fund manager who was present at the hearing. I was confused as a result of this phone call and e-mailed [the Respondent] to confirm the position on costs. [The Respondent] again confirmed that there were no further costs for us resulting from the hearing…"

The witness agreed that he had e-mailed the Respondent at 17.38 referring to the other hedge fund manager, as set out in the background to this judgment. This would have been 16.38 London time, [there was some discussion about the difference between London and other European countries times and also that there were several versions of Ms M's e-mail of 17.44]. The statement continued:

> "I remained confused as a result of the conflicting information I had been given and I asked [Ms M] for some evidence regarding the alleged costs order. I understand that [Ms M] went to court, obtained a copy of the order and faxed it to me…"

In respect of that copy order, he did not know where Ms M had got it from; he agreed that he was troubled and sought clarification from the Respondent after his contact with Ms M. The witness stated he received an e-mail from the Respondent at 17.36 London time. He knew after he had the telephone call from Ms M that someone was "big-time lying" and he needed to know who it was; he received the Respondent's e-mail and he knew. As to the issue about the London and rest of Europe time, the only thing he could say was that he sent an e-mail to the Respondent at 17.36, he received the Respondent's answer and had hers and then knew who was lying.

171. The witness stated that it was probably not he who had told DR about the costs order; DR had different information from him. The witness asked the Respondent separately and that was it. It might be, he agreed that Ms M told him broadly when she told DR.

As to it being DR's evidence that he had been told by 10.00 in the morning of 1 June 2012, the witness stated that he remembered in the afternoon that he and DR had different information; the information flow to them was different.

172. In his statement, the witness also said:

> "I was shocked when I received the order from [Ms M]. [MB], [DR] and I felt that we could no longer maintain the professional relationship we had with [the Respondent] and [the firm]. We had previously had a good working relationship with [Ms M] and, as a result, we instructed [HH] to take over the matter on 5 June 2012. [HH] paid the order for us and we reimbursed them in accordance with the ratio…."

The witness stated that before he received the costs order he was just confused because the Respondent told him there was no costs order and everyone else especially Ms M told him there was. Ms M was his lawyer; he trusted her and still did. He had believed that the Respondent was his lawyer and he could trust him but realised he could not and was shocked. He was first shocked when he saw the costs order with his own eyes. He did not have a copy of the costs order before he asked the Respondent about it.

173. As to the fact that he did not terminate the retainer until 5 June 2012; the witness was not a lawyer and needed to have the right thing to do to move the case. He did not know how to do it in English law. He did not know the consequences. He had to discuss it with AAM, (the company looking after the funds). He had to agree with DR and MB. There would be an auditor in the fund and he could not just advise the Respondent then. The witness rejected as complete nonsense that he had wanted to move the case to Ms M from April when she called him but did not do so because of the termination provision in the retainer letter which would uncap the fees and lead to higher rates of charging and that his questions to the Respondent were framed in order to get good cause to terminate the retainer. The witness stated that the Respondent was again lying; the witness could get all the AM group into court. There were e-mails to lawyers, to the auditors for the fund; they acted for funds and could not just do what they wanted. Everything they did had to be brought before the auditors. They had looked at the consequences of moving the case, not because they had a major plan but because the Respondent did something unbelievable and they had to move the case away from him; they had no reason to move otherwise. Ms M's new firm was 200 km from London; the Respondent had told them that everything was fine and then he started to play games; he was lying then and he was lying now. During re-examination the witness said that they had decided to move the case away from the firm because of consecutive untruths; at a certain stage they all agreed, DR, MB and then the people from the fund administration, that for that reason the best decision was to move somewhere else; Ms M was the only contact available and she was already familiar with the case. They had made a decision on 1 June but the question was how to do it and how not to make mistakes and errors because of the ongoing litigation. It was all about winning that case not about the firm or the Respondent and after a while they won the case.

174. In cross-examination, the witness denied he felt that it could be improper for Ms M to talk to him because she should not solicit clients away from the firm. He had not

spoken to her a lot between April and June 2012; he had been speaking to the Respondent much more. He had not sent a copy of the costs order to the Respondent after 1 June because he was not interested in working with the Respondent any more. (In re-examination, the witness could not say precisely how many times there had been contact between him and Ms M between the time she left the firm and the termination of AM's contract with it; maybe four to six times during which she was informing him. Then some days nothing happened. She told him things that he mentioned in his witness statement. He did not have "dealings" with her; he trusted her and still did and was astonished she left the firm. Until 1 June 2012 he only spoke to her twice or so but on 1 June the discussion was very intensive, several times back and forth because he did not believe that there was a costs order and so he asked for evidence; he did not know whether she was lying. She delivered a confirmatory costs order and clearly he had to move on with another lawyer.)

175. It was put to the witness that during the recorded telephone conversation on 1 June 2012 that the Respondent could not have been referring to the adverse costs because of his reply to the witness's question:

> "WK: Now and the fact that you asked for that, has this produced any additional costs or fees or whatever for us?"
>
> R: No, no, as I was saying when we first spoke about it, this is included in our budget."

The witness stated that he meant any additional fees or whatever; he could not know what costs were called. The witness did not even know the words in German law. He included any sort of costs and said "whatever". He rejected the suggestion that because he then said in the 1 June conversation "OK" it was because what the Respondent said was a reference to April call and both then and in June WK had been told then that the costs were included in the budget so it could not be a reference to adverse costs. The witness stated that therefore the Respondent had not answered his question and he did not realise because of his "bad English". His attention was drawn to another exchange in the conversation:

> "WK: Ok – any further costs – neither for you, not the court not for [IB] or [F,] not anyone?"
>
> R: Not for anyone..."

To this the witness said in evidence "There we have it."

176. The witness was referred to the part of his statement where he said:

> "I have been asked to comment on the issue of fees for Counsel. Mr [S] QC and Mr [G] of [E] were instructed by [the firm] on our behalf in relation to this matter. I remember very clearly being asked repeatedly via e-mail for £40,000 in May 2012 to cover the barristers' fees...
>
> It was my understanding that out of £40,000 that [the Respondent] was requesting from us, £30,000 was specifically for the barristers. It is my

> understanding that all of the fees were with [the Respondent] by 30 May 2012 and this completed our liability to [the firm]. There were no other outstanding payments due to [the firm]..."

The witness exhibited copy email correspondence between himself and the Respondent relating to the issue. The witness insisted that when he said £40,000 had been requested he meant £40,000 and £30,000; they had been repeatedly asked for £40,000 for barristers and then they went into details and the Respondent said £30,000 was for the barristers and £10,000 was for him. As to the invoice sent to DR on 9 May 2012 which did not refer to barristers' fees, the witness did not know about the additional invoices for DR; the subject might have been discussed in the background but he did not remember; he did remember an invoice of £40,000 representing his 69% share but he was adamant that the Respondent said that the fees were covering the firm's costs and £30,000 was to go to the barristers. It was put to him that the invoice for him would have been similar to that for DR and it only referred to the firm's fees, the witness understood it completely differently and said so in the e-mails attached to his witness statement. He rejected the suggestion that meant that the firm said it would only charge £10,000; the Respondent said he wanted £40,000 and from this £10,000 would go to him and he would just pass £30,000 onto the barristers. It was suggested to the witness that he paid £40,000 to the firm however [regardless of how] it was decided to allocate it later. The witness stated that he had asked in advance how the firm would allocate the money and the Respondent said £30,000 and £10,000. It was very clear from his e-mail of 21 May 2012 and the Respondent's reply:

WK sent at 17.55:

> "we understood that if we pay the GBP 40.000 now there are no fees left for CityLaw as stated on your fee narrative sent last Thursday, 17th May. In addition you will pass on GBP 30,000,-of this to the counsel (S QC) for the fee due to him.
>
> Could you please confirm this in order to proceed on time and make the payment to you."

Respondent in reply at 18.16:

> "Yes,
> That is correct [WK]
> The £40,000 payment finishes off all liability to my firm.
> Best,
> Paul"

The witness stated that he was not clear what the Respondent meant by the 18.16 e-mail and so he asked in a further e-mail shown as sent at 06.54 which was probably the London time:

> "And GBP 30,000, -of that go to [S] QC?"

And the Respondent replied:

> "Yes. That is the reason for the urgency. Can you please arrange the transfers today so that I can cover.
> Best
> Paul"

The witness asked how could it be clearer? He rejected the suggestion that the Respondent's use of the word "cover" made a difference. He did not understand the difference in that e-mail from what he the witness was saying. He asked the Respondent twice and the Respondent did not pass the fees on. The 21 May e-mail at 17.55 from the Respondent was unclear about the £40,000 finishing off all liability to his firm and so the witness had asked his question again.

177. **Mr Edward Charles Miller** gave evidence. He confirmed the truth of his statement dated 12 June 2013. In cross-examination his attention was drawn to that part of his statement which dealt with the events of 22 October 2012. He agreed that a Mr GT of the firm who was present at the hearing produced an extract from the "Lawyer" reporting on the intervention into the firm and he confirmed the truth of his statement:

> "After the hearing on 22 October 2012 I asked [the Respondent] what the intervention meant for the Firm. He intimated that he had discussed the matter with the [Applicant] and there would be nothing that should prompt any concern."

However the witness could not accept the proposition that the Respondent told him that he was in discussions with the Applicant at that stage.

178. **Mr Alexander Lee Green** of Devonshires Solicitors gave evidence. He confirmed the truth of his statement dated 21 June 2013. He was referred to that part of his statement which referred to a telephone conversation with the Respondent on 24 October 2012. It was his recollection that the Respondent called Devonshires; he rang through to the Interventions Team and the call was put through to the witness. Mr Allen put it to him that in his statement he said:

> "On 24 October 2012 I managed to speak with [the Respondent] over the telephone."

As to the use of the word "managed" it was put to him that it was the Respondent who had called him. The witness stated that they had not managed to raise the Respondent prior to that call. The Applicant had tried and they had been to the firm's offices and a number of other premises but not managed to see the Respondent or raise him on the telephone; hence his use of words. During the course of the conversation the witness asked where the Respondent was right now and the witness said "at home". The witness asked where that was and the Respondent replied "17 [C] House". The witness was referred to an attendance note he had prepared dated 24 October 2012 referring to the conversation and confirmed that it was reasonably accurate and he did not wish to make any changes to it. The witness was asked whether the Respondent was making any arrangements to inspect documents and responded, certainly not at that time. There had been some contact only very recently about looking at his old e-mails but nothing immediately after this attendance note. Devonshires arranged some access to look at the Cloud hard drive that the firm had used. They arranged some

access for the Respondent to look at some of the e-mails but it never happened; this was very recently. In cross-examination the witness was referred to his file note dated 19 October 2012 of the intervention into the firm. In it he said and confirmed, referring to the Cannon Street premises:

> "We then met with the Business Development Manager…. He informed us that [the Respondent] had signed a Rental Agreement in late August for office space at the premises. [The Respondent] had wanted some changes made to the building so they had obtained some quotes for him."

The witness had not been shown a copy of the Cannon Street lease. He had no idea whether the Business Development Manager was an employee of the landlord or of the building. In the next paragraph, the witness had said:

> "[The Business Development Manager] confirmed that he had not heard from [the Respondent] since then and his account was now in arrears. [The Respondent] had been chased by the landlord's head office and [the Business Development Manager] explained that every time he has tried to call [the Respondent] he just hangs up so they were now "going legal". He confirmed to us that some of the staff have called to ask when the office will be ready and if they can use it. He said he had a call from a Mr Edward Miller (internet address) Mr Miller said he had recently been in Court with the Respondent."

The witness was happy with what he had written. He rejected the suggestion that during the telephone conversation on 24 October 2012 his memory was clouded or he had made a mistake about the Respondent saying he lived at C House.; He remembered it because it was an odd thing to say, that he was at home; it was as if it was obvious to the Respondent that home was C House. The witness agreed that over the weekend prior to the day fixed for the Respondent's inspection of documents which was on a Monday there had been a power outage at Devonshires but despite this they had managed to get all the documents and it had no effect on the Respondent's ability to look at them.

179. **David Grief** gave evidence. He was the Senior Clerk at EC Chambers. He confirmed the truth of his witness statement dated 19 June 2013 and of his supplemental witness statement dated 26 July 2013. He had tried to make arrangements to meet representatives of the lay clients [from D] but no meeting had ever taken place. His counsel had applied to the Compensation Fund and the fees had been fully paid for all three of them. In cross-examination, the witness was referred to an e-mail he had sent on 7 March 2012 at 6.25 pm to Mr C the chairman of D which included:

> "Since [the firm] do not seem able to pay these outstanding fees even though my discussions with them have continued for many months, what proposals do you have to make payment for the work these three barristers have done on behalf of [D]?"

The witness agreed that by then Chambers had been in extensive dialogue with the firm and he added, since the previous summer. He was only trying to open up a fresh dialogue with the client because he was getting nowhere with the Respondent; there had been endless false promises and the only way to progress the matter was to deal

with the lawyers or the client in Greece. Bearing in mind that it occurred two years ago, the witness stated that it did not appear that at the inception of the direct dialogue anyone from the firm was involved. The dialogue that EC had had with the Respondent for the previous nine months was that the fees could not be paid because of the Greek debt crisis. The Respondent intimated to the witness that the client was made many promises. The witness did not have "a handle" on it and so he thought as there were Greek lawyers involved, why not contact them. As to C being the president of D, the witness stated that clearly he went to the top and agreed he was trying to stir things up. He also agreed that 13 minutes after his e-mail to the president he received the e-mail from TP of D quoted in the background to this judgment, stating that they were very unpleasantly surprised by the fact that the fees were not paid by the firm. The witness agreed that this e-mail from TP was the basis for his statement when he said:

> "It became apparent that it was her understanding that funds had been sent to [the firm] in order for Counsel's fees to be paid."

He had replied: "Thank you for your prompt response, I am too, very concerned at the news." and he agreed that the news he referred to was that D had funded the firm to pay counsel. He had sent a further e-mail the following day 8 March including:

> "Mr [G] QC has not been paid anything since December 2010, Mr [B] has not been paid anything since December 2010 and Mr [F] who began work on the case in September 2010 has not been paid at all. Is this consistent with your understanding of the position?
>
> In your e-mail you said that you were surprised that the barristers' fees "were not duly paid by [the firm], since we have sent the funds for settlement of such fees." Is it possible for you to give us some more details of the payments made by [D] to [the firm] in respect of counsel's fees. Specifically, how much was paid and on what dates?"

180. The witness stated that the Respondent was consistently telling him that he received no money from the clients because of the Greek debt crisis. The witness had even suggested that the Respondent go to Greece and collect the funds directly and it concerned him that TP said that the Respondent had the money. The witness could not think back two years as to whether he had received an e-mail following on from his questions in his 8 March e-mail. He agreed that if such an e-mail had been included in the communications he was asked to send to Applicant, it was reasonable to suppose that the reply would be in these documents. The witness agreed that in TP's e-mail of 9 March she said:

> "We have scheduled a conference today with [the firm] in order to understand what went wrong for. Following this call I will inform you on all the issue (sic) raised on your e-mail below."

181. The witness was asked if it surprised him to be told that the Respondent's evidence would be that TP called the Respondent and said she could not understand why the barristers were putting pressure on and why not sack them. The witness did not know because he could not get a "handle" from the Respondent or the people in Greece

about "what the hell was going on with the fees". It was also put to the witness that TP had told the Respondent that she had met the witness earlier that day and that she also told the Respondent that they had sorted out the fee position at that meeting and that she had agreed to pay the witness by the end of April; the witness denied it. He had no meeting with anyone from Greece. He was certain that he did not.

182. In respect of a long e-mail from Mr G QC to D dated 3 April 2012 at 14.16, the witness stated that they were all frustrated and Mr G was trying to get a grip on the case. It was put to the witness that the e-mail from Mr G referred to the witness's e-mail to D on 7 March and TP's reply about being very unpleasantly surprised and also a statement in Mr G's e-mail:

> "On 13th of March 2011 [2012], Ms [TP] wrote to [the witness] to inform him that she was happy to meet [the witness] when she returned to London in April. The e-mail concluded as follows:
>
> "...We just want to reassure you that, regardless of our internal discussions and arrangements with [the firm], D intends to settle the fees owed to the barristers. We will update you on our proposal for the settlement, after our meeting with [the firm]..."

As to whether it surprised the witness that the Respondent had met TP on 15 March 2012 [although she said she would not be back in London until April], whatever she had told the witness, he stated that nothing surprised him, but he agreed he would have been surprised if he had known that at the time. (The witness was asked to obtain the e-mail 13 March 2012 from TP to him in its entirety as it was only quoted in G QC's e-mail.)

183. Mr G's e-mail also stated that on 10 March 2012, TP informed the witness that she was to meet the Respondent in London on 15 March 2012 and the witness agreed that she must have told him that. It was put to the witness that on 10 March 2012 she told him that she was meeting the Respondent in London on 15 March and on 13 March she told him that she would not return to London until April. The witness stated that he and the Respondent met in the Respondent's office in May and went through this and the Respondent knew that TP did not meet him and so the witness came to see the Respondent.

184. It was put to the witness that TP's 13 March 2012 e-mail about settling the fees owed to counsel was a very stark difference to what TP said on 7 March 2012 when she told the witness that she had already paid all the fees and that the difference must have surprised the witness. He said that there were so many ups and downs over the whole period, blaming Greece; this was a high point saying that they were going to be paid. As to the difference, he probably was surprised.

185. The witness was then referred to a further paragraph in G QC's email:

> "On 21st March 2011 [2012], Ms [TP] wrote to the witness as follows:
>
> "Sorry for not replying earlier, but as I told you I was not in the office for several days, so I did not have the chance to speak with the financial

> Department of [D] on the payment of the fees. As you understand this is an amount that they did not anticipate and they needed to make the necessary arrangements. They informed me this morning that they will pay all fees until the end of April. They will send you a schedule with the exact dates, later this week."

The witness stated that he had never received the schedule and the witness had come to see the Respondent and asked, where the hell is the schedule. It was put to the witness that his surprise at the 21 March 2012 e-mail must be turning to rank scepticism because it did not look as if D had paid the firm which just failed to pass the money on. The witness stated that in years of experience of dealing with solicitors he had had many things said to him. The witness did not know who was who and what was going on.

186. Mr G's e-mail continued:

> [The witness] replied as follows:
>
> "...This whole saga is a mystery to me, [the Respondent] has been telling me for a year that he has been chasing our fees and promising payment on numerous occasions, surely [D] knew that they had incurred these fees, all Counsel had done a considerable amount of work so I can't understand why this comes as a surprise to [D]. As you also must be aware, time in the diary was being held for [D] in April this year and only when I was told by [the Respondent] that he had come off the record due to non-payment of fees (if this was true), were the dates released…"

The witness accepted that the e-mail of 7 March and the later ones were not consistent. Mr G's e-mail continued:

> "Ms [TP]' response was as follows:
>
> "... Last year we capped the fees of [the firm] and we thought that we had an arrangement with [the firm] to pay all the fees of the external advisers as they did in the past. We had a disagreement and we now have now (sic) a new agreement with them. As I told you before [D] is prepared to cover directly the fees..."

It was put to the witness that TP was saying that they had capped the fees and so it must have been clear to the witness that D had never paid the fees before and was saying that they would pay them now. The witness was referred to what was described as a summary at the end of Mr G's e-mail:

> "In the light of the above, I consider that I and my fellow counsel are entitled to a full, honest and detailed explanation and straight answers to the following questions:
>
> Why has [D] not met its obligations to pay us and why has [D] reneged on the numerous assurances of payment given to us by [the Respondent]?

> When will [D] meet its obligations to pay counsel and where is the payment schedule promised in Ms [TP]'s e-mail of 21st March 2012?
>
> When Ms [TP] said:
>
> "We were very unpleasantly surprised by the fact that the barristers' fees were not duly paid by the firm, since we have sent the funds for the settlement of such fees…"
>
> This implied that monies were sent by [D] to [the firm] to pay counsel's fees which were not passed on to counsel. Is this right? If so please provide details."

It was put to the witness that his shock at the 21 March 2012 e-mail from TP must have turned to scepticism and he agreed. He did not know whether Ms TP replied to Mr G's email.

187. On 21 March 2012 at 12.01, Mr G QC emailed the Respondent:

> "I am surprised if not shocked that you have failed to pick up the phone or write to [the witness] (or indeed any of us) for many weeks.
>
> This is despite the fact that you must be well aware that we have been in correspondence with [TP] and we know that you met her last Thursday.
>
> I am also disturbed, to say the least, that you have informed us that the firm have come off the record when this does not, in fact, appear to have been the case.
>
> It also appears that [D] capped the fees of [the firm] last year and thought that they had an arrangement with the firm to pay all the fees of counsel. As you know [F] has been paid nothing and [B] and I have been paid nothing since December 2010. We have no alternative but to believe that [the firm] has used all the funds paid by [D] for its own purposes and chose to pay nothing to counsel…"

The Respondent forwarded this e-mail to EX (of D) on 21 March at 20.10:

> "See below. What is the plan?
>
> I need to talk to him [Mr G]."

It was put to the witness that the Respondent had passed this e-mail exchange to him on the day the Respondent and the witness met and nothing had been provided by the witness commenting on TP's email about her understanding. The witness replied that if it was not there it was not there. The witness stated that there were days of not being able to get hold of the Respondent then amazingly the witness did so and asked if he could come to the Respondent's office the following morning.

188. It was put to the witness that it must have been obvious to him that D's word on the fee matter was fundamentally not reliable and he replied, maybe yes. Nothing turned up at the end of April. The promised schedule had never come and nothing had been paid. The day after the witness visited the Respondent's office, the Respondent sent an e-mail to the witness on 2 May 2012 at 11.49 in reply to Mr G's points. It was put to the witness that by now he must have a healthy scepticism as to whether TP had told the truth in the 7 March 2012 e-mail. The witness replied that also applied regarding whether the Respondent was telling the truth; there probably was scepticism in EC; they didn't know what to believe. As to whether he could possibly have believed that TP was telling the truth, the witness stated that it was two years ago and he could not possibly say.

189. The Respondent's 2 May 2012 e-mail referred to a meeting in August 2011 attended by TP and EC and others when costs were discussed. The Respondent continued:

> "Pausing here, you will have seen the e-mail I passed on yesterday from [TP] which records [D's] "misunderstanding" of the terms of the March arrangement. It may well be that [EX], in particular, was confused rather than motivated by an intention to re-write the deal; but any such confusion was certainly laid to rest at the August meeting."

Later the Respondent's e-mail said that a payment of £50,000 had been made by D (in November) 2011 as a gesture of goodwill. He continued:

> "It is true that we could have paid £50,000 to counsel. As I explained to you on our call in December, however, that would have imperilled my Firm which has suffered greatly from the failure to meet our fees. The payment was certainly not made against counsels' fees; if it had been I would have had no choice but to account for it in accordance with the client's instructions. It was a general payment on account of what was due generally. I might make no bones about the difficult choice that created but, as well as wanting to look after counsel, I also have to look after my staff."

The witness stated that the Respondent had an obligation to pay counsel but counsel had to accept that while the Respondent owed counsel he had to pay his staff and did not pay counsel. They did not know what the client said the money was for. In terms of whether he could have believed what TP told him or that he would have raised it with the Respondent, the witness stated that he was not going to that depth he just wanted to get the fees paid.

190. The Respondent's e-mail said later:

> "I met [TP] in London in March, the meeting to which [G QC] refers, and she told me, in short that [D] accepted they had to meet counsels' fees and that at least a substantial payment would be made against them by the end of April. They would be paid albeit in instalments. I told her I was pleased at that. The fact that payment will be made has since been confirmed by [EX] (and I sent you one of her e-mails yesterday).
>
> ...

> I am glad that they recognise their liability for counsels' fees and that their "misunderstanding" has been dissipated.
>
> I am sorry that counsel have been kept out of their fees for so long; but, to be frank, none of us would have anticipated the economic turmoil in Greece over the past year. Still less could I have anticipated its full extent at the point [G QC] was instructed six years ago (I mentioned that in the light of his comment that we ought to have been better astute to the credit risk).
>
> We have not withheld sums paid by way of counsels' fees by the client. On the contrary, the client has consistently underpaid by way of general sums on account which were, at best, just about enough to sustain us, often not even that or nothing at all, but never enough to allow us to allocate funds to counsel without endangering the Firm."

The Respondent put it to the witness that he never replied to his 2 May 2012 e-mail because obviously the client had misled them in her e-mail of 7 March or the witness would have said that it was nonsense because the Respondent had the money. The witness had to say "Yes" but the whole thing was a complete mystery at the time. He did not remember passing the e-mail on to TP or EX but he could not say for absolute certainty; he did not know.

191. The witness was referred to an e-mail on 13 November 2012 at 14.43 to him from Ms EX:

> "I would like to inform you that the business relationship between [the Respondent's] office and our company commenced in December 2007; services rendered were compensated on an annual basis as the outcome of our case progressed which included all respective third-party fees.
>
> Suddenly at some point in late 2011, [the Respondent] communicated the fact that there were outstanding third party fees pertaining to services rendered in 2011 and we were thereby requested to settle these additional fees. As you can understand this came as a rather unexpected and most troubling surprise.
>
> Indeed, [the firm] issued an invoice dated 9/2/2012 wherein all outstanding third party fees are outlined (attached herein). we in turn made a £240,000 deposit on the aforementioned invoice assuming that this amount will (sic) settle all pending payment re third parties and we had explicitly requested that we are issued at (sic) credit invoice (refer to attached e-mail for further details).
>
> [The Respondent] however continued to excerpt (sic) absurd pressure re outstanding third party fees and finally we completed a payment of £273,440 explicitly requesting that the outstanding third party fees amounting to £173,440 are settled with the utmost urgency. As you can readily understand the latter amount is the exact amount quoted in the [firm's] invoice pertaining to all third party fees."

The Respondent put it to the witness that he relied on EX and TP to tell him of the arrangements between them and the Respondent. The witness responded that the firm had shut down; it was his detective work, he still did not want to give up on collecting fees and he sent a number of e-mails to EX and this one came to him. At least he was now communicating with the client [D] as opposed to its lawyer EX and so the witness felt he was getting a better picture; the true story. He was playing detective. He might be sceptical but actually got someone to reply from D. He agreed that while he had had e-mails from D before, he just did not believe them. It was put to him that the two lines of the e-mail saying that the firm was compensated on an annual basis including all respective third-party fees, was nonsense. The witness stated that he understood that EX was saying that was what was happening and that the firm was compensated for its fees and third-party fees. The witness stated that he just did not know what to believe.

192. The witness was then referred to an e-mail from EX to him dated 18 January 2013 at 16.38 beginning:

> "It was great to speak to you yesterday afternoon.
>
> As discussed please find hearing details of all [D] payments to [the firm] from May 2010 onwards amounting to a total of £2,111,969.61 plus the £273,440 payments referred to in my previous email, thereby a total of £2,385,409.61. As confirmed in our previous communication, these payments regarded all services rendered including all third-party and counsels fees."

As to whether the witness had experienced any scepticism regarding what had happened in March, he thought he had hit the jackpot because he was going to get money.

193. As to the claim on the Compensation Fund, the witness stated that all three counsel had been paid in full. It was put to the witness that the claim went beyond the £173,440 referred to in EX's e-mail of 30 July 2012 quoted in the background to this judgment. The witness's e-mail of 2 November 2012 set out:

> "The barristers are still owed outstanding amounts to date on this matter in the sums of:
>
> [G] QC £185,600.00
> [B] £64,850.00
> [F] £39,125.00"

[The e-mail asked what sums in addition to the £173,440 which did not cover the above sums were sent to the Respondent for the purposes of paying the remainder of the barristers' fees.]

The witness stated that his claim on the Compensation Fund was for the three fee notes at the front of the file. When he found out that the firm had received counsels' fees and that EC had not been paid they notified the Applicant. Devonshires had all the evidence and the Compensation Fund paid out on the evidence that he had. In re-examination, the witness was asked about saying that when he saw the e-mail from

EX dated 18 January 2013 he thought he had hit the jackpot; he replied that at last he had evidence that the clients had paid the firm and to get a claim to the Compensation Fund he had to prove instructing solicitors had the funds and at last he had that proof that the client had paid the firm for the barristers. The witness had heard various sums which the Respondent mentioned saying that he had received from D but the firm said it had to pay the staff and EC did not want the firm to go out of business. These conversations took place in the last quarter of 2011 and the first quarter of 2012; it had been put to him that EC should feel sorry for the firm and that it had to survive.

194. **Mr Peter George Ling** gave evidence. He confirmed the truth of his witness statement dated 30 July 2013. He was a chartered legal executive in the employ of HK. In cross-examination, the witness confirmed that the letter from HK dated 3 October 2012 giving a deadline of 26 October 2012 in respect of the firm's files, was his letter. The witness agreed that the reference to the possible destruction of the files was said more to put pressure on the Respondent to take responsibility for them and to resolve the position. The witness agreed that in a telephone conversation with the IO, broadly what the IO said was to warn the witness not to destroy the papers and the witness never had any real intention to do so.

195. **The Respondent** gave evidence. He confirmed the truth of his witness statement dated 3 March 2012 and also the additional statement put in, in respect of the circumstances of his bankruptcy. His evidence is recorded where appropriate under the relevant allegation.

Findings of Fact and Law

196. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

(The submissions recorded below include those made orally at the hearing and those in the documents. Cross references and paragraph numbering in quotations are generally omitted unless they aid comprehension.)

197. **Allegation 1 - The allegations against the Respondent, Paul Francis Fallon, as amended with the consent of the Tribunal, made on behalf of the Solicitors Regulation Authority were that, while in practice as a member and/or as the Sole Principal of City Law Financial LLP ("the firm"):**

1.1 On dates between around 26 April 2012 and 19 October 2012, he:

1.1.1 failed to pay to counsel, promptly or at all, sums received from clients in whole or in part for the express or specific purpose of settling fee notes raised by counsel in respect of work done for the relevant clients;

1.1.2 transferred client monies, including monies received from clients for the express or specific purpose of settling counsel's fees, from

the firm's client account to the firm's office account and the firm's office business reserve account;

1.1.3 used client monies, including monies received from clients for the express or specific purpose of settling counsel's fees, for his own purposes and/or those of the firm

and thereby breached all or alternatively any of Principles 2, 4, 5, 6, 7 and 10 of the SRA Principles 2011 and further or alternatively failed to achieve all or alternatively any of outcomes O(1.1) and O(1.2) of the SRA Code of Conduct 2011 and further or alternatively breached all or alternatively any of Rules 1.2 (a), 1.2 (c) and 20.1 of the SRA Accounts Rules 2011.

1.2 On dates between about 23 April 2012 and 1 June 2012, he made false statements to clients as to the settlement of counsel's fees on their behalf, and thereby breached all or alternatively any of Principles 2, 4, 5 and 6 of the SRA Principles 2011 and further or alternatively failed to achieve all or alternatively any of outcomes O(1.1) and O(1.2) of the SRA Code of Conduct 2011.

Dishonesty was alleged in respect of allegation 1.1 and 1.2.

Submissions for the Applicant

197.1 Mr Allen relied on the facts set out the Rule 5 Statement, and the witness statements and evidence of Mr DG, Dr WK, Mr DR,, the witness statements of Mr PM [of FC Chambers] Mr SW, Mr DA, Dr MB, and Mr PL.

197.2 Mr Allen made submissions in respect of allegations 1.1 and 1.2 together on the basis that they were connected. Mr Allen submitted that the Respondent had a career history of fairly heavy high-profile litigation. The allegations had been brought following an investigation based on a report by Ms RA of the firm whose evidence was accepted. Mr Allen submitted that the bulk of the issues in this matter did not arise out of the Applicant's investigation into the firm but the firm's financial difficulties provided a background context and might help to explain the Respondent's motives for his conduct. It was alleged that between March and August 2012 in the case of three separate clients, the Respondent received money to pay counsel's fees and used it for other purposes (allegation 1.1) and that in respect of two of those clients he also made false statements about the settlement of counsel's fees (allegation 1.2).

FC Chambers

197.3 Mr Allen approached the three different client matters chronologically beginning with FC. Mr Allen referred to the history of the matter and the Respondent's statement in his e-mail of 23 April 2011 to DA at 09.11 stating in the past tense that he had "paid £21,000 to the Barristers this morning…" and that later that same day at 13.47 he had e-mailed again: "please confirm [D] I am in and out of Court today." DA replied:

> "I fully understand, but you have dropped this on me today and [E] is in Detroit seeing our suppliers, flying back on Wednesday, should be in the office on Thursday, but might not be until Friday, as we agreed we are always working to the end of the month. If you had told me last week, it would not have been a problem but I am not able to do anything until he returns as he is the only mandate on the bank..."

On 25 April 2012 at 20.08 Respondent e-mailed:

> "Just out of the trial. No real sleep since Friday.
> Please do make the payment tomorrow. We are now £21K out from the fees paid."

A day later DA paid the £30,000 requested, as evidenced by the CHAPS transfer of 26 April 2012 to the firm's client account. It was received the same day and transferred to office account with other amounts in the client account. It was the Applicant's case that the statements in the Respondent's e-mails of 23 and 25 April 2012 were false and admitted of no other construction but that counsel had been paid which was not so and the Respondent must have known that. The Respondent had asked for the month end payment but said that he had already paid £21,000 to counsel and that had to be covered and so £21,000 of the payment was required for counsel's fees. The client was entitled to expect that liability to counsel was discharged by that payment. The Respondent had been dishonest in telling the client about the payment and requesting money and then receiving money on the basis that it was to cover counsel's fees already paid and not to ensure that counsel was paid. In his response to the Rule 5 Statement, the Respondent said that DA based his evidence on the wholly generalised understanding that the firm was paying counsel everything that was due to them out of its own money and that he referred to nothing by way of document or conversation where he was actually told by anyone that this was the case. This disregarded the basis of the allegation. It was accepted that absent an instruction from the client the solicitor was not bound to pay counsel but the Applicant relied on the e-mail exchange on the basis that counsel had already been paid. The Respondent went on in his response to refer to his e-mail of 23 April 2012 and said:

> "I had indeed that morning signed off two cheques with a letter to go off to [FC]. Before two o'clock I received an e-mail in reply from [DA] saying he was going to be making payment by Wednesday but that arrived when I was at court so I didn't see it when it came in. I think I pretty much trusted [DA] but he was, so to speak, astute in the ways of cash management. I was not going to risk the office cheques bouncing once I knew he was not going to put us in funds for our fees as requested; so when I got back from court and had sent him another e-mail I reflected further on the position and finally decided to pull the letter from the post run. My thinking was coloured by the fact that although this payment did in fact come in at the end of the month, we had experienced missed payments previously."

Signing a cheque for dispatch did not justify telling the client that counsel had been paid and if the cheques were pulled and did not go out that did not explain the later e-mails of 23 and 25 April 2012. The Respondent did not write to the client and get consent. The Respondent accepted:

> "but left uncorrected the e-mail was misleading and I am sorry for that."

Mr Allen submitted that this conduct could not be anything other than dishonest in the light of what the Respondent told the client about what he needed the monies for.

EC Chambers

197.4 In respect of EC, which was the subject only of allegation 1.1, where three counsel were instructed, Mr Allen referred the Tribunal to the e-mail exchanges between the Respondent and WK, DR and MB which are quoted in the background to this judgment and in the witness evidence. He submitted that the fact that the fees due to Mr G were not mentioned was not a problem. [They were referred to in the Rule 5 Statement.] WK did not feel the Respondent's initial response at 18.16 on 21 May 2012 was a complete answer and sought confirmation about payments to counsel and the Respondent confirmed in his 09.27 e-mail on 22 May. On 24 May 2012 at 14:27, the Respondent forwarded SW's e-mail of 21 May 2012 to WK, DR and MB. His covering e-mail quoted above included the following:

> "I am attaching an e-mail from [S QC's] clerk which is, and has been, the basis of my request that we are funded on our invoice so as to transfer £30,000 against the first phase of the brief fee…

Mr Allen submitted that the use of the word "transfer" indicated that the money would be moved and not stay in either client account or office account and when the Respondent continued:

> "my intention was to do that on Tuesday…"

by "that" he referred to the "transfer" and £40,000 was transferred to the firm after that e-mail was sent. The bank statement for the client account showed an entry for 22 May 2012 by way of CHAPS payment described as "Fees Payment for City Law and [S] QC" in the sum of £11,600, another from PTF in the same amount (in respect of DRF's contribution) on 29 May 2012 and on the same date a CHAPS payment from AM for the sum of £27,600. MB paid £800 on 24 May. It was irrelevant that the firm would not have seen the CHAPS slip at the date of transfer, it showed what the clients were saying. Almost immediately the monies were transferred to office account. Mr Allen then referred to WK's e-mail of 30 May 2012 quoted earlier. It referred to payment having gone through and asked for confirmation that S QC had at least received £30,000. In his reply of 11:05 on 30 May the Respondent did not in terms say that the money had gone to S QC but referred to keeping S on (the trial team). He was not expressly saying that WK's instructions had not been complied with regarding S QC. Mr Allen referred to the transcript of a telephone conversation between the Respondent, WK and DR on 1 June 2012 quoted above which included a statement by the Respondent: "… they started work on that on Monday on the basis that the assurances and payments made to them.,…" the Respondent took issue with the word "and" and thought that it might have been "assurances of payments" but Mr Allen submitted that the only fair interpretation was the Respondent was telling the clients that money had already been transferred to counsel and the Respondent himself had not challenged this interpretation.

197.5 Mr Allen submitted that in his response the Respondent had taken issue with the understanding of the three clients that £30,000 was for counsel and that £10,000 of the £40,000 payment was for the firm. He said that the £40,000 was due for his firm and he was only offering to provide cover from his fees if paid, and if necessary he would pay from that but he did not agree that the £40,000 payment for the firm should be reduced to £10,000. Mr Allen referred the Tribunal to the firm's retainer letter dated 2 February 2011 to WK and another individual at AM and an Agreed Cost Estimate document which set out agreed fees for certain stages of the proceedings; correspondence with IB and others was estimated at £15,000; attendance at hearing of two days at £15,000 and there were contingencies including £10,000 for disclosure which it was stated IB might seek. The Respondent said that those sums totalled the £40,000 so that there was nothing for counsel's fees. Mr Allen submitted that even if the clients got it wrong and £40,000 was for the Respondent's fees, the key to the allegation was the material the Tribunal had been shown where the Respondent had agreed to pay money to counsel and the client had instructed him to; he said that he had made payment and he had not. It did not matter if the £40,000 was due to him for his fees because he had agreed to cover £30,000 counsel's fees and only take £10,000 for himself. The Respondent could have said that £40,000 was due for him and he needed £30,000 for counsel's fees but he did not do so. In any event it was the Applicant's case that when one looked at what the Respondent said made up the £40,000 payment for him; £15,000 was for attendance at the hearing but his retainer was terminated on 5 June 2012 and he never attended the hearing. Another firm HH took it on and so on any view £15,000 could not have been retained by him on account of a £40,000 agreed fee and he would need to account to the client for that £15,000 which he had not done.

197.6 The Respondent had sought to divide the allegation into generic and specific but Mr Allen submitted that there was no generic allegation, it was based solely on the Respondent's failure to pay part of the fees which were due to the counsel team at EC from the sum of £273,440 received by the firm on 1 August 2012 in accordance with D's express instructions in EX's e-mail of 30 July 2012. The evidence of the Respondent's prolonged failure to pay counsel retained on behalf of D over several years (since December 1, 2010) was referred to in the Rule 5 Statement solely by way of background to the allegation. The mistaken reference to "third suppliers" was clearly meant third-party suppliers including the barristers. The apparently odd figure of £173,440 was explicable by reference to the invoice dated 9 February 2012 from the firm to D which listed charges and disbursements. The latter totalled £173,440.44 and included counsel's fees for Mr F of £2,250, for Mr G QC of £58,700 and for Mr B of £25,000, totalling just under £86,000. In that invoice the firm's charges were £230,593. The bank statement showed the payment of £273,440 coming into the client account on 1 August 2012 from D by CHAPS, and going out on the same day to the office account business reserve leaving a nil balance in client account following which the various debts were discharged, including as the bank statement showed, a payment referable to C House the Respondent's then residence to BM estate agents. There was no evidence that the £173,440 was used to pay third-party suppliers in accordance with EX's e-mail instructions of 30 July 2012. The Respondent said that the client's instructions were fundamentally ambiguous because he could not identify which third parties should be paid and in what preference but the e-mail contained instructions that the money was to go to third parties and a distinction was drawn between them and the firm. The Respondent stated that after he received the e-mail he

spoke to the client and was told to do with the money "as they had in the past". This explanation had been provided on 3 March 2014 just over a week before the hearing and Mr Allen asked the Tribunal to bear in mind its lateness in assessing its credibility.

197.7 Mr Allen accepted that the Applicant had not called direct evidence from the client but relied on the clear terms of the e-mail of 30 July 2012 and given the late notice of the Respondent's response with its alternative explanation, the absence of direct evidence from a client in Greece was not surprising and there was no evidence from the client to support the Respondent's account. Rather there was the e-mail dated 18 October 2012 at 17.47 from EX to DG, EC's Senior Clerk and her further e-mail on 13 November 2012 both quoted above, the latter referring to the 30 July e-mail. In respect of the reference to the deposit of £240,000 from D in the latter email, the bank statement showed a payment on 1 March 2012 from D of £240,000. Mr Allen accepted that this was not the same as evidence on oath which could be cross examined but the Tribunal could determine what weight to attach to the e-mail. Mr Allen rejected the Respondent's suggestion that this was the rehashing of an old debate between D and the Respondent regarding whether to pay counsel as they went along. The 30 July 2012 e-mail was specific from the client's lawyer EX about how to apply the payment she was making.

197.8 Mr Allen submitted that the background was that throughout the latter part of 2011, the Respondent and DG were in regular contact and so was the Respondent with the client regarding the non-payment of counsels' and his own fees. During March 2012, DG lost patience and between January and March 2012 there was not much communication between the Respondent and DG who contacted the client directly asking why counsel were not being paid. There were various communications between DG and the client, the Respondent and DG and the Respondent and the client which culminated in the client's (TP's) e-mail to DG of 12 March 2012 at 10.38 in which she said:

> "… last year we capped the fees of [the] firm and we thought that we had an arrangement with [the firm] to pay all the fees of the external advisers as they did in the past. We had a disagreement and we now have now (sic) a new agreement with them. As I told you before D is prepared to cover directly the fees…"

This explained what was said in an e-mail later the same day from TP to the Respondent at 22.06:

> "I wrote to [DG] this morning and told him that there was a misunderstanding between us that was solved and that [D] will pay everything until the end of April. I do not understand the reaction. What do they want from us?"

The Respondent said in his response that the misunderstanding that TP referred to regarding "us" was between herself and DG but Mr Allen submitted that she said in her other e-mail (of 21 March 2012 to DG) that it was between D and the firm. The Tribunal might have to resolve who had the misunderstanding. DG and TP had only been in contact since March and Mr Allen submitted that there was not much room for misunderstanding between them. Although D did not cover counsel's fees by the

end of April as promised, this was the backdrop to the e-mail of 30 July to the Respondent telling him to use some of the money being transferred for third parties including counsel; TP was fulfilling in part D's undertaking to EC of March and when pushed by the Respondent, D had found a way to pay part of counsels' fees and intended to have their undertaking acted on.

197.9 Mr Allen submitted that there was no documentary evidence to support the Respondent's account that the instructions of 30 July 2012 had been varied, revoked or qualified. In his response the Respondent said that he telephoned TP and she said she would try to speak with D's president Mr C, he continued:

> "I cannot now remember whether she did manage to get hold of him or whether she passed on to me what he had said to her on the issue or, indeed, whether she also spoke with [EX]; but when she called me back she said that we should deal with the payment "as we had in the past". I remember her words precisely and I took a note of them. As far as I was concerned this did not alter the effect of [EX's] e-mail; it simply made more explicit that this payment was to be applied in the same way as all earlier payments had been; as a general payment towards all outstanding invoices without precise allocation."

No contemporary note of the conversation had been disclosed. The Respondent stated that the files were with the intervention agent but Mr Allen submitted that he had arranged to visit them on 3 March 2014 and had not attended; it was for him to find documents if he wished. One would expect any solicitor to record any countermanded instructions in writing preferably from the client themselves. Mr Allen could not see what the incentive would be, if the client was being hassled for the disbursements, to agree that all the money should go for the solicitor's fees. In his response quoted above the Respondent stated that the telephone conversation made the written instructions clearer but they already were clear. The phrase "as we had in the past" was vague and the content of a telephone call which was not recorded was being used to reverse the 30 July 2012 instructions and the distinction between the Respondent's fees and those of third parties. Even if the Respondent suggested that the conversation altered the effect of what went before (which he did not) Mr Allen found ambiguity regarding what the phrase meant and there was a fundamental disagreement between the Respondent and the client regarding what happened. EX clearly stated in subsequent e-mails to DG of 18 October and 13 November 2012 that D specifically instructed the Respondent to settle third-party fees amounting to £173,440. The words that the Respondent alleged were used orally were unclear against the written instructions; they were not clear and unequivocal enough to treat £173,000 of client money inconsistently with the 30 July e-mail and for a very substantial amount of money to be directed by the Respondent to his own firm in circumstances where the firm was in very severe financial difficulties.

197.10 In his final submissions of law, Mr Allen submitted that the Respondent put great weight on receiving clear unambiguous instructions from the client to allocate monies to counsel's fees. The Applicant did not accept that it was a prerequisite of the allegations; it was necessary to look at the instructions and determine objectively what the clients meant and ask how did the solicitor acting respond, deliberately ignore them or act in accordance with them. It was possible for the client to say something

that might look ambiguous in a court room but the solicitor at the time would understand what the client meant and be on the same page as the client. Mr Allen submitted that if the solicitor acted otherwise than on their understanding that was a dishonest breach of instructions given by the client. The position was not as clear as the Respondent said in respect of instructions. It was necessary to put the facts into context; look at what the solicitor had been told objectively and what did they understand subjectively.

197.11 Mr Allen also submitted that money could not be both client and office money simultaneously. It was necessary for the Tribunal to determine what it was as a matter of law and it might feel that where the solicitor had outstanding bills in the same amount or more than the amount of the client's payments that did not automatically make any payment office money and if the client transferred it for some specific purpose other than for paying the firm's fees then the payment was not office money. It was a red herring that the firm's bill was in the same amount as the payment. The payment was only office money if there was a totally unconditional payment of the firm's fees with no other purpose in mind by the client. If the client said in the case of AM, £30,000 was counsel it was client money paid for an unpaid professional disbursement if there was a clear instruction. The Respondent said that £40,000 was his fees and £30,000 was cover for the barristers but he could not have both; if he was covering the barristers to the extent of £30,000 that was client money. If the £40,000 was all treated as office money from day one and used to pay rent etc there would not be £30,000 to pay counsel if that needed to be done

197.12 Dishonesty was alleged in respect of allegation 1.1.Mr Allen submitted that the Respondent must have known that the monies which were transferred to him by three separate clients for the specific purpose of settling counsels' fees could not properly be used by him for any other purpose. It was clear that the monies received from D in respect of the monies due to counsel at EC were spent in large part on the firm's overheads or the Respondent's personal expenses. The monies received from CI (DA) and on behalf of AM appeared to have been used for similar purposes. Moreover as explained in relation to allegation 1.2, the Respondent misled his clients (it was to be inferred) in relation to the settlement of fees due to counsel at FC and E Chambers. In all the circumstances the irresistible inference was that the Respondent was acting dishonestly in misappropriating client monies which had been transferred to the firm for the purpose of settling counsels' fees, for other purposes.

197.13 In respect of allegation 1.2, Mr Allen submitted that it was inconceivable that the Respondent was not aware when he made the statements to DA to WK and DR referred to above that those statements were untrue and such conduct was plainly dishonest.

<u>Submissions by and evidence of the Respondent</u>

197.14 In his email to the Tribunal dated 7 March 2014, the Respondent denied allegation 1.1.1 – 1.1.3 and 1.2 in their entirety.

FC Chambers

197.15 The Respondent submitted that the Tribunal had not heard from DA and was left with an untested scrap of paper which would have been his witness statement. He submitted that the allegation that he had misled the client must fail because there was only a shadowy basis for an instruction. There were a couple of glancing references in DA's witness statement as follows:

> "It was my understanding that all Counsel's fees were being paid by [the firm]"
>
> "It was my understanding that the payment, made on 26 April 2012 by [CI Investments USA Limited...to [the firm] was for all outstanding Counsel (sic) fees as at the date and that the remainder would go to [the firm]."

The Respondent submitted that all of the allegations were based on the understanding of the client and it was the Respondent's submissions that their understanding could not be enough where it was not communicated to the solicitor to support an allegation that a fee should be paid in a particular way especially if the amount paid was the same sum as a bill raised by the solicitor. So DA's evidence failed the threshold test. The two un-communicated understandings set out in the witness statement never came out as a proper instruction so this head of claim must fail; there could not be a misdirection if there had never been a direction to pay at all.

197.16 The Respondent submitted that the Tribunal should be cautious in construing his e-mail of 23 October 2012 stating that "I paid £21,000 to the Barristers this morning…" as if it were a statute. Saying that he had paid was plainly shorthand, it could equally well have said "I signed cheques and put them in the post tray so please ensure I'm in funds". This would have had the same effect on DA although it could not be tested because DA was not at the hearing. For 150 years lawyers had been running round London asking if the cheque was in the post box was it creditably paid and the answer was "Yes". The post office was the lawyer's agent and the solicitor paid the supplier by putting a cheque in the post box. Even electronic payments had complex issues. There were at least three textbooks on when a debt was paid. The Tribunal could not assess the Respondent's honesty by an ephemeral word in an e-mail. It was wrong to fill in the gaps in shorthand in the e-mails to try to expand what was said to mean something that was not said or to contract it away. Mr Allen had put it to him that he was never going to send these cheques but he had a changing state of mind. He signed cheques and at the same moment sought assurance from the client. When he did not get the assurance that the money was coming in, the Respondent changed his mind. Time went up and down until Thursday evening and he sent the e-mail and decided not to send the cheque. He accepted that there was a need to correct the second e-mail but DA's state of mind would not change; he was paying the firm's fee. The client was not obliged to pay counsel; he had never been billed and never told of the figures. The Respondent was saying what might happen when the firm got fees. The Respondent was trying to help out the client as he had with AM. If he had used the £21,000 to pay the barrister, the Respondent would have looked to the client later to pay it. It was using the firm's money and it was for the Respondent to decide what to do.

197.17 In cross examination, the Respondent explained that he had signed two cheques and a letter with the intent that they should go to FC; they were in a tray on his desk. The envelope would be taken to the receptionist who took it for franking. As to whether he expected that they would be posted that day, the Respondent stated "No" and that he was cautious; the payment history of the client was not very good. The cheques were drawn on office account and he did not want them to bounce and so he sent the e-mail to DA at 09.11 on 23 April 2012. He thought that this was the week of the D trial and before the maelstrom of the trial started he tried to get "office stuff" off in the morning. His intention was that the letter would be sent out when at least he had some indication from the client in response to this e-mail. He was not sure that he had a precise intention regarding when the letter would go. He did not get back to the office for three days. If the client had replied and the Respondent had got back to the office that evening, it could have gone off but he did not get back to the office.

197.18 The Respondent testified that he did not see DA's reply of 23 April 2012 at 13.53 until Thursday. He came back to the office between Monday and Thursday but not until eight or nine o'clock at night and probably went into his room to see if there was anything desperate. It was pointed out that the D trial did not start until Tuesday. The Respondent stated that he spent all of Monday on a particular set of evidence which consisted of thousands of documents in Norwegian which were provided that day. He was also at another firm of solicitors that day. In respect of the fact that on 23 April 2012, the Respondent had sent an e-mail to DA including "I am in and out of Court today" when he was not in court, the Respondent stated that this was shorthand telling DA that he was not at his desk. He agreed that it was untrue in that he was not in court but he was preparing for a trial starting the next day. He did not accept that the e-mail he sent at 09.11 on 23 April was misleading; he signed the cheques, they were in an envelope. He supposed that until they were cleared they were not paid but it was shorthand for sitting down and signing cheques for DA's benefit. It was true that the cheques had not been posted but they could be lost in the post box if it caught fire. He wanted the barristers to be paid and was looking to DA to make good by the end of the month.

197.19 The Respondent stated that when he took the case over it was going nowhere and the client had no money. It was a very substantial claim against the FSA with dozens upon dozens of documents and lots of issues. He told the client that the client could not afford this litigation and advised him to reposition the claim. He asked him how much he could afford to pay a month and the client said he could run to £30,000 a month and that was the agreement. The client could not have £30,000 for counsel and money for the firm. He just had £30,000 and they had to marshal the funds; the agreement was that the client paid the firm. If the firm was to pay counsel, it would have to do so from its fee; in the real world the Respondent could not ask the client for money on top of the £30,000. If the Respondent paid counsel it would come from out of the Respondent's household. It was the firm's fee and they were trying to deal with the barristers as best they could. He rejected the suggestion that if he paid £21,000 to counsel, the firm could be reimbursed when the next £30,000 payment came in; they were whole [i.e. paid in full] when they were paid their fee which was used to pay staff and replenish the library etc. The fees were not capped at £30,000 per month; that was what the client could afford and what the firm billed them. If the client got more money the Respondent reserved the right to charge more; the firm was recording its time. The Respondent was running up a lot of hours in the background.

The client had properties in Spain that he was trying to sell. The firm included time sheets on the back of the bills so that the client would understand. If the monthly amount came to less than £30,000 they would bill that and keep the remainder on deposit, but it never happened because they are working flat out. This was a funding arrangement not an agreed fee. It would be unusual for there to be a separate bill for counsel's fees as the client could not afford it.

197.20 As to whether counsel was ever to be paid the Respondent stated that it would not be from office money but by the other side or if some other way of paying was found. The case had not started under his watch and a fashionable silk with a junior in tow had been instructed by Ms M. When she left the Respondent could not ignore the client. It would cost £2 million to go to trial and at some stage there would be a train wreck. When the Respondent took over he spoke to leading counsel about strategy and sat down with the client. He did not agree that counsel would never be paid but in the give and take of cash flow the firm could cover some of it. They were looking after the barristers but not doing it if the client was not even paying the firm's fee; they would "nibble a bit off" from their fee. If the Respondent was to pay a cheque on this matter he wanted the client to pay the fee from which the payment to counsel was going to come. He would have sent these cheques if leading counsel's clerk called and said that they would refer payment to the Bar Council. The cheques would go out if the client "immediately whipped something back" to the Respondent and said there was a cheque in the post. The Respondent looked after counsel if the client did not have enough money to do it direct but the Respondent did not accept that he was a bank for the client by sending £21,000 to counsel and the client paying it back later in the week. If he decided to pay the barristers it was his call and he reserved the right to go back to the client later. Sometimes the only way was for some of his money to have to go. When he said in his e-mail of 23 April at 09.11 that he did not mind not being in pocket with the client, his main message was "pay my bill" that I'm at my desk and have just written some cheques. If the client paid £30,000 at the end of the month he was not paying £30,000 plus £21,000 for the barristers.

197.21 The Respondent's stream of consciousness was that he had signed the cheques and did not want them to bounce. There were limited funds and he was asking the client not to leave them out of pocket. He agreed that the implication was that he would be out of pocket if the client did not pay by the month end. There were a lot of things he could have said to make the e-mail more accurate including that the cheques would take a week to clear so it would be alright if the client sent funds. The Respondent compared it to payment by debit card where it took two days for the card payment to clear. He did not have a fixed view about sending the cheques; he certainly did not intend the cheques would not go out when he signed them and put them with the letter but the process was that he was cautious.

197.22 The firm did not have an enormous amount of post each day but a handful and there could be a day when no post went out. The letter did not go out because the Respondent did not take it to the receptionist. As to the e-mail from the client of 23 April 2012 at 13.53 saying when he might be able to make payment, the Respondent said this client was someone who knew how to manage his cash flow; he was a nice fellow but if he could avoid paying on a given date he would and therefore mentioning Thursday/Friday was not an assurance. If the Respondent had seen that e-mail when it came in if he had been feeling grumpy he might say why am I funding

this client. Where he was first thing in the morning on 23 April 2012 was that he would have let the letter go to the receptionist. If he got back and the client had not answered the Respondent would probably think that the client had a problem paying. Although he had a Blackberry the Respondent was not the best collector of e-mails; he had a lot going on and agreed he overlooked them.

197.23 As to his e-mail of Thursday 25 April 2012 at 20.08, in which he said that he was now "£21,000 out" from the fees paid, the Respondent said that it was misleading when he wrote it; he should have adjusted the e-mail. He rejected the suggestion that it was untrue; the letter was on the way to the post box. He had seen the e-mail and decided to release the cheques but he had second thoughts. He agreed that the word "now" was misleading as it did not express where they were. He intended to say more or less that it was all systems go; that was the way with e-mails - he thought better of it later on. As to how he could have thought the e-mail was true when he wrote it, the Respondent had written the cheques to go to the barristers and he would not be out of funds until the cheques cleared. He would not regard it as misleading if the cheques were in the post or the recipient did not present them. Mr Allen was placing too much weight on an e-mail written at 8 pm after a trial and he did not regard signing a cheque as anything other than making a payment and if he delivered a bill for £30,000 he regarded it as his money and the client could not appropriate it to counsel, not that the client did.

197.24 The Respondent did not accept at all the premise that if he told the client that he had paid £21,000 to counsel, the client was entitled to expect that once they made the payment to the Respondent their liability regarding counsels' fees was discharged. The client was paying a bill which was entirely the firm's fees with a full work in progress statement to show how the £30,000 was derived which did not include any element of barristers' fees attached to the invoice. The Respondent was not sure what he meant when he said in his e-mail on 23 April at 09.11 "I don't mind not being in pocket for you" it probably meant that the Respondent did not mind the client being behind on the fees but that he needed to cover outgoings; the Respondent was telling clients that he had barristers fees that he professionally needed to pay equalling outgoings and that he did not mind being behind if he needed to cover them.

197.25 The Respondent rejected the suggestion that it was the client's choice as to what should happen to monies which they sent to the firm; this only applied if a fee note had come in and it had been sent to the client but this client had no bill when he the Respondent came into the case. There was a bundle of fee notes which the client could not afford to pay. The Respondent could have sent him a bill for £30,000 and £21,000 which would have regulated the position but the Respondent did not regard the client as having a choice not to pay the firm's bill. The Respondent accepted that if clients' money came in allocated in a specific way he would have to pay it in that way; he could stop acting but would have to adhere to those instructions. If it came in without any allocation and the Respondent chose to pay or not pay £21,000 to barristers that was for him because it was office account money because it was paid against a bill. He was telling the client what he would do with his money - the Respondent's money once the bill was paid. The Respondent did not accept that this was client money.

197.26 The Respondent did not accept that it was always dishonest knowingly to make false statements to clients, for example in a conflict situation if there was not a dishonest intention to deceive. Ordinarily he agreed it would be dishonest not to correct a statement that became false but not necessarily for example if he told the client that he was not out of a trial until a particular day and then he was free but was chock-a-block with work. He agreed it would be dishonest to use the money received from a client in a way inconsistent with the client's instructions, but not if it was inconsistent with the way that he had told the client it would be used; he could change his mind about things he said he would do with his money, office account money properly paid under a bill.

197.27 The Respondent stated that he would have sent the cheques if the client had come back and said that absolutely he would be put in funds or with telegraphic transfer instructions that the money would be with him by Wednesday. He had more or less decided to send them to the post box but changed his mind. The client in his e-mail did not say that the money would be there by Thursday or Friday; he said that as soon as the colleague who had the bank mandate returned, arrangements would be started. The Respondent did not regard it as irrelevant that he had second thoughts about it. He accepted in respect of his e-mail of 25 April that as soon as he decided not to send the cheques it was misleading. The Respondent did not accept that the earlier e-mails were misleading; they would have been if he said he wanted another £21,000 for reimbursement but he did not say that; the client had been given to understand that from the firm's money the Respondent could make payment to pay counsel but he was not entitled to expectations to bind the Respondent to act in a particular way and the Respondent was free to change his mind about what he did with his firm's money. The client would not care if the money went to counsel or for the firm's salaries because he was paying the firm's bill. It was the Respondent's professional obligation to transfer the money to office account timeously in settlement of the bill. The Respondent agreed that if the client had made payment and he had sent the cheques he could have raised a further bill of £21,000 for counsel's fees in principle but probably he would not send the bill as the client did not have the money. If he had been going to pay counsel's fees, the Respondent would have sent the fee notes to the client and asked for the money to pay counsel but there was no point; the client did not have £50,000 for it.

<u>E Chambers [AM]</u>

197.28 The Respondent stated that he was not involved in the dialogue between clients and E Chambers. DR telephoned him to ask about setting up an escrow account. He had no problem with that suggestion. He needed to have some species of cover. The Respondent stated that he thought that the clients did not believe that the barristers needed cover. He did not know why WK did not want to have an escrow account; the Respondent thought WK did not want to pay anything that might have liquidity issues as result of the sending of the document described as a Swift instruction which was not. The Respondent thought that the discussion about the escrow account might come after WK's e-mail of 21 May 2012 at 17.55 about there being no fees left for the firm if £40,000 was paid and that £30,000 would be passed on to S QC. The e-mail referred to a fee narrative sent on 17 May 2012 and the Respondent had not been talking to WK much before the bill was sent.

197.29 In respect of the e-mail exchanges on 21 and 22 May 2012 between the Respondent and WK, the Respondent stated that undoubtedly the firm told the clients that it would use its fee to give assurance to counsel. The Respondent was emphasising that the fee due to the firm was £40,000. He thought he was saying that he would pass £30,000 onto counsel but not saying when but that he would use the £40,000 to give assurance to counsel regarding the first stage of the brief fee. The Respondent stated that he was asking the clients to pay the firm's bill to finish off their liability to the firm but he now knew that WK did not think that. By the time he sent his e-mail of 24 May 2012 at 14.27 to the clients attaching the e-mail from S QC's clerk, quoted in the background to this judgment, the Respondent thought that they might have had the conversation about the escrow account by then when in the first sentence he used the words "transfer 30,000 against the first phase of the brief fee". He was talking to German and Italian clients who might not understand the word "cover".

197.30 The Respondent had given an assurance by then and wanted to make sure that if the case settled and there were fee notes, he was holding funds. He confirmed that the reference to a "transfer" was to some unspecified point in the future. He had sent them an e-mail from counsel's clerk SW but it was not in the language that he would usually use with foreign clients. In the second sentence of his e-mail to the clients when he said "My intention was to do that on Tuesday…" there was no way that the clients would think that the firm was transferring money to the barristers by Tuesday rather that the firm would be funded on its invoice by Tuesday. As to the fact that the e-mail was written on Thursday and Tuesday had passed, the Respondent stated that he had given the assurance but he did not think he told the clients that because that would leave him loose. In the e-mail he went on to say "I do not mind that the fees are diverted from our trial fee." By that he meant that the firm's trial fee could be used as a pool to pay the barristers; the clients could not have been confused. He was not looking for more fees but looking to divert from the firm's trial fee to cover the first instalment of the brief; the firm's trial fee was used as a pump. There was one sum of money but they did not have to pay the barristers yet but needed to be sure that when they came to pay the barristers they could. The Respondent did not want to be in the situation that when they came to pay S QC, the firm was not paid. As to why the firm did not seek to be paid up front, the Respondent stated that he had never done that. He had been in or around big firms his entire career and in such cases counsel did not want money upfront. The senior clerk might say "Is someone going to fork up the cash"; the firm just had to say that it would be in funds by the time the barristers needed it. The firm did not need hard cash but did not want to be exposed. It was quite likely after the disclosure hearing that the case would settle.

197.31 As to the instructions the clients gave about the payment to the firm, the Respondent stated that the clients agreed to the proposal that he made. He needed to give an assurance and was uncomfortable to give it without the firm's trial fee being paid. He was telling the clients -pay our fee and I will divert fees if I have to, to keep that team of barristers intact. It was not a foregone conclusion that they would have to pay out in advance or that they would not be required to pay counsel until the action was over. The Respondent wanted something in the pot as good faith for the client. They had paid Ms M but not him. He was thinking maybe he should come off the record. The clients were agreeing to this proposal that he would use his fee to give cover needed but he was not saying that he would pay counsel.

197.32 The Respondent rejected the suggestion that it was clear from WK's e-mail of 30 May 2012 at10.43 that he was under the impression that money was to be transferred. They were at daggers drawn. WK was being sarcastic to the effect that "You have been pressing us all this time, have you transferred it?" The Respondent did not answer the e-mail because he would have been facetious in turn. Whenever the Respondent reached him on the phone, WK asked when are you doing the transfer. The Respondent said that he was not doing the transfer but needed WK to put him in funds. There was one of his e-mails when the Respondent said that he did not appreciate WK's sarcasm. The Respondent's e-mail of 24 May 2012 at 14.27 when he used the word "transfer "was a rerun of several conversations during which the Respondent explained cover. The e-mail was the Respondent's way of saying calm down. WK was not the kind of man to let things go.

197.33 The Respondent was referred to the transcript of the telephone conversation on 1 June 2012 between the Respondent, and the clients during which WK said:

> "OK, OK, I just missed that a little bit – but I understood that you have already passed the money to [S]"

The Respondent was recorded as replying "Yes". The Respondent explained this by saying that he was not sure about his answer; he might have been distracted. WK then said "OK it is already there" and the Respondent replied "Yes, it is there to the extent he wanted it – I think he wanted £70,000 but we have given him a half cover which is the £30,000." The Respondent stated that when he said "Yes" to the earlier question that was just an instinctive answer; the real answer was that regarding half cover. The Respondent pointed out that WK then replied "OK" and he would not accept that if half cover of £30,000 was not exactly what he expected to happen. The Respondent pointed out that he had not yet heard the taped telephone conversation. His use of the word "Yes" might have just been filling a gap in the conversation but as soon as he opened his mouth to give the full position he referred to half cover and so it meant that the earlier comment of WK was in the same vein as those of previous days. The Respondent stated that WK's instructions to transfer £30,000 to counsel and saying that the firm's fee was only £10,000 had not been seen and if WK had said that, the Respondent would have given him a "solid English raspberry" and told the clients to reconsider the position. As to whether he accepted that the previous e-mails constituted instructions to transfer the £30,000, the Respondent understood how the confusion regarding the £30,000 had crept in and there was nothing in writing regarding instructions to transfer it and to reduce his fee to £10,000 and these people operated in the financial world. The Respondent accepted that WK and DR had given evidence that £30,000 of the £40,000 was to be passed to counsel but the e-mails did not say that. He did not accept that they were corralling the office fee and that it was to be reduced to £10,000 in the process.

<u>EC Chambers [D]</u>

197.34 The Respondent submitted that the background to the allegations was that D made various payments to the firm which was acting in litigation and arbitration proceedings arising out of the disposal of D's interest in an insurance company. Those proceedings lasted in all for a little under twenty years, for five of which (2007 to 2012) the firm acted. The prosecution chose to lead no first-hand evidence at all

regarding the background arrangements either as to the "generic" allegation or as to the circumstances of the e-mail sent by EX on 30 July 2012 and the instructions given in it (in respect of the £173,440) and which in the Respondent's evidence were varied or changed. The evidence of TP of D was heavily polluted because of the obvious lie she told DG in e-mail on 7 March 2012 when she said that

> "… We were very unpleasantly surprised by the fact that the barristers' fees were not duly paid by [the firm], since we have sent the funds for the settlement of such fees. We will discuss this with [the firm] and internally with our client and inform you on (sic) our proposals."

DG's evidence was based on information stated in documents supplied to him by either TP or EX of D. The Respondent submitted that the development of that e-mail thread meant that by April 2012 at the latest no one at EC could possibly have believed what TP was telling them. The Respondent submitted that there was a clear motive to assert widespread dishonesty on his part which went beyond the confines of the Applicant's case because the Compensation Fund had made an award on 10 December 2013, only three months before this hearing on the basis of dishonesty established against the Respondent by all three of the EC barristers. The Respondent did not know on what basis of evidence the Adjudication Committee made its findings but considered that it was unlikely that they were made without reference to DG's part in these proceedings, and based on the evidence of TP and EX to which DG referred in his statement when he said:

> "It became apparent that it was her (TP's) understanding that funds had been sent to [the firm] in order for Counsel's fees to be paid..."

This was a deeply unsatisfactory position. It was parallel to saying that someone stole a car and had stolen other cars in the past. This was relevant to the weight to be given to DG's evidence and the e-mail exchanges between March 2012 and January 2013. DG had lost patience with the firm and decided to open a second front to put pressure on D to pay the barristers' fees by sending an e-mail to the president of D. DG gave evidence consistent with that e-mail. TP's reply came 13 minutes later containing an obvious and palpable lie which was the cornerstone of a whole raft of evidence by DG. It was not enough for DG to formulate this statement to use without qualification in proceedings of this seriousness and it should not assist if DG did not believe it.

197.35 The Respondent submitted that there were clues that TP's e-mail was a lie.

- Immediately after the e-mail came, the next day 8 March 2012, DG asked her for information regarding payments and he confirmed in evidence that these were never provided and he did not press for it as the weeks went by. The reason for the information not being provided was that no payments were specifically allocated.

- There was the consistency issue illustrated by G QC's long e-mail dated 3 April 2012 which recapped the dialogue from receipt of TP's 7 March e-mail which was utterly inconsistent with e-mails sent by TP on 13 and 21 March. In her 7 March e-mail she said that D had sent the funds for the settlement of the fees. By 13 March 2012 she was no longer alleging that

D had sent funds but said that D intended to settle the fees owed to the barristers. If they had been paid already why do that and there was no attempt to explain why if the fees had been paid once they should be paid twice. On 21 March 2012, TP said that D would pay all fees "until" the end of April, that is by the end of April. In evidence DG could not render the last two e-mails consistent with the first and he was right. This must have raised clear alarm bells with him about the truth of what TP was telling him.

- The surprise which TP expressed in her 7 March 2012 e-mail wholly dissipated in a week and resulted in what DG called in his e-mail in reply his mystification about what was going on. He had no assurance from TP's second e-mail and was plainly unconvinced by what she was telling him, saying that the whole saga was a mystery to him but he produced the same statement as the basis for saying that the Respondent and the firm had misappropriated funds.

- On 21 March 2012, G QC e-mailed the Respondent asserting the misappropriation:

  > "We have no alternative but to believe that [the firm] has used all the funds paid by [D] for its own purposes and chose to pay nothing to counsel."

The Respondent said that he sent the email on to TP and EX asking what he should say and that prompted TP's e-mail to him referring to "a misunderstanding between us that was solved". The Respondent submitted that TP was alongside DG in a state of misunderstanding and mystification after making serious allegations against him of misappropriation. It was wholly implausible that the misunderstanding was between the Respondent and D; there was no evidence that the abortive proposals from the previous August about capping the firm's fees had been discussed again in March 2012. Her e-mail ended "What do they want now from us?" The answer was money and TP was trying to deal with that. The Respondent sent TP's email to him of 21 March 2012 about the misunderstanding on to DG on 1 May 2012 and DG never answered it. The Respondent suggested that what TP said in the 7 March email was not true.

- G QC's long e-mail to D of 3 April 2012 asked specific questions including asking for an explanation of the arrangement which TP had mentioned about capping the firm's fees, followed by a disagreement and then a new arrangement, telling DG that D was prepared to cover directly the barristers' fees. TP did not answer that question because there never was an arrangement.

- On 2 May 2012, the Respondent sent a long e-mail to DG following their meeting the day before, replying to G QC's e-mail of 21 March 2012 and DG never raised any questions on the points the Respondent made. The Respondent submitted that the inescapable conclusion was that it was because DG did not believe TP. He was happy to wait and see if the

> money came up and she said it would at the end of April and by 2 May 2012 that promise had been broken too.

197.36 The Respondent also referred the Tribunal to the exchange of e-mails between DG and TP beginning on 8 March 2012 and going through to 13 March which DG was asked to look for while he was giving evidence and provided. DG e-mailed TP on 8 March 2012 at 2.53 pm, asking various questions including asking for more details of the payments made by D to the firm in respect of counsel's fees, specifically how much was paid and on what dates. On 9 March, she replied that D had scheduled a conference that day with the firm in order to understand what went wrong and that she would inform him after that. On 10 March, DG emailed asking her to let him know the result of her telephone conversation with the firm. Later that day she replied to DG:

> "It was not possible to resolve the matter. I will come to London next week most probably on Thursday the 15th in order to meet with [the firm]. This is a very serious matter and we need to find a solution as soon as possible. I will keep you informed."

After receiving that email also on 10 March, DG had invited TP to attend Chambers the following week. He repeated the invitation on 13 March 2012 asking her to confirm whether she was visiting London that week and would find it useful to meet him and G QC. The Respondent submitted that her reply on 13 March 2012 was telling; she said that she was to stop over for a few hours in London as she had to be in Paris on Thursday afternoon but did not think she would be able to meet DG. She would be in London again in April and they could schedule a meeting then. She continued:

> "We just want to reassure you that, regardless of our internal discussions and arrangements with [the firm], [D] intends to settle the fees owed to the barristers. We will update you on our proposal for the settlement, after our meeting with [the firm]."

197.37 The Respondent submitted that TP's e-mail of 9 March 2012 replying to DG's e-mail with questions was very telling regarding her state of mind; she had been asked difficult questions and needed to "come up with the goods" regarding her earlier e-mail on 7 March 2012 saying that EC would be paid in full. She was not answering the questions and on 10 March said that it had not been possible to resolve the matter, which must mean that she had tried and could not. She must have been referring to a vituperative telephone call, the date of which the Respondent could not remember, received out of the blue from TP and another person at D which did not touch on fees but on the sensibility of the barristers and their impertinence in asking for fees and in which TP asked whether the barristers should be sacked. The Respondent had said that it was not surprising that they were asking to be paid; they should be paid. TP said she would go away and see what she could do; that's what the firm had been discussing with the clients between 9 and 15 March 2012. There was no mention of the problem of the previous August. This call was not an internal discussion it was a catharsis. The discussion was on 15 March when she came into the firm and said that D would pay by the end of April that would be after the trial had taken place.

197.38 The obvious inference from the e-mails was that TP did not want to sit down with DG as he would ask the same questions and her contrivance would have fallen apart. The Respondent also submitted that as she said she had tried to resolve the position and was coming to London, it was impossible that she felt what she would be talking about was the agreement of the previous August. She had not raised it. She said she would meet the firm and on 15 March 2012 the only reference to the barristers was that they would be paid in full by the end of April. The Respondent submitted that there was no misunderstanding between TP and the firm; it was a way of backing away from what she had said on 7 March 2012; a way to keep DG at bay as the Respondent set out in his response and skeleton. The inconsistency involved a change of story, the absence of follow-up information, and "healthy scepticism" from EC about the evidence generally, although DG disavowed that TP was lying but he didn't believe that what she said was true. Nevertheless he put in his statement as stating to the best of his belief and put it to the Compensation Fund as well as the basis for the application. In evidence, the Respondent asserted that the e-mails of 13 and 21 March 2012 were utterly inconsistent with TP's e-mail of 7 March 2012 and DG accepted that. D did not say that they had an understanding with the firm to pay the fees they said that they had sent funds. If they had an understanding but had not given instructions that was "writ on water". In her e-mail referring to capping the firm's fees, she referred to an agreement but did not say what the agreement was. He rejected the suggestion that in her e-mails in early to mid March she came to learn in discussions that her understanding was not the same as the Respondent's, and then the entire series of e-mails was explicable; because it was about her saying that D had paid the fees and then that they would pay the fees. What she thought the purpose of the arrangement was – a capped fee agreement was a proposal not an arrangement. She did not say that D had arranged to pay £100,000 a month and that an amount was to go to counsel. Setting out the objective did not set out an arrangement. The Respondent denied that her saying that they now had a new agreement was entirely consistent with her understanding that the arrangement had changed after having discussions with the Respondent in March 2012; she said that they had paid the fees and they had not. The Respondent also rejected the suggestion that TP's e-mail to DG on 21 March 2012 after the Respondent's meeting with her on 15 March was the proposal referred to in her 13 March e-mail; her last sentence: "They will send you a schedule with the exact dates [when fees would be paid], later this week." It was not a proposal; it was a statement of intent, a promise of a proposal.

197.39 The second aspect of DG's evidence that the Respondent highlighted was that the assertion in EX's e-mail of 13 November 2012 to DG quoted under DG's evidence above, that there was enough money to settle with the suppliers in full; a wholly generalised understanding that payments were appropriated to counsel's fees. DG accepted that he could not make sense of the e-mail sent to him and that it was no more than the basis for backing away from the earlier e-mail. The Respondent also referred to the EX's e-mail of 18 January 2013 to DG detailing payments from D to the firm which were described as including all third-party and counsel's fees. These explanations were absolutely meaningless and nonsense; there was not a substantiated agreement which was sufficiently robust for DG to relate his evidence to. Why did he now accept what he disbelieved in March 2012? In the 18 January 2013 e-mail EX sent a series of payment details saying that D had paid everything but could not point to the allocations. DG approached that with healthy scepticism as he did in March 2012 but in evidence described the January 2013 e-mail as a "jackpot" which the

Respondent submitted was very telling about DG's approach to the case. His evidence was plainly coloured in his written statement by the need to make good a finding of dishonesty for his barristers' claim to be paid their outstanding fees from the Compensation Fund. It was manifestly the case that DG had swallowed the evidence whole and he should not have done and should not be presenting it to the Tribunal. At best the evidence was unreliable and in the case of TP untrue. The Respondent asked the Tribunal to disregard DG's evidence which was polluted by base material from EX and TP.

197.40 As to the 30 July 2012 e-mail referring to the transfer of £273,440, the Respondent submitted that the instructions were manifestly ambiguous and unworkable. EX knew that the total sums due to third-party suppliers at that stage were over £600,000 and that £173,440 was not enough to pay them all. EX had given instructions which she must have known were incapable of performance without further confirmatory instructions being given. It could not safely be assumed (to say the least) that if the entire £173,440 element was paid to D's external actuaries (who were owed a lot more than that) that this would be consistent with the instructions given in the e-mail; or, indeed, if the entire £173,440 was paid to the EC barristers; or if it was pro-rated between all the suppliers; or pro-rated between all the barristers including those at two other sets of Chambers and ignoring overseas lawyers. No proper approach had been taken to these instructions; it was not enough to say that there was a figure of £173,440 in the disbursement line of an invoice six months previously where the level of invoices outstanding at the date the e-mail was written was between 10 and 12 and those invoices went back well over a year. It was not credible that the Respondent would have remembered that figure and kept it in his head for six months and had it in his head at five o'clock on 30 July 2012 when the figure appeared in the e-mail without reference of any kind to the invoice that it was said to relate to. The figure did not remove the inherent ambiguity in the e-mail.

197.41 The Respondent submitted that his obligation as a solicitor receiving those instructions was to clarify them and to render them unambiguous and workable and that was the first driver to the conversation that followed. The Tribunal had heard evidence of the circumstances of the e-mail coming in late afternoon on 30 July 2012, on the day before payment was promised to the firm and saying for the first time that there was an express appropriation between the suppliers and the firm. The Respondent's state of mind was to avoid the firm being treated as a clearinghouse for D; as a cipher to pay money over to suppliers. These two drivers were in his mind; to clarify the instructions and his commercial concern for the firm. This was a rerun of what had happened the previous August and which TP had characterised as the capped fee agreement which was unacceptable. To secure both objectives, the Respondent sought to speak to EX, could not find her and so spoke to TP. She consulted either the president or EX or both or on her own initiative as general counsel. She then called the Respondent to give him instructions to tell him to deal as they had done in the past. There was nothing surprising about that; for two years they had operated general payment on account without appropriation. It was not a sophisticated or surprising instruction, but what the firm had always done and what the D had always asked it to do, to treat the money as a general payment on account just like the £240,000 paid in March of that year. Having clarified those instructions or amended them or secured instructions which were workable and unambiguous, the payment was dealt with by the firm in accordance with the instructions unashamedly

on the basis that the financial position of the firm took priority above the barristers of EC. The Respondent had dealt strictly in accordance with the general payment on account and in strict loyalty to his client's instructions.

197.42 In evidence in respect of EX's e-mail of 30 July 2012, the Respondent testified that D was always sending amounts and the firm could not work out what they were and it drove the firm mad. The Respondent was cross when he saw that e-mail because EX did not answer his call; he tried to speak to her and in his view she was in hiding. His immediate reaction was there were £700,000 worth of supplier invoices and he did not know what D meant. The fee notes and invoices filled more than a lever arch file. It was an odd figure and the Respondent did not understand it; at the time it bemused him. He did not ask TP about the strange numbers because D was always sending odd numbers. The firm asked them in the early stages about strange numbers and D never answered. The firm had a general allocation because D never told them (how to allocate the numbers). It was something entirely in the rub of the retainer.

197.43 In evidence the Respondent stated that this was happening late in the evening. He didn't think about the invoice. He just needed to clarify the instruction. EX was trying to protect D's assets from an avaricious lawyer in London looking for money. The firm said pay and D said they would and suddenly at 5 pm in the evening he got this e-mail and EX went home. The Respondent was really cross with her. If Mr Allen was saying that the firm should have harboured a bit of the money, maybe they should have but he had to look after the firm. They had threatened to come off the record in February. Another firm had all the files from the arbitration so the firm had no lien worth anything and had to carry on. Also he didn't want to let the client down. By now he was so fed up with them. The firm had saved D more than £22 million at the end of the arbitration and he thought that this was cheese paring. He did not know about the dialogue with DG. At the beginning of 2011, D stopped paying the firm. There were at least seven invoices in the first half year but then the Respondent slowed it down a bit. D said they were surprised at the level of fees because they were getting invoices monthly and then it went up. The Respondent delivered another one in February 2012 so that they could see the instructions. As at 30 July 2012 there were at least 10 and possibly 12 invoices. About £1.5 million was outstanding; £640,000 suppliers and around £900,000 for the firm. Each one of the invoices was in a plastic wallet with fee notes behind it. Some of the payments due to third parties out of £173,440 in the February invoice had been paid by the firm and so even on this approach some of the money was due to the firm.

197.44 As to the fact that the 30 July e-mail drew a clear distinction between disbursements and the firm's fees, the Respondent stated absolutely this was what the client had tried to do a year earlier regarding the capped fees argument. She was trying to carve out the suppliers fees, to ignore the firm's fees and pay suppliers was what she always did. The Respondent agreed he knew that there was £100,000 for the firm. He tried to speak to EX and to get hold of Mr C and he actually got hold of TP whose mobile number he had. He had not mentioned this in his response of 3 March 2014 because he had only read the allegation for the first time a month ago. He was not happy to deal with underpaying the firm and cutting out the suppliers' fees which was what they had also done the previous year. The Respondent could have sent the money back to D if TP had not unwound the instructions. His response included:

> "I cannot now remember whether she did manage to get hold of him [C] or whether she passed on to me what he had said to her on the issue or, indeed, whether she also spoke with [EX]; but when she called me back she said that we should deal with the payment "as we had in the past". I remember her words precisely and I took a note of them. as far as I was concerned this did not alter the effect of [EX's] e-mail; it simply made more explicit that this payment was to be applied in the same way as all earlier payments had been; as a general payment towards all outstanding invoices without precise allocation."

The Respondent stated that this was not a total change to instructions but it had been an attempt by EX to use the firm as a bank and it was not the first time that she had been overruled. The Respondent was pretty sure that she had spoken to Mr C. It was open to him to say that he would come off the record as he had threatened to do before. The Respondent stated that he was furious to see this e-mail coming in the evening before payment was promised. It was clear they were trying to give an allocation instruction but the telephone call did not alter the effect of the e-mail; that would only happen if another e-mail had been sent. He agreed that the telephone call altered the e-mail but it didn't change it from being a fee payment. He was entitled to have the fee paid and they were robbing Peter to pay Paul. Of course it was a payment of fees.

197.45 The Respondent submitted that Mr Allen had made play of the fact that he could not get hold of his note of the telephone conversation but the instructions hardly required evidence of their terms; the Respondent was asked to do what he did in the past and secondly the fact that the point came up late was a creature of the Respondent's decision not to engage in the proceedings until a late stage. He did not mean to be disrespectful to the Tribunal but the allegations were embedded in his past and it made him angry to look back at them. The first time he read the Rule 5 Statement was in late February 2014 after the second set of directions from the Tribunal when he was flat out trying to produce a fairly extensive response and to prepare for the hearing. In respect of his access to Devonshires, he could not remember which of the three files the note was on. He had been told there was a power failure but that it should be okay and he could not come to central London if there was any likelihood that the documents would not be available. In evidence the Respondent stated that as to any contemporary evidence, he should have prepared detailed attendance notes. He wrote down on a piece of paper what TP told him. He agreed that in respect of £173,000 of client money a solicitor of his experience should have taken more care. He did not agree that the instructions had to be varied in writing.

197.46 In evidence, the Respondent stated that he had been in regular contact with DG regarding counsel's fees but they were out of contact a lot over the period January to March 2012 but the Respondent forwarded to him a long e-mail which the Respondent had sent to D on 16 January 2012 setting out the position. In the Respondent's covering e-mail to D of the same date which is quoted in the background to this judgment, the Respondent said: "I am frankly dumfounded (sic) by the refusal to release the [E] funds to meet suppliers' fees."

197.47 The Respondent was referred to Mr G's e-mail to him of 21 March 2012 at 12.01 expressing surprise that he had not telephoned or written for many weeks. The

Respondent could not fight back and say that his client had lied to him and so the Respondent immediately (on 21 March 2012 at 20.10) sent the e-mail to EX who was the Chief Financial Officer of D. TP replied to the Respondent that day at 22.06 saying that she had written to DG that morning and told him there was a misunderstanding "between us". The Respondent stated that this was consistent with what she had told him on 15 March 2012 that everything would be paid off by the end of April. He denied that the misunderstanding was between him and D because he did not know anything about it. TP was playing them off against each other. TP was saying in her e-mail to the Respondent of 21 March 2012 at 22.06, don't worry, DG got the wrong end of the stick and that was the misunderstanding. Why would she say to the Respondent that there was a misunderstanding between them which would be irrelevant? The Respondent's two line e-mail was shorthand; he could have said more and TP wrote back saying that it was a misunderstanding and it had been solved; she had both lied to DG and backed off gracefully or there had been a misunderstanding between TP and DG.

197.48 In his response, the Respondent said that TP told him that she had met DG on 15 March 2012 and this was one of various unreliable statements that TP made. He did not know whether she had met DG.

197.49 It was nonsense to suggest that in July 2012 D intended to fulfil its obligation to EC which it had made in March, to pay by the end of April. The figure of £173,440 was nowhere near enough. D had told DG that they would pay to keep him happy. They had also failed to supply him with the promised schedules. They had plainly lied regarding the previous arrangement for the allocation of fees. DG plainly knew that and they met in early May. There was no sign from DG that he expected to be paid; trial cover was his concern. The brief was the biggest lever and that had gone. It was pretty clear that D was on its uppers because of the Greek economy and there were currency restrictions so that D could not send more than £10,000. Neither he nor DG expected D to pay anything. Anything they could get was a blessing. Once what was owed to other suppliers was taken out of the sum, there was less than half what was owed to EC.

197.50 The Respondent stated in evidence it was not true that he did not receive a change to D's instructions but decided to use the money for office expenses because the firm was in financial difficulty but he needed to cover the firm that was a far more pressing need for him than the suppliers and undoubtedly he would have had that in mind in seeking further instructions. He was acting on instructions and absolutely denied dishonesty.

<u>E Chambers [AM]</u>

197.51 The Respondent submitted that:

- So far as the prosecution was concerned, any reference to fees was to barristers' fees and any reference to a transfer, to a transfer only to barristers (and all references to costs meant the adverse costs order – allegation 1.5). The Respondent submitted that almost all the words in the evidence were deeply ambiguous and admitted to much more than one perspective. It was necessary to look at the subtext and content. It was

necessary to construe ambiguity in the factual matrix. If WK had said that the client sent £10,000 in full and final settlement of the firm's bill and £30,000 had to be transferred to the barristers, the Respondent would not know who got what and would have been compelled to go back and decline the instruction.

- The Tribunal was not dealing with a statement of position from lawyer to client which was carefully crafted and articulated so that there was no doubt what the lawyer meant. This was a series of e-mails and statements by telephone and not on any basis was it considered documents drafted with full consideration or an apprehension of different meanings that ambiguous words could bear and which meaning in the range was allocated to the words. The Respondent asked the Tribunal to be cautious regarding e-mails and comments by telephone. E-mails were ephemeral, instant, happening in a moment. None of the e-mails was drafted with the level of thought that would allow one to switch off the warning system by either side.

- The ground rule that the Tribunal needed to look for was that the breach needed to be pinned on clear and unambiguous instructions from the client: we sent £40,000; £10,000 in full and final settlement of the firm's fees and £30,000 to be sent to the barristers, possibly with a date. The only qualification to the principle was that if the instructions were ambiguous the lawyer had an obligation to clarify them. The allegation was not that the Respondent failed to clarify instructions; the Applicant's case was that there were clear instructions. Even based on the Rule 5 Statement they had to be ambiguous instructions; what was the lawyer supposed to do with the £30,000. If it all went to S QC it was a breach of instructions because Mr G had not been paid. They might be paid half and half and so the lawyer needed to go back. The most the Respondent should have asked was, who was to get what.

- Having regard to the substance of the evidence, WK and DR both in various ways denied paying any invoices at all. They thought they were making a payment of some kind but not by reference to the invoices they held. The Respondent submitted that this was not credible. All he thought was that they were paying bills and he asked them to pay the firm's bill. There could not possibly be two more diametrically opposed positions than the parties' in mid-May leading up into late May 2012. There were a number of reasons why it was not credible that the clients thought they were not paying the firm's invoices:

    - They were sent invoices, all in the same form one of which was that sent to DR on 9 May 2012 which referred to "OUR AGREED FEES". All three clients received invoices referable to their percentage of the fees which taken together made up £40,000. There was no line on the invoice for the barristers' fees. WK and DR were reasonably sophisticated financial men and all could read invoices. They could not have thought they were not being asked to pay fees although both witnesses said they did not think that.

- If they thought they were paying £10,000 in final settlement of the firm's fees, it was not credible when no credit note was ever raised on any of these invoices. No credit note was ever asked for on any of these invoices. If they only paid £10,000 they were owed £30,000 and did not say that. They said they paid everything due - £40,000. In evidence both looked wide-eyed at the suggestion of credit notes because they said there were no invoices and this was not credible having regard to their obvious financial sophistication.

- There was no line on the invoice for barristers' fees at all however barristers were defined because there were no barristers' fees due and payable from these clients. The retainer letter for WK and AM dated 2 February 2011 stated:

> "Disbursements are charges paid to external providers on your behalf for which you agree to reimburse us either on written demand or, if later, within the period stipulated for payment by the external provider…"

This meant that the clients did not have to pay until they were asked and there was never a written request to these clients to pay a fee. There could not be because no fee note had been issued at that point and there never was a written demand. WK gave evidence that he read the retainer letter carefully because he had to satisfy AM's custodian trustees and to explain it to the underlying funds as well because they were the actual claimant in the action. This was not small print. WK knew that he had no liability for counsel's fees unless there was a bill or written demand and in the case of a bill, with a disbursements line or copy of the fee note both of which were customary ways to bring in barristers' fees. S QC's clerk never asked for £30,000 or for anything. He said that one half of the £70,000 brief fee related to the first stage. He asked for composite staged fees.

- Between the submission of the bills on 9 May and 21 May 2012 no payments were made. On 21 May 2012, the Respondent sent the clients an e-mail at 15.00:

> "Here is the agreed budget.
> The agreed trial costs are the last two boxes and the second contingency (disclosure)."

There was £15,000 for the correspondence and £15,000 for attendance at the hearing and with the second contingency, £10,000 for disclosure that came to £40,000. They knew precisely what the £40,000 was; it was explained to them. The attached budget was not before the Tribunal attached to this e-mail. The Respondent submitted that when forwarded, it had fallen away but it would have been sent to all three clients. The Respondent pointed to WK's e-mail of 21 May 2012 at 17.55 when he referred to:

> "…now there are no fees left for [the firm] as stated on your fee narrative sent Thursday, May 17th..."

The budget document was attached and at the very least having had the bill, WK knew there was a bill and he said he had it. The Respondent also referred to his e-mail to the three clients on 24 May 2012 at 14.27 quoted in the background to this judgment in which he referred to "fees ...diverted from our trial fee". This was ambiguous but could only mean barristers' fees in the context of the two previous paragraphs and this was inexplicable phrasing if the trial fee was £10,000 but wholly explicable if what was being paid was the firm's trial fee and from that the £30,000 covering payment was derived for counsel. The £40,000 was the lawyer's trial fee from which the smaller barristers' fee was taken. The clients' first language was not English but they must have understood at least that.

197.52 The Respondent also asked, in support of his submissions on credibility, what did the clients think that they were paying. The client had been provided with SW's e-mail of 21 May 2012 with the Respondent's e-mail of 24 May 2012 in which he talked about the brief fees being incurred. S QC was seeking an assurance:

> "[S QC] also mentioned that he would like an assurance from you that you are, or will be, in funds from the clients for his fees (and [G's]). He would be grateful if you could confirm that before the first stage of the brief is incurred."

The clients could see what the clerk was asking for; he was not asking for funds to be transferred. They were sent SW's e-mail to make them understand that the barristers needed that assurance. They were sceptical about what that meant which was understandable because English was not their first language and WK was puzzled about the divided nature of the legal profession; how puzzled would he be about the language of staged briefs covered by an assurance on 28 May 2012. For the previous three days the Respondent had been struggling to explain what was required. When in his e-mail of 24 May, the Respondent referred to transferring £30,000 against the first phase of the brief fee, it did not mean an immediate transfer but that the Respondent wanted his invoice paid so that the firm could transfer £30,000 when they needed to against £30,000 of the brief fee. It meant so as to be able to transfer when they needed to. He used the words "funded on our invoice"; it was not a fee note and it would be the wrong figure for the actual brief of £67,500. The Respondent was telling them that he would not give the assurance until he was in funds to pay the firm's bill.

197.53 The Respondent also submitted that nowhere in the e-mail exchanges did the Respondent come close to saying. "Just pay me £10,000." Even less surprisingly nowhere did any of the clients say they would only pay him £10,000 which was the cornerstone of their case. They were not paying a fee or a £10,000 fee which would not be enough to divert counsels' fees, based on the clear language of the e-mail which the Respondent sent on 24 May 2012. Even setting aside that point, the Respondent submitted that there was nothing in the e-mail sequence that approximated to clear instructions such as he had spoken about earlier. It was obvious that £40,000 was paid to the firm in settlement of its bill and no other objective analysis made sense. They were not billed for the barristers' fees and did not know what they were. There was no obligation and no fee note. They only had invoices and they paid them; that was a fact. There were probably phone calls between the e-mails. On 28 May 2012 at 19.00 the Respondent wrote to the clients stating that he had still received no funds. In an e-mail at 19.48 he said: " I am finished with your games

[WK]" because the Swift instruction of which he had been sent a copy was manifestly not such an instruction and tempers were beginning to fray. The reference to games was a reference to the Swift message.

197.54 From 21 May 2012 when the bill was issued, there were parallel dialogues and in the Respondent's e-mail of 24 May he was talking about using money to cover the barristers and so the client should pay the firm's bill. These two points tangled in the dialogue and came together in WK's e-mail of 21 May 2012:

> "we understood that if we pay the GBP 40.000-now there are no fees left for CityLaw as stated on your fee narrative sent last Thursday, May 17th. In addition you will pass on GBP 30,000,-of this to the counsel (S QC) for the fee due to him.
>
> Could you please confirm this in order to proceed on time and make the payment to you."

The Respondent's reply indicated that this was correct and he responded "Yes" they had paid their bill that is the total of three bills they had received between him and from the firm's fee, the Respondent would give cover for counsel. The £40,000 payment finished off their liability to his firm. WK was rightly saying what the Respondent had told him. The Respondent passed on the exchange to DR and MB so they could see what he and WK were talking about; Mr Allen had termed this philanthropy but he was not ashamed of the proposal. WK did not pay; perhaps he thought, why if the Respondent was prepared to use his own money. DR said he contacted the barristers to try and pay them; if he had done so he would have been told it was £35,000 not £30,000 and they would not take the money because of money laundering issues and no fee note had been produced. There was a delay of two days during which the clients probably contacted counsel. The Respondent thought that they thought it was too good to be true. It was a mystery how the clients formed their view but the Respondent could now see that WK was laying out new proposals on 24 May 2012: pay £40,000 and we finish your fees, or pay £40,000 and from it you cover counsel. In the Respondent's e-mail of 24 May, two propositions were discussed so much that they had become one. The Respondent's request looked as if it was one thing but it was not. It had been shorthanded:

> "I am attaching an e-mail from [S QC's] clerk which is, and has been, the basis of my request that we are funded on our invoice so as to transfer £30,000 against the first phase of the brief fee…"

On 21 and 22 May there had been careful quarantining of the two propositions and everyone knew what was happening but by the time of this e-mail, the seed was planted and if there was a basis for what the clients were saying it was here but the clients never articulated it as an instruction. If they had written back and said that the Respondent would get £10,000, they would have got a short answer. The Respondent had clearly told them in e-mails that they must pay his invoice which was his trial fee or they would lose S QC.

197.55 The Respondent submitted that he had agreed that an escrow account would be a good idea when DR suggested it but the danger of it was that they would have to pay

£70,000 because the escrow account would contain £30,000 and they would have to pay the Respondent £40,000 or he might have agreed that they paid £30,000 of his £40,000. The question never came up; WK did not want to do it because he would have had to pay £70,000 because he still harbingered the suspicion that the "gift" basis of cover was still available and it was and the Respondent effected it.

197.56 After that not much relevant happened; save that the firm threatened to come off the record. The Respondent was chasing WK and WK was trying to avoid him. The Respondent had been a lawyer in banking and finance since the early 1980s and WK had not sent a Swift but an internal note in German to his finance department. WK was saying when are you (the Respondent) going to pay S QC; this meant the Respondent had told him that everything had to happen by 28 May 2012 when the first stage of the brief fee fell due. At 19.56 on 28 May 2012, the Respondent sent an e-mail to the clients including a draft e-mail to SW of E saying that his firm was withdrawing from the action because funds to cover the brief fee had not been received. He said that he would send the e-mail the following morning. Possibly WK thought that 28 May was not the threshold date because the Respondent had not sent the threatened e-mail to the barristers. At 19.00 on 28 May the Respondent sent an e-mail indicating that he had received no funds and stating:

> "I will have to tell [S QC] tomorrow that we don't have costs cover. On that basis we will lose representation at the Trial."

On 30 May 2012 at 10.43, WK e-mailed to the Respondent copying in the other clients and included:

> "b) Can you confirm that [S QC] (and the firm he works for) has at least received £30.000,-from you for his work on the case. When was the money transferred to [S QC]?"

The Respondent regarded this as an attempt by WK to "twist my tail" about something he knew was not going to happen; by then they were "at daggers".

197.57 In evidence the Respondent was referred to an exchange of e-mails on 28 May 2012 between WK and himself in which WK wrote at 20.26:

> "I am writing about the trial. I am not writing about the funds. I have sent over the funds last Tuesday. Tell me about the outcome of today's trial! Did it take place? Was it deferred again?"

The Respondent replied at 20.45:

> "It took place last Thursday [WK]. I will, honestly, move onto other matters."

WK then e-mailed:

> "I thought this takes place today, Monday? Has it been deferred again?"

Mr Allen suggested that by the trial in this e-mail exchange WK meant the disclosure application. The Respondent did not accept this; WK knew that cover was being

referred to and not a transfer and so the Respondent ignored his question. If WK did not get an answer he would follow it up but he did not.

197.58 The Respondent submitted that he had no clear instruction that he should take £10,000 and pay £30,000 to the barristers; the fundamental theme was the firm asking for its bill to be paid and the Respondent did not accept that it (his e-mail of 21 May to WK) confused the clients. The Respondent adopted what WK said: if WK paid the firm £40,000 the clients would not owe the firm any more money and from this amount the firm would cover counsel and so the clients never thought they were paying anything other than the firm's invoice. Both WK and DR had given evidence that they had no view about when counsel should be paid which was inconsistent with their giving an instruction to pay S QC. It was consistent with the firm paying from its fee when needed. It was the firm's assurance to counsel and the firm's money. The clients would be concerned about timing of the payment if it was their money not the firm's. The Respondent maintained that the fee narrative referred to in the 21 May 2012 e-mail from WK to the Respondent referred to as being sent on 17 May must be the invoice, that is WK's bill. [This was in the context that the document was not before the Tribunal.]

197.59 The Respondent submitted that Mr Allen was trying to say that the clients had paid the firm's fees but there was a side arrangement whereby the Respondent agreed to pay counsel out of office money if and when called on to do so. As a matter of law that would not work. If there was an arrangement that the money was to pay counsel or another disbursement, it would have to be held as client money until the instruction changed and the clients put up more money or a fee note was delivered. There could not be an arrangement whereby money was to be used to pay counsel and would be used as office money. It might come back to the clarity of instruction point.

197.60 As to the allegations of dishonesty in respect of allegations 1.1, 1.2 and 1.5, the Respondent stated that he was very aware of the two-stage test for dishonesty in the case of Twinsectra and knew that a Respondent could not create and live by Robin Hood morals. As to whether if the Tribunal accepted the Applicant's case that he knew at the time he was acting dishonestly, the Respondent stated that he would have to think about it; it was a legal point; it was a question for submissions. He accepted that if he knowingly told a client that no adverse costs order had been made that would be dishonest by the standards of honest and reasonable people but he stated that that did not happen in this case. If he told the client that he had paid counsel's fees and they would be debited to the firm's bank account and that he was holding a debit balance and that it was the firm's money, that would be dishonest.

197.61 Facts could become right or wrong and were not necessarily crystallised at a given moment. It did matter in the DA case (FC Chambers) if at 09:15 he signed two cheques and said he had paid counsel because he had put the cheques in the out tray – this was not misleading but as the days went on and his state of mind changed so that he was not sending the cheques, he possibly needed to correct what he said. The Respondent stated that he got back to the office at 8 pm and his state of mind changed in respect of his receptiveness to paying the firm's money to pay counsel-he might feel less optimistic. Also e-mails were so ephemeral; it was not like crafting a letter and taking it through two or three drafts. If clients gave clear instructions stating how a fund was to be allocated, the solicitor must follow them. If DA said I am sending

£30,000 and my instructions are that £21,000 is to go to counsel and you are to take £9,000 for yourself, those instructions would have to be complied with. But in practice the Respondent's answer would be to "get stuffed".

197.62 The instruction to allocate had to be communicated. How was a lawyer to know what the client was thinking? Just because the subject came up just before the bill was paid and the client thought that the solicitor was paying counsel out of his fee, there was no way the Account Rules could operate if the solicitor had to say the client must be thinking something and I will treat it as an instruction. Most of his clients were overseas and had a better or less command of English. The Respondent stated that if the client said use the money to pay the barristers and he thought, what barristers do you mean; he would try to clarify with the objective of securing a clear instruction. If the client gave very clear instructions it did not matter what the solicitor thought. The solicitor's understanding was in the mix. If it was clear that the clients were seeking to give instructions, it was incumbent on the solicitor to get it clear. It was not enough that the clients had an understanding that some of the monies might ultimately be paid to barristers. That could happen or the firm could decide to use some of its money to pay the barristers. The solicitor needed the bones of an instruction in order to seek clarification. The raw material for an enquiry was an instruction and there was no raw material if it was just a vague idea that the clients had an understanding of how the money was to be applied. If the client did not have the money to pay the barrister and the solicitor said I will pay the barrister out of my fee and the client paid the solicitor's bill, the money became the solicitors. Once that happened the client could not insist if the solicitor changed his mind. It was not dishonest to have an understanding that the solicitor would use his own money to pay the barrister and change his mind.

Findings of the Tribunal regarding allegations 1.1 and 1.2

197.63 The Tribunal considered the submissions and evidence for the Applicant and by the Respondent, and all the oral evidence. The Tribunal wished to make clear that in respect of the Respondent categorising allegation 1.1 as generic and specific, the Tribunal was only dealing with a specific allegation; it did not need to consider a course of conduct over a period because there was no general allegation of non-payment. The Tribunal made the following findings in respect of allegations 1.1 and 1.2.

EC Allegation 1.1.1, 1.1.2 and 1.1.3

197.64 Allegation 1.1 in respect of EC Chambers related to monies which had been invoiced but were not paid to three counsel as follows: Mr G QC-£185,600, Mr B-£64,850; and Mr F-£39,125. The Applicant did not call either Ms EX or Ms TP to give evidence. The Respondent had given an explanation both in his response to the Rule 5 Statement and in oral evidence. Mr DG, a senior clerk at EC Chambers conceded in his oral evidence that the e-mail messages he received from D were contradictory and that a healthy scepticism developed in respect of D on the part of EC. The Tribunal noted particularly the Respondent's explanation in his response at paragraph 10:

> "In her e-mail to me on 21 March 2012, [TP] referred to a "*misunderstanding*" between her and Mr [DG], so whatever the other sections of her e-mails say

> (that are currently withheld from the Bundles) and whatever she had said to Mr [DG] and others at the Thursday meeting the previous week, I expect she did no more than gracefully withdraw from her earlier mistaken comments; if, indeed, she chose to refer to them again at all given they were fundamentally untrue as she must have known at least by this stage. But I do not know. No notes of the meeting have been produced and we are shown only a part of [TP]'s other e-mails and what seems to be only an extract of what Mr [DG] himself wrote. It is still telling in addition, however, that unlike her e-mail to me sent a few hours later on the same day, the e-mail to Mr [DG] does not refer to a "*misunderstanding*" at all; so despite what she told me, she had not in any event written to "*solve it*". I doubt on reflection that there was ever a misunderstanding; [TP] and the others at [D] knew the true position all along but needed to hold to their previous false assertion to Mr [DG] for as long as they could so as to stave off counsel from pressing for payment directly from them. By 21 March she had bought [D] further time, until the end of April, so her objective was at least in the short term accomplished."

First TP said in an e-mail to DG dated 7 March 2012 that D had "sent the funds for the settlement of such fees" and then said in an e-mail of 13 March 2012 that whatever the outcome of its discussions with the Respondent's firm, D "intends to settle the fees owed to the barristers". In an e-mail of 21 March 2012, TP referred to D's finance department not anticipating that they would need to make the payment and that all fees would be paid "until the end of April" which the Tribunal took to mean by the end of April 2012. In the e-mail exchanges which followed, TP referred to D thinking that it had an arrangement with the firm to pay all fees and external advisers as they did in the past; that there had been a disagreement and they now had a new agreement with the firm. In his response the Respondent stated that this was the first inkling he had of any such arrangement and so he forwarded a copy of the e-mail to EC. In an e-mail replying to the Respondent on 21 March 2012 at 22.06, TP said:

> "I wrote to [DG] this morning and told him that there was a misunderstanding between us that was solved and that [D] will pay everything until the end of April. I do not understand the reaction. What do they want from us?"

There was a dispute between the parties as to who the "us" referred to was. The Respondent asserted that neither EX or TP said they thought there was such an arrangement. However the firm had issued an invoice to the client D on 9 February 2012 which included disbursements totalling £173,440.44. The disbursements included Counsel's fees for Mr F in the amount of £2,250, Mr G QC in the amount of £58,700 and Mr B in the amount of £25,000. On 30 July 2012 at 13:29, the Respondent sent an e-mail to EX of D which included the following request for payment:

> "Please confirm the payment is on line for tomorrow so that I can tell the suppliers (who are chasing ceaselessly)"

EX replied to the Respondent by e-mail on 30 July 2012 at 16:51 as follows:

> "We will transfer to your account the amount of 273,440 pounds tomorrow. The amount of 173,440 pounds concerns invoices of third [party] suppliers

> including the barristers and the amount of 100,000 pounds concerns part of your fees."

These facts were not disputed between the parties.

197.65 In his response the Respondent said:

> "If the e-mail had said that £173,440 was to be paid to the barristers at Essex Court then of course I would have arranged for that sum to be paid to them. The fact is that it does not say that at all; as I read it at the time and as I read it now, it is fundamentally ambiguous.

It was the Respondent's case that the 30 July 2012 e-mail was ambiguous and that in any event he did not have in mind the February 2012 invoice when he received the July e-mail. However when asked by a member of the Tribunal how many invoices had been issued he was able to give a reasonably precise answer and also state how much by way of fees was outstanding in respect of the barristers. In his response, the Respondent also relied on the fact that in July 2012 the amount owed to the barristers was not £173,440 but £289,575 as set out in DG's statement. On the face of it the Tribunal found the Respondent to be correct in that assertion, but when one looked at the Respondent's own invoice of 9 February 2012 and the amount in the 30 July 2012 e-mail for suppliers, the link was obvious and equally obvious was how much was to be paid to each of the three barristers - it was set out in the invoice. In the invoice the amount for the barristers amounted to less than £173,440, destroying the Respondent's argument that even if the e-mail did tell him to pay the barristers he did not know how much to pay each one. In the same invoice, the Respondent set out his firm's charges of £230,593 and the Tribunal found that the payment of £100,000 referred to in TP's 30 July e-mail was a payment on account of that amount, expressed to be "part of your fees." The Respondent stated that after he received the e-mail he spoke to the client and was told to do with the money as they had in the past. The Tribunal noted that the Respondent's precise recollection and difficulty in recollection varied quite substantially. He had no trouble in informing the Tribunal that between 10 and 12 invoices had been delivered to D and was quick to point out when giving evidence that around £3.5 million has been paid by the client. The Tribunal found there was no ambiguity; the invoice and the 30 July 2012 e-mail read together amounted to an express and specific instruction to settle the fees of the three barristers as set out in the 9 February 2012 invoice. It was not fundamentally ambiguous. The fact that the barristers were owed an amount greater than that was irrelevant in the context of the invoice and the e-mail taken together. This was the relevant factual matrix.

197.66 The Respondent stated in his response:

> "Almost all their previous payments had been for curious irregular sums which were generally impossible to tie up against specific line items in the invoices."

The Tribunal noted that the Respondent said in evidence that he was bemused by the amount of the payment and was asked whether he had reverted to the client to clarify how the money was to be used. He said that it was pointless because of the odd

numbers paid by the client but then he said in evidence repeating his response that he had telephoned the client and the message had changed. (In the particular circumstances the Tribunal found that any pattern of paying in odd amounts was irrelevant as the material circumstances were clear.) As Mr Allen said, the Respondent's explanation had been provided on 3 March 2014 just over a week before the hearing and although he had been given the opportunity to inspect documents at the intervention agents, the Respondent had chosen not to do so and he had not produced a note of this important conversation. The absence of an attendance note was particularly telling where the client's first language was not English and they were changing their instructions in respect of a substantial amount of money; it was not credible that in such a situation a note of the conversation was not produced and that the Respondent had not produced any e-mail traffic confirming the variation to his instructions.

197.67 As to the proposition that the client was trying to refer to an earlier abortive attempt to reach agreement with the Respondent for a capped fee arrangement, the Tribunal noted that there was no reference to this in the 30 July 2012 e-mail. The Tribunal did not accept the Respondent's evidence of the telephone conversation if indeed it took place at all. The Tribunal found the Respondent's explanation to be over elaborate and implausible and not supported by any evidence. In his response the Respondent said:

> "I doubt very much she [EX] could have thought that a payment of £173,440 gave a simple fit against all outstanding suppliers' fees because it simply didn't; but if she did think that then what she then proposed was utterly unworkable which is precisely the reason why I had to clarify my instructions with [TP]."

The Tribunal found that this was not the issue; it was clear from the invoice and e-mail taken together that EX did not think she was paying all the suppliers all that was owed but just the amount requested for third-party suppliers in the 9 February 2012 invoice. The Tribunal had carefully considered the evidence of Mr DG. His evidence was that what was going on was a complete mystery to him and he was getting a better picture by playing detective but that he did not know what to believe. The Tribunal had carefully considered the Respondent's response where he quoted from EX's e-mail of 13 November 2012 to DG. She said:

> [The Respondent] however continued to excerpt (sic) absurd pressure re outstanding third party fees and finally we completed a payment of £273,440 explicitly requesting that the outstanding third party fees amounting to £173,440 are settled with the utmost urgency. As you can readily understand the latter amount is the exact amount quoted in the [firm's] invoice pertaining to all third party fees."

197.68 The Tribunal had noted all the e-mail traffic before it, including the bundle of e-mails provided by DG at its request. In her e-mail of 13 March 2012 at 09.30, TP said to DG:

> "We just want to reassure you that, regardless of our internal discussions and arrangements with [the firm], [D] intends to settle the fees owed to the

> barristers. We will update you on our proposal for the settlement, after our meeting with [the firm].

The Tribunal found that this continued the theme that D had already provided the money to pay the barristers. The Respondent had asserted that D had failed to provide the schedule promised in TP's e-mail to DG of 21 March 2012 at 08.40 when she said:

> "… As you understand this is an amount that they [the financial Department of D] did not anticipate and they needed to make the necessary arrangements. They informed me this morning that they will pay all the fees until the end of April. They will send you a schedule with the exact dates, later this week.]

but on 18 January 2013 EX sent an e-mail to DG:

> "It was great to speak to you yesterday afternoon.
>
> As discussed please find hearing details of all [D] payments to [the firm] from May 2010 onwards amounting to a total of "2,111,969.61 plus the £273,440 payments referred to in my previous email, thereby a total of £2,385,409.61. As confirmed in our previous communication, these payments regarded all services rendered including all third-party and counsels fees."

It was true that D did not send the future payment schedule referred to in this e-mail, but that was irrelevant to the issues before the Tribunal. The Tribunal found that if there was any inconsistency in the e-mail traffic from D, it did not undermine the clear and unambiguous connection between the 9 February 2012 invoice and the 30 July 2012 e-mail giving instructions about payment to third-party suppliers.

197.69 Various other issues had been raised during the hearing in respect of the allegation concerning EC Chambers and D upon which the Tribunal determined as follows:

- As to the credibility of the client D, the president C, TP and EX were not before the Tribunal to give evidence. The Respondent did not comply with the Tribunal's directions about witness evidence and if he was critical of the Applicant for not bringing these potential witnesses, it had to be remembered that he had kept on changing his mind. In any event the Tribunal found, having heard from the Respondent and Mr DG and considered the documentary evidence that there was ample material upon which to make a finding to the required standard.

- The Tribunal noted that DG made concessions in giving evidence; in cross-examination the Respondent tried to get DG to say that the e-mails from DG were inconsistent and in isolation he urged him to use the word "inconsistent". The e-mail traffic could well be seen as inconsistent but when pressed further DG said that the traffic was inconsistent only if the Respondent was telling the truth and stated that he, DG was mystified.

- Regarding the alleged meeting between TP and the Respondent there was no proof as to whether it had taken place or not. Regarding possible

meetings between TP and DG the Respondent tried to press DG about why he had not done anything to pursue the subject of the meeting on 30 April 2012. DG explained that this was because he had a meeting arranged with the Respondent on 1 May at the Respondent's offices.

- In respect of the ulterior motive which the Respondent attributed to EC Chambers that they wanted a finding of dishonesty against him because of their dealings with the Compensation Fund, the Tribunal had considered the Compensation Fund documentation which the Respondent had asked the Applicant to provide. The findings made by the Compensation Fund were not in issue before the Tribunal. The Tribunal had assessed DG's evidence; he was unsure about certain things but had no doubt about what was due to the barristers. The Tribunal found him to be a frank and honest witness and it had to base its findings upon the evidence before the Tribunal.

- The Tribunal had considered the press cuttings concerning the arrest of certain persons in Greece dated January and February 2012. TP who had given instructions to the Respondent in respect of the payment of the barristers' fees was an external lawyer working for D. The Tribunal found that just because she and EX had a working relationship with or worked for a firm where the chairman was later accused in respect of activities relating to a bank and not to D, this did not undermine the fundamental issue as to what was the client's instruction and the Respondent's obligation to comply with it.

197.70 The Tribunal found proved on the evidence that the sum of £273,440 was received into the firm's client account from D on 1 August 2012 and was transferred to the firm's office account business reserve on the same day. The Tribunal found that no payments were made to EC by the firm in relation to this matter after 13 December 2010 and that the money received on 1 August 2012 was then used as alleged in the Rule 5 Statement to make payments which had nothing to do with the matter in which D had instructed the Respondent; instead it was used for the benefit of the firm or the Respondent personally as the firm's bank statements showed. The Tribunal found allegation 1.1.1, 1.1.2 and 1.1.3 proved to the required standard in respect of EC Chambers. The Tribunal found that it followed that in acting as he had, the Respondent had breached Principle 2 (integrity), Principle 4 (best interests of client), Principle 5 (proper standard of service) and Principal 6 (public trust), Principle 7 (failure to comply with his legal and regulatory obligations) and Principle 10 (protect client money and assets) of the SRA Principles 2011. The Tribunal also found that the Respondent had failed to achieve outcome O(1.1) (treat clients fairly) and O(1.2) (provide services to clients in a manner which protected their interests in their matter subject to the proper administration of justice) of the SRA Code of Conduct ("the Code"). He had risked losing counsel, threatened to come off the record and used the client's money for something other than what it was provided for and thereby did not provide them with the services they were entitled to expect. The Respondent had also breached SRA Accounts Rule ("SRAAR")1.2(a) by failing to keep D's money separate from money belonging to him or his firm and 1.2(c) by failing to use D's money for D's matters only, and SRAAR 20.1 by withdrawing client money from client account other than as provided for in the rules.

FC Chambers Allegation 1.1.1, 1.1.2 and 1.1.3 and 1.2

197.71 Allegations 1.1 and 1.2 arose out of e-mails which the Respondent sent to his client's representative DA in respect of fees for FC. On 23 April 2012 at 09.11, the Respondent wrote an e-mail to DA of CM in which he stated:

> "I paid £21,000 to the Barristers this morning so please ensure our month end payment gets to us by Wednesday this week so that we are not out of pocket; I don't mind being in pocket for you but we need to cover the outgoings as they arise"

Later that same day at 13.47 he had e-mailed again:

> "Please confirm [D] I am in and out of court today."

A further e-mail chasing reimbursement of counsel's fees was sent to DA by the Respondent on 25 April 2012 at 20:08 in which the Respondent stated:

> "Please do make the payment tomorrow. We are now £21 K out from the fees paid"

The Tribunal found that on the basis of these e-mails from the Respondent, the client paid £30,000 into the firm's client account of which £21,000 was for payment to FC. The Respondent stated unequivocally in his first e-mail that he had paid counsel using the past tense. When he made this statement the cheques which he had signed were not even in the post. In his response, the Respondent said:

> "Again, Mr [DA] basis (sic) his evidence on a wholly generalised *understanding* that my Firm was paying counsel everything that was due to them out of our own money. He refers to nothing, of course, by way of document or conversation where he was actually told by anyone that this *was* the case but that does not to deter him. If his understanding was based on a private assumption that "*this is what solicitors do*", then I beg to differ with him..."

The Respondent also referred to his e-mail of 23 April 2012 and continued:

> "I had indeed that morning signed off two cheques with a letter to go off to [FC]. Before 2 o'clock I received an e-mail in reply from Mr [DA] saying he wasn't going to be making a payment by Wednesday but that arrived while I was at Court so I didn't see it when it came in. I think I pretty much trusted Mr [DA] but he was, so to speak, astute in the ways of cash management. I was not going to risk the office cheques bouncing once I knew he was not going to put us in funds for our fees as requested; so when I got back from Court and had sent him another e-mail I reflected further on the position and finally decided to pull the letter from the post run. My thinking was coloured by the fact that although this payment did in fact come in at the end of the (sic) month, we had experienced missed payments previously."

The Respondent admitted:

> "I could have told him this was the case after the second e-mail was sent but I don't think it would have mattered; certainly it didn't relieve him of his obligation to pay our monthly fee on time ([CM] were paying us a fixed sum each month of £30,000 against our fees; I say *each month* but several were missed and a few were for less than £30,000). I certainly did not see the inchoate payment of counsel as in any way being a stimulus to Mr [DA] paying us what he owed. But left uncorrected the e-mail was misleading and I am sorry for that. I should have told him the position had moved on over the course of the evening. In any event, the subject did not come up again prior to our getting the payment at the end of the week."

The Respondent repeated his admission in evidence that the 25 April e-mail was misleading although he referred to the first e-mail as being written in shorthand when he could have given a detailed description of the actions he had taken in writing but not sending the cheques. In his response he said that the payment was made against an invoice from the firm which included no reference to counsel's fees. The Respondent stated that he understood that if the client sent the money and allocated it in a particular way, he was under an obligation to accept the client's instructions. In this situation the Respondent accepted payment in clear terms that he was to pay counsel £21,000 and he did not do that. The Tribunal noted that DA did not attend to give evidence but it found the evidence before it completely conclusive. The Tribunal found as a fact that the e-mail sent on 23 April was untruthful and that the Respondent knew it to be so. The follow up e-mail knowingly repeated the untruth. The Tribunal found allegation 1.1.1 proved to the required standard in respect of FC. The Tribunal also found proved on the evidence that the sum of £30,000 was received into the firm's client account from C Investments USA Ltd on 26 April 2012 and on the same day, an online transfer was made from the firm's client account to the firm's office account in the sum of £32,737.50 which included the monies transferred in from CI USA Ltd. The Tribunal further found that as no payments were made by the firm to FC Chambers after 26 April 2012, the monies received by the firm on 26 April 2012 must have been used for other purposes because the firm's client account and office accounts had a nil balance when they were closed in October 2012 and that allegations 1.1.2 and 1.1.3 were also proved to the required standard. The Tribunal found that by his conduct the Respondent breached Principles 2, 4, 5, 6, 7 and 10 of the SRA Principles 2011 and failed to achieve all of outcomes O(1.1) (treat clients fairly) and O(1.2) (providing services) of the SRA Code of Conduct 2011 and breached all of Rules 1.2 (a), 1.2 (c) and 20.1 of the SRA Accounts Rules 2011.

<u>E Chambers allegations 1.1 and 1.2</u>

197.72 The circumstances in this matter were similar to those in respect of FC. The allegations arose out of exchanges of e-mails between the Respondent and three clients all of whom were involved in the same litigation. The Tribunal had had the benefit of hearing from two of the clients Dr WK and Mr DR in evidence and the evidence of the third client Dr MB was dispensed with by agreement between the parties. In this case the Respondent gave the clients to understand that £30,000 was required in a way which was disputed in order to retain the services of two barristers for an imminent trial. The Tribunal had found both the individual clients to be

impressive witnesses who were very clear in their evidence notwithstanding that English was not their first language. There was no dispute between the parties that WK had at some time received a budget for the litigation from the Respondent but it was disputed whether its contents were in their mind at the material time. On 21 May 2012 at 17:55, WK sent an e-mail to the Respondent which contained the following:

> "we understood that if we pay the GBP 40.000-now there are no fees left for CityLaw as stated on your fee narrative sent last Thursday, May 17th. In addition you will pass on GBP 30,000-of this to the counsel (S QC) for the fee due to him.
>
> Could you please confirm this in order to proceed on time and make the payment to you."

The Respondent replied to WK by e-mail on 21 May 2012 at 18:16 as follows:

> "Yes,
> That is correct [WK]
>
> The £40,000 payment finishes off all liability to my firm.
> Best,
> Paul"

The Respondent later forwarded that e-mail to MB and DR on 21 May 2012 at 19:17. On 22 May 2012, at 06.54, WK sent a further e-mail to the Respondent in the following terms:

> "And GBP 30.000,-of that go to [S] QC?"

The Respondent replied to WK by e-mail on 22 May 2012 at 09.27, copied to DR and MB, stating:

> "Yes. That is the reason for the urgency. Can you please arrange the transfers today so that I can cover."

On 24 May 2012 at 14:27, the Respondent forwarded SW's e-mail of 21 May 2012 to WK, DR and MB. His covering e-mail included the following:

> "I am attaching an e-mail from [S's] clerk which is, and has been, the basis of my request that we are funded on our invoice so as to transfer £30,000 against the first phase of the brief fee…

In an e-mail dated 30 May 2012 at 10.43, WK specifically asked the Respondent:

> "b) Can you confirm that [S QC] (and the firm he works for) has at least received £30.000,-from you for his work on the case. When was the money transferred to [S QC]?"

In a reply at 11.05 on the same day, the Respondent had acknowledged receipt of the funds transferred by WK and stated:

> "We never declined our mandate, we wanted to keep [S QC] on his. Which we have now done."

WK specifically required an answer to his e-mail by noon London time and he received it. WK's approach confirmed what he had said in evidence that the Respondent had been "grey" in the past. The Tribunal found that the combination of the e-mail exchanges between WK and the Respondent on 21 May 2012 and that on 30 May 2012 could not have been clearer. The earlier e-mail exchange particularly contained no caveats by the Respondent. The Tribunal also noted particularly the specific confirmation "Yes" in the Respondent's reply to WK's specific question that £30,000 was to go to S QC, both of which took place on 22 May 2012. In his response, the Respondent included:

> "The whole argument that clear instructions to pay £30,000 to counsel can be reverse engineered from the shreds of comment and allusion in e-mails generated in such often fractious circumstances is absurd.

and

> "There is no basis whatsoever for the [AM] witnesses' assertion that they thought they were paying anything other than the invoices sent to them by [the firm]. They were never invoiced for counsels' fees for the Trial."

The Respondent relied on an argument that it was understood that the references to £30,000 for counsel all related to his providing "cover" against the first stage of the brief but this was not what the e-mail exchanges said. The Tribunal found that this was not a question of cover but a question of getting money from clients for a specific purpose and then not using it for that purpose and not even reserving the money in client account to use for that purpose later. The Respondent had deployed sophisticated semantic arguments but the Tribunal considered these to be a smokescreen for what had actually occurred. The Tribunal found proved on the evidence that the following sums were received into the firm's client account; £11,600 on 22 May 2012 referenced for "Fees payment for City Law and [S QC]"; £800 from MB on 24 May 2012; and £27,600 from AM on 29 May 2012. The Tribunal also found that the following online transfers were made from the firm's client account to the firm's office account in each instance leaving the client account with a nil balance; on 22 May 2012 the sum of £11,600; on 24 May 2012 the sum of £800 which comprised the monies from MB; and on 29 May 2012 the sum of £27,600 which comprised the monies from AM. The Tribunal found that as with EC Chambers and FC Chambers the money received from clients in this case in May 2012 had not been used to pay counsel as no payments were made by the firm in respect of fees due to S QC or Mr G after 22 September 2011 and having regard to the state of the firm's accounts when they were closed the funds must have been used for other purposes. The Tribunal found allegation 1.1.1, 1.1.2 and 1.1.3 proved to the required standard in respect of E Chambers. The Tribunal found that by his conduct the Respondent breached Principles 2, 4, 5, 6, 7 and 10 of the SRA Principles 2011 and failed to achieve all of outcomes O(1.1) (treat clients fairly) and O(1.2) (providing services) of

the SRA Code of Conduct 2011 and breached all of Rules 1.2 (a), 1.2 (c) and 20.1 of the SRA Accounts Rules 2011.

Findings of the Tribunal regarding allegation 1.2

197.73 Allegation 1.2 related only to the clients in the FC and E Chambers matters and was denied by the Respondent in its entirety. The Tribunal had regard to the submissions for the Applicant, the submissions and evidence of the Respondent and the oral evidence of WK and DR. The findings of fact which the Tribunal had made in respect of allegation 1.1 were also relevant to allegation 1.2. The Tribunal found proved to the required standard that the Respondent had made false statements to the DA (FC Chambers) and to the three clients in the AM matter (E Chambers) and that by his conduct the Respondent had breached Principle 2 (integrity), Principle 4 (best interests of the client), Principle 5 (proper standard of service) and Principle 6 (public trust) of the SRA Principles 2011. He had also failed to achieve outcome O(1.1) (treat clients fairly).

Tribunal's findings in respect of dishonesty regarding allegations 1.1 and 1.2

197.74 In respect of the dishonesty, the Tribunal employed the test in the case of Twinsectra Ltd v Yardley [2002] UKHL 12

> "… there is a standard which combines an objective and a subjective test, and which requires that before there can be a finding of dishonesty it must be established that the defendant's conduct was dishonest by the ordinary standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest."

In respect of allegation 1.1, the Tribunal had had the benefit of the oral evidence of the Respondent at length, of hearing two of the three clients in the AM/E Chambers matter and of Mr DG of EC Chambers who has stated in evidence that he did not know what to believe from what he was told. The Tribunal had found that the Respondent had received funds from clients for payment of counsel from the client D for EC Chambers, from the three AM clients for E Chambers and from DA for FC Chambers. The monies were received with express instructions that they be used for the purpose of paying third-party costs including counsel's fees and they had been transferred to the firm's office account and/or the firm's office account business reserve and used for purposes other than those for which they had been transferred by clients. Under the Code and the Solicitors Accounts Rules in their various versions, client funds which was what these monies were, belonged to clients and could only be used for the purposes for which they were expressly transferred. The Tribunal had found that the monies received from D were spent largely on the firm's overheads or the Respondent's personal expenses. It was the inescapable conclusion that the money received from DA and AM had been used for purposes other than those to which the clients had allocated them as the barristers had not subsequently been paid and only £0.65 remained in the firm's bank accounts when they were closed. The Tribunal found that by the ordinary standards of reasonable and honest people to appropriate those funds and to use them for the Respondent/firm's own purposes or for other purposes was objectively dishonest. The Respondent had referred in giving evidence to the unacceptability of creating "Robin Hood" morals in the application of

the subjective test in Twinsectra. The Tribunal found that he was well aware that in misappropriating these funds including when transferring the monies from client account to office account and/or office account business reserve and using them for purposes other than that for which the clients had allocated them that he was behaving dishonestly. The Tribunal therefore found dishonesty proved to the required standard in respect of allegation 1.1.

197.75 In respect of the allegation of dishonesty regarding allegation 1.2, the Tribunal had found that the Respondent had knowingly misled, indeed had been untruthful to DA when he categorically stated in an e-mail dated 23 April 2012 that he had paid £21,000 to counsel and when he reinforced the message in a further e-mail on 25 April 2012. The Respondent had accepted both in his response and giving oral evidence that he should have corrected what he had told DA. The Tribunal considered that in making these statements to DA the Respondent would be considered dishonest by the ordinary standards of reasonable and honest people. The Tribunal found that the Respondent was aware when he sent the email on 23 April that whatever his intentions regarding posting the cheques later that day might have been, he knew that he had not yet posted them and that what he was doing was dishonest. It remained dishonest when he repeated the message in different words on 25 April 2012.

197.76 In respect of his statements to his clients in the AM matter, the Tribunal had had the benefit of hearing two of the three clients as well as the oral evidence of the Respondent. The Respondent's attempts to cross-examine the two witnesses did not work and both WK and DR made it clear that they considered he had told them lies. Their evidence was completely convincing and was solidly supported by the e-mail exchanges and the transcript of the teleconference of 1 June 2012. The Tribunal accepted that the Respondent had not had the benefit of hearing the tape but after it was offered to him he did not make any substantive challenge to the transcript. Even without that conversation the Tribunal was satisfied that by the ordinary standards of reasonable and honest people, the statements which the Respondent had made to DA and the AM clients were objectively dishonest. The construction which the Respondent put on his exchanges with his clients was thoroughly implausible and stretched the English language to breaking point. The Tribunal found that the Respondent knew that in dealing with these clients he was being dishonest. The Tribunal found dishonesty proved to the required standard in respect of allegation 1.2.

198. **Allegation 1.3 - On a date between about 19 and 26 October 2012, he [the Respondent] misappropriated sums due to the firm in that he gave instructions, or caused instructions to be given, to the City of London to redirect sums payable to the firm to a bank account other than one controlled by the firm, and thereafter used part of these monies belonging to the firm for his own purposes, and thereby breached one or both of Principles 2 and 8 of the SRA Principles 2011.**

198.1 For the Applicant, Mr Allen relied on the facts set out in the Rule 5 Statement. The evidence and witness statements of Mr AG and Mr EM were also relevant. He submitted that on 8 August 2012, the firm's office lease had been forfeited and there were rent arrears of around £180,000 and £94,000. The judgment debt was paid using money from D. The Applicant's investigation commenced on 14 August 2012 and an intervention notice was sent on 8 October 2012 to the address C House that the

Respondent said that he had left, as well as by e-mail. The Respondent had still made no arrangements to move the firm to new premises after the lease had been forfeited two months earlier and he had promised the IO the firm would move in a matter of days. On 17 August 2012, the Respondent e-mailed to the IO:

> "Our builders have not hit their threshold time so we can't move the files as intended this weekend…"

Later that day the Respondent said in answer to the IO's question as to when they expected to be in the Cannon Street office:

> "On current projections Wednesday…"

The Respondent said that the lease of the new premises had been signed but a copy lease had not been seen. He told the Applicant that they would move in mid to late August and by mid-October no arrangements had been made for the premises to be occupied. On 3 October 2012, HK told the Respondent of the deadline of 28 October 2012 for the storage of client files which they had already moved to a storage company. The landlord was aggrieved at having to pay storage charges regarding the Respondent's business. On 11 October 2012, the Respondent was made bankrupt. He had put in a further short response regarding his bankruptcy; he explained that it arose out of a dispute with HMRC regarding the proper taxation of drawings he had taken at an earlier firm of solicitors upon which tax had been paid in the USA and in respect of which there were questions about double taxation. The Respondent said he had had no notice and had been adjudged bankrupt in his absence. He stated that his ex-wife had informed him on 19 October 2012 of the bankruptcy order. He had not sought to set it aside and said the intervention killed off any incentive to do so. Mr Allen submitted that all these factors created a basis for the Respondent to seek to arrange for the rent rebate from City of London to be paid to a personal account; he had been made bankrupt, it was likely that the firm would be intervened into because of his bankruptcy and/or the forensic investigation into the firm of which the Respondent was aware and/or because of his failure to make arrangements for the safe storage of client files and computer equipment following forfeiture of the firm's lease.

198.2 Mr Allen referred the Tribunal to the e-mail sent from EM's iPad on 19 October 2012 asking for the rebate to be paid to "our account"; he submitted that those words were slightly misleading because the account was in the name of the Respondent's ex-wife. The firm's bankers had closed the firm's accounts so that the firm had no accounts open albeit the firm was to continue as the Respondent intended as he was seeking to arrange new premises. The Respondent asked for a bank transfer rather than a cheque because that would be in the name of the firm. That same day the firm was intervened into. The Respondent accepted that he learned of the intervention on 23 October; the Applicant said he learned on 22 October but Mr Allen suspected not much turned on that. On 24 October 2012 at 09.44 the City of London sent an e-mail to EM attaching the remittance advice for the refund. It bore the name of the firm but showed the Respondent's address at C House where he was at one time resident. It was disputed when he left that address. The Respondent spoke to Devonshires, the intervention agents on 24 October 2012 and it was not disputed that he did not tell Mr AG during the call or at any time about the rebate. The Applicant learned about it from EM. Mr Allen drew the Tribunal's attention to subsequent events described in the

background to this judgment; the Applicant recovered an amount less than the rebate. The Respondent's ex-wife had not made any withdrawals but the Respondent could access the account via a bank card and the amount of £3,206.71 was then and remained missing. In his response, the Respondent stated:

> "As far as I was concerned this was my money, it was not client money which I could well see was likely to be protected by the Intervention process…"

Mr Allen could see why the Respondent said that but legally he was not right; the firm was an LLP, a separate legal personality. The Respondent stated "it was a cash asset of the firm of which I was the sole owner". In his skeleton argument the Respondent stated:

> "I was not aware that the statutory intervention trusts would attach to money which was effectively mine. That was certainly the case with the rates refund due to the firm from the Corporation of London. Prior to learning of the intervention, I had given instructions to the Corporation to pay that sum to my wife's account with Barclays; firstly, because I owed her money pursuant to an order made in her favour in our divorce proceedings which I intended the payment to discharge and secondly, for the balance, because by this stage Coutts had closed [the firm's] bank accounts so I had no other account that I could remit the funds to."

198.3 Mr Allen submitted that the Respondent could have opened another bank account. The Respondent objected to Mr Allen's interpretation of the law in respect of an LLP/sole partnership and the matter was dealt with later in the proceedings. The Respondent suggested that it was legal for the rebate which was payable on its face to the LLP, to go to his ex-wife's account to discharge his liability in their divorce proceedings when on any view the firm was in deep financial trouble. Mr Allen submitted that it hardly mattered whether or not the Respondent understood the niceties of the statutory trusts operating on an intervention as there was a clear issue about the legitimacy of transferring monies to a personal account for that purpose and it seemed to be a clear admission that the object of removing the money was at least in part to discharge a personal liability of the Respondent. Mr Allen submitted that in the documents the Respondent just said that the money was "effectively mine" rather than it being a legal point.

198.4 Dishonesty was alleged in respect of allegation 1.3 and Mr Allen submitted in his skeleton that it was inconceivable that the Respondent did not appreciate that the business rate rebate was due to the firm and that the monies could not properly be redirected to another account for his own personal use. The inference that he was acting dishonestly was supported by the fact that:

- The Respondent inaccurately described the Barclays account as "our account" in his e-mail to the City of London of 19 October 2012;

- In the same e-mail, the Respondent also asked that the rebate be paid by way of bank transfer rather than a cheque which would have been drawn in the name of the firm;

- It appeared from the remittance advice that the Respondent provided an address to the City of London which was not the address of an office of the firm but was his own residential address;

- The Respondent was aware of the intervention on or before 22 October 2012 but did not draw the rebate to the attention of the Applicant's intervention agents when he spoke to them on 24 October 2012; and

- The funds were withdrawn from the Barclays account on 25 October 2012 or 26 October 2012 after the Respondent had become aware of the intervention.

Submissions by and evidence of the Respondent

198.5 The Respondent submitted that he was "a financial services guy" who knew nothing about interventions – they appeared on the back page of the Gazette. He knew nothing about the powers involved when an intervention happened and had no idea that the intervention would fix on office account money; that was the reason the rate rebate went to the Barclays account. The firm's accounts elsewhere had been closed and he had no personal account – that had been taken with his divorce. It was a fact that he owed money to his ex-wife. The rebate money was not being warehoused in her account; some of it was due to her and the rest was the firm's money. Once he found out about the intervention, the Respondent spoke to his ex-wife as he said in his response. He was fairly clear that the intervention would not bite on office account and his ex-wife suggested they should speak with Devonshires the intervention agents and tell them what had happened. He stated that she was a doctor and therefore reasonably intelligent and capable of speaking to Devonshires on the matter. The person dealing at Devonshires did not return his ex-wife's call as he was on half day's leave and then Devonshires obtained an injunction. The Respondent found out on the Monday following when he was at his son's prize-giving at around 8 pm and was unable to use an ATM. The next day he and his ex-wife spent half a day with Barclays to find out why the account had been frozen. When he got home that night there was a letter from Barclays about the injunction. The next morning a bundle of papers arrived in his ex-wife's letterbox. She read from the Order that the intervention bit on the office account. Both of them had previously been inclined to fight the action but immediately they saw what the Judge said, she sent the money back. There was no guilty intention to hide this money and keep it from the firm's creditors. The Respondent submitted that he had no idea of the statutory trust framework and he did not check the statute but immediately sent the money back and it had been with Devonshires ever since. To the extent that it was suggested that in late September and October 2012 he felt intervention was inevitable, that was not true; he thought the firm could downsize and carry on. He was working on getting an additional member. When he left the IO with the accountant he did not know what would happen. The IO must have received the impression from the accountant that the Respondent had lied to him because the accountant said he had not done any work since 2011.

198.6 In cross-examination, the Respondent stated that he was the sole member of the LLP and regarded the rebate as his money; he was the LLP. Anything the LLP did could in law be ratified by the members – him. Transferring the assets of an LLP to himself was not done to defeat creditors but if it could be ratified it could be done if it was

lawful and subject to Mr Allen proving otherwise the Respondent considered that it was. The Respondent accepted that when the firm's bank accounts were closed on 12 September 2012 leaving only £0.65 in one of them, there was an outstanding set of proceedings for mesne profits for around £20,000. The rebate was not the only asset of the firm; it had goodwill and it was nonsense to imply that he was warehousing money to defeat creditors. He agreed that it was intended in part to meet an obligation by way of personal liability to his former wife of around £20,000. At most the claim by the landlord was £20,000 and there was more than that in the former wife's account. The assets were not being depleted they were just being moved. There were no other liabilities that the firm had not covered. The money had to go somewhere and it was more than the landlord was claiming. He had talked to the landlord about its claims in excess of that figure but they could not claim rent after the forfeiture. Intervention costs were certainly not in his mind; he had given the instruction concerning the rebate before he knew about the intervention on the evening of 23 October. As to the £3,206.71 which had been spent from the rebate, the Respondent had bought some clothes and was living in a hotel.

Findings of the Tribunal regarding allegation1.3

198.7 The Tribunal had regard to the submissions and evidence for the Applicant, the submissions and evidence of the Respondent and the oral evidence of EM. The facts giving rise to this allegation were not disputed but the Respondent denied they amounted to dishonest misappropriation. It was the Applicant's case that the Respondent deliberately arranged for the business rate rebate to be transferred to a bank account in his ex-wife's name with a view to gaining personal access to the money despite his bankruptcy and the likely intervention by the Applicant into the firm. The Respondent's evidence was that he was not aware that the statutory intervention trusts would attach to money which he regarded as effectively his own. The Respondent summarised his case as follows: he did not know about the intervention at any point prior to giving instructions to the Corporation of London to pay the refund to the Barclays account; the instructions were not secret – the Respondent gave them using EM's laptop and knew EM would be able to see them; he knew that the intervention had happened when the monies were transferred to the account but had no idea that they were subject to the statutory trusts and as soon as there was any suggestion that they were, they were paid back. The Tribunal noted that all the firm's bank accounts had been closed by the firm's bank. The Tribunal did not consider material the provisions of section 4A of the Limited Liability Partnerships Act 2000. The Act provided that where a LLP carried on business for more than six months without at least two members, a person who for the whole or any part of the period that it so carried on business after those six months was a member of the LLP, and knew that it carried on business with only one member, was liable (jointly and severally with the LLP) for the payment of the LLP's debts contracted during the period, or as the case may be, that part of it. The Tribunal considered the Respondent's explanation for his conduct in respect of the rebate; he stated that he had been trying to secure payment of the refund since early August 2012, it was substantial and he was looking to it as an extraordinary item which would smooth out the cost of the move to Cannon Street. The Tribunal noted that the Respondent had been made bankrupt on 11 October 2012, that the lease of his office premises had been forfeited over two months previously leading the firm's bank to close all the firm's bank accounts which at closure had nil balances (save for £0.65 in one of

them), and that he was subject to investigation by the Applicant which he had been made aware by the IO could lead to an intervention. The Respondent accepted that the firm had a debt to the former landlord for mesne profits. Any intervention would also lead to considerable costs. He could have asked for the rebate to be made by cheque in which case it would have been payable to the firm and not available to him personally. The Tribunal accepted that he did not have a personal bank account but on his own evidence the Respondent had access to his ex-wife's bank account by way of a debit card. The Tribunal found it an inescapable conclusion that in these circumstances the Respondent had acted as alleged. The Tribunal found allegation 1.3 proved to the required standard. The Tribunal found that in so doing the Respondent breached Principle 2 (integrity) and Principle 8 (running his business or carrying out his role in the business effectively and in accordance with proper governance etc).

198.8 In respect of the dishonesty alleged in respect of allegation 1.3, the Tribunal found that by the ordinary standards of reasonable and honest people what the Respondent did in diverting the rate rebate to an account to which he had personal access would be considered dishonest. But the Tribunal could not be satisfied to the required standard that the Respondent had known that what he was doing was dishonest. Having regard to the Respondent's specialism in company commercial law, the Tribunal accepted that he did not have a detailed knowledge of the statutory trusts consequent upon an intervention. He might be open to criticism for not having found out about that once he was aware of the intervention which knowledge he acquired after he had initiated the transfer of the money by the Corporation of London but it raised a doubt and the Tribunal found the allegation of dishonesty in respect of allegation 1.3 not proved to the required standard.

199. Allegation 1.4 - On or about 24 April 2012, 25 April 2012 and 28 May 2012, he [the Respondent] exercised or purported to exercise rights of audience by appearing on behalf of clients before proceedings in the High Court of Justice when he was not qualified or entitled to do so, and thereby breached all or alternatively any of Principles 1, 4, 6 and 7 of the SRA Principles 2011 and further or alternatively failed to achieve outcome O(HR4) of the SRA Higher Rights of Audience Regulations 2011 and further or alternatively failed to achieve outcome O(1.3) of the SRA Code of Conduct 2011.

199.1 For the Applicant, Mr Allen relied on the facts set out in the Rule 5 Statement. The evidence of Ms DW was also relevant. He submitted that it was clear from the regulations that it was not sufficient for a solicitor to have successfully completed the assessments prescribed by the Applicant in order to be permitted to exercise rights of audience in the higher courts. It was also necessary for the solicitor to make an application to the Applicant for certification and for that application to be granted. Mr Allen submitted that it was not disputed that the Respondent had exercised the higher rights on two occasions before he was formally authorised to do so on 29 May 2012. The Respondent claimed that he was told by the Ethics Department of the Applicant that he was entitled to act in the trial. Mr Allen submitted that this was no defence. It was set out in the case of Financial Services Authority v Fox Hayes [2009] EWCA civ 76 in respect of guidance given by a regulator:

> "The most that can, in my view, be said is that, if advice or guidance is given and it subsequently transpired that it was wrong, that may have an effect on

> the penalty for any transgression. One can only say that it "may" have an effect on penalty because it is likely to be only the authorised person who knows the full factual picture; usually the regulator will not. Any advice or guidance given can only be relied on if the full facts are before the regulator when the advice or guidance is given. In the present case, for example, the FSA did not know these critical facts…"

In his response to the Rule 5 Statement, the Respondent stated that the application was submitted by fax and post on 20 April 2012 and that he was informed by the Ethics Department on 20 April 2012 that the application process would be a "formality" provided that the paperwork was in order and there were no outstanding disciplinary proceedings against him and that he took this as confirmation that he could appear at the trial on 24 April 2012. The Respondent had not produced any documentary evidence of the alleged conversation or written confirmation of what he claimed to have been told by the Applicant. Mr Allen submitted that there were two versions of the assessment certificate in the papers; one was dated 20 April 2012 from the City Law School and the other, the certified copy was dated 24 April but Mr Allen took no point on this. The Respondent had in his hands an assessment certificate dated April 20 and he might have passed some time before that. His application form was dated 20 April the day of the alleged telephone call and he said he faxed the application on that day. The Applicant had no internal record of the Respondent's alleged conversation with the Ethics Department and would invite the Tribunal to reject his evidence that the conversation took place. The Applicant had no record of the faxed application being received; the paper application was stamped as received on 23 April 2012 when one would have expected it to arrive and the application fee could not be faxed; there was a cheque referred to in a covering compliments slip which must have been sent by post. So when the alleged conversation took place the cheque had not been received. The application form showed a processing date of 8 May 2012 and on the same day the Applicant e-mailed asking for a certified copy of the assessment certificate which meant the application was incomplete. A certified copy was an express requirement on the application form. The conversation was alleged to have taken place on Friday just two working days before the trial was due to commence. Mr Allen submitted that it was inherently unlikely that the Ethics Department would have confirmed to the Respondent that he could appear as an advocate in the High Court trial which was due to commence a couple of working days later without having seen his application or assessment certificate or having received the application fee. Mr Allen submitted that the correspondence between the Respondent and Ms DW acting for the seventh and eighth defendants made it appear all the more unlikely that the conversation would have taken place. The Respondent referred to having the certificate sent to DW but it was unclear what certificate. It could only be the assessment certificate at that date 3 May 2012 and that would not give DW the comfort she sought. There was no reference to an explanation about why the Applicant said it was acceptable for the Respondent to proceed even though the certification process had not gone in accordance with the HRA Regulations. In her letter of 6 May 2012, DW included:

> "This is a matter which should be capable of being quickly resolved. For the avoidance of doubt, what we have requested is evidence that you have higher rights of audience and that these rights are current and valid. In these circumstances, a copy of the certificate on its own is insufficient…"

DW also gave the Respondent a deadline for reply as she wished to resolve the matter prior to judgment being issued and indicated that if it could not be resolved, she would draw the matter to the attention of the Court. DW received no response and on 10 May 2012 she wrote to the clerk to the trial Judge including that the Applicant had informed her and a firm of solicitors acting for the third defendant that there was no record of the Respondent obtaining higher rights of audience. Mr Allen submitted that the chain of events which was set off by the failure to get a satisfactory explanation was quite dramatic and submitted that it cast doubt on the Respondent's credibility, that he did not give an explanation. On 10 May he received a copy of the letter sent to the trial Judge. On 8 May the Applicant sent an e-mail asking for a certified copy of his assessment certificate so that his application could proceed. Both of these were clear alarm bells but the Respondent exercised higher rights again on 28 May 2012 before his qualification had been recognised. He was in breach of the rules by not complying with them but his mental state might be relevant to sanction. At the least he had acted negligently but Mr Allen invited the Tribunal to be cautious about the Respondent's evidence when he did not give an explanation at the time.

Submissions by and evidence of the Respondent

199.2 The Respondent admitted that he exercised higher right of audience between the dates in question but that he did so in the honest belief that he was entitled to and received assurances in that respect from the Applicant. The Respondent submitted that the genesis of this allegation was D. The Respondent was genuinely doing the best he could to see that they were looked after. The entire barrister team in February and March 2012 made it clear that they would not represent this client. A judgment could have been obtained well in excess of £30 million. The only route the Respondent could find was to pay £9,000 for a course which was specially put on to have him certified before the trial. He started the process several weeks before the trial and the providers said they could give the course before the trial. He had spent two days being educated about how to be an advocate – he did not want to do it. He was doing it to look after the client. CD-ROMs were motorcycled to the Applicant at Leamington Spa and he did not get the impression that they were not aware of the threshold that he had to meet. His PA spoke to the Applicant to get the documents sent over. The Respondent could still have made an ad hoc application for advocacy rights to Mr Justice Clarke. What else could the Respondent do; it would deprive the client of representation. Worse advocates than the Respondent had been at the Bar; but only a few. The Respondent thought that the process was like registering competence to drive a car and he now knew that was wrong. He acted from an abundance of caution. The Respondent thought that if the issue went to the Judge he could deal with the Judge. The Respondent did not regard DW as a policeman of compliance. He did not think that he should raise the process with other parties in the litigation. It would have been a disaster to tell two silks that he was certifying in the run-up to the trial and it would have killed the chance of a settlement. If he failed, the other side would know.

199.3 In cross-examination, the Respondent accepted that he exercised higher rights in the D trial on 24 and 25 April 2012 and in the specific disclosure application in the AM case on 28 May 2012. He thought that he had also undertaken a mention hearing in open court before a Judge before 29 May 2012. He accepted that technically speaking he was not entitled to exercise higher rights without the certificate from the Applicant. He had spoken to the Ethics Department about the D trial. The assessment certificate

had been obtained and faxed to the Applicant but the fee could not be faxed and was posted. The Respondent stated that he had done quite a lot of advocacy and as a young man he often had a meeting possibly in Chambers where there was an immediate appeal and so he sought out higher rights to go before the Judge if he could not get a barrister. This had happened a lot. He knew the Judge's clerk in the D case but rather than ask the Judge about the situation he thought he would run it past the Ethics Department. He did not make a note of the telephone call or ask for written confirmation; he spoke to the Ethics Department quite a lot. He agreed it was an important matter and stated that he placed weight on what they told him. If one asked for written confirmation, Ethics would have asked him to write to them. They would give advice and guidance but they would want a lot of detail in writing. Looking at it now the Respondent saw that there had to be a registration certificate. The Respondent did not seek to suggest that the Ethics Department were culpable; he asked them and they told him it was fine. He thought the Applicant had a faxed application and that his PA told him that she had done that. She called the Applicant when she got the assessment certificates in. The Respondent was out of the office and he was pretty sure that she said she had sent it all off; he knew that he had to sign the cheque. The Respondent accepted that the internal processing form of the Applicant suggested that the application was processed on 8 May 2012 and that the 23 April 2012 application was not complete because the Applicant asked for a certified copy of the assessment certificate. The Respondent compared the process to requesting a charge; the date was the date it happened; he knew now that it was wrong but he relied on what the training body told him. He thought it was like passing the driving test and driving away. He agreed that he regarded the application process as administrative bureaucracy. As to the fact that the Applicant had a discretion to refuse the request for higher rights, the Applicant said that he raised that with the "fellow on the phone" as he had in mind the trial, not that that person was to blame. The individual said that it would be a problem if he was before the Disciplinary Tribunal but he was not at the time. He saw it as a registration process rather than a qualification process.

199.4 In respect of the correspondence with Ms DW after the D trial ended and his having said that he would send a certificate and he had not done so, the Respondent said he said that he passed the exams. DW had been his trainee at another firm and to say that they did not get on was a "huge understatement". He thought it was impertinent and that she was trying to needle him. He had another trial coming up with two QCs and senior barristers and he was not going to say in the middle of a big commercial court trial that he had just passed the course. The view he took was that he would raise it with the Judge at the hearing. If he made an ad hoc application to the Judge the other advocates would not know because it would be in Chambers. Never in his previous experience of seeking ad hoc rights when he had to do it in Chambers had the other side been there. He was not enjoying the correspondence with DW. It was the Judge's court and the Respondent intended to deal with him. Notwithstanding that subsequently a party obtained leave to appeal based on the fact that he did not have higher rights at the hearing, the Respondent regarded the issue as one between him and the Court and stated that his relationship with DW undoubtedly coloured his approach; he would not trail the issue with his opponents in correspondence. He might or might not have had the intention of sending the certificate to her. DW had just collapsed on a £12 million point at the hearing and she was trying to needle him because she had been humiliated on this point and it had cost a fortune. He was

dealing with this matter on the Monday when Mr Allen had asked whether he was in court. As to his failure to reply to DW he was not going to say that he had now got a provisional licence and could do a three-point turn by the time of the hearing. As to DW raising the matter by writing to the Judge's clerk the Respondent rejected the suggestion that he thought that it was getting out of control; it needed to be dealt with, with the Judge. It all led to the Judge's chambers. Once raised the point was bound to come up. As to DW wanting the matter resolved before judgment was handed down, the Respondent stated that DW was not the be all and end all; he would deal with the Judge and not with the opposition on advocacy issues before a major hearing. He did not write to the Judge because there would be a skeleton argument about this issue and an explanation in the event there was no hearing because these matters came up. As to this being an important issue for the clients, the Respondent said that it was more important what the Applicant was saying than DW, the harbinger of ill fortune. As to the fact that DW said in one of her letters that the Applicant had told her that there was no record of his certification, the Respondent said who did he trust DW or the Applicant? It meant that the Applicant had not finally kicked the button on the computer and pushed out the certificate. That was the reason he spoke to Ethics in the first place. He now knew that both Ethics and he had got it wrong. As to his appearing on 28 May 2012, he relied on what the course provider and Ethics had said; he was not relying on one line from DW. It would look odd if he did not appear; as if he had chanced it once and had better not do it again. DW had not put a doubt in his mind because he had spoken to Ethics and looked into it. It did not ring any warning bells.

Findings of the Tribunal regarding allegation 1.4

199.5 The Tribunal considered the submissions and evidence for the Applicant and submissions and evidence of the Respondent. The Tribunal found in respect of allegation 1.4 as follows. The Respondent did not have higher rights of audience. He was aware of this fact and when hearings were imminent he took steps to undergo the necessary training with a view to obtaining certification. He successfully underwent an assessment course. With time running out an application was made on or about 20 April 2012 to the Applicant for certification. The application was not properly completed because it did not include a certified copy of the Respondent's advocacy assessment certificate which was clearly required in section 2 of the form. Certification was granted on 29 May 2012. Before certification was granted the Respondent made various appearances in the higher courts. The Respondent relied on a conversation which he asserted he had had with the Applicant's Ethics Department on 20 April 2012 when he claimed that he was told that provided all the relevant certification had been given which he stated in his skeleton argument they had been and there were no ongoing disciplinary proceedings against him which they weren't, then it would be in order for him to appear as an advocate at the D trial the following week. The Tribunal found that the Respondent had produced no evidence in support of his assertion about the telephone guidance and that he had relied on an assumption that gaining certification was akin to passing the driving test. The Tribunal found allegation 1.4 proved to the required standard and that by his conduct the Applicant had breached Principle 1 (upholding the rule of law and the proper administration of justice), Principle 4 (acting in the best interests of each client), as a result of his actions one of his clients had appealed the Court's finding based on the Respondent not being certified; Principle 6 (maintaining public trust) and Principle 7 (complying with legal and regulatory obligations etc) of the SRA Principles 2011. He had also

failed to achieve outcome O(HR4) (act so that clients, the judiciary and the wider public, have confidence that this has been demonstrated) of the HRA Regulations and outcome O(1.3) of the Code (when deciding whether to act, or terminate his instructions, to comply with the law and the Code.)

200. **Allegation 1.5 - In relation to an adverse costs order made against a client by the High Court of Justice on 28 May 2012, he [the Respondent]:**

1.5.1 failed to notify the client in writing or otherwise within seven days of receiving notice of the order, or at any time thereafter, in breach of his duty under rule 44.8 of the civil procedure rules 1998;

1.5.2 On or about 1 June 2012, made false statements to the client as to the existence of the adverse costs order

and thereby breached all or alternatively any of Principles 2, 4, 5, 6 and 7 of the SRA Principles 2011 and further or alternatively failed to achieve all or alternatively any of outcomes O (1.1), O(1.2), O(1.3), and O(1.16) of the SRA Code of Conduct 2011.

200.1 For the Applicant, Mr Allen relied on the facts set out in the Rule 5 Statement. The witness statement of Dr MB and the evidence and witness statements of Dr WK and Mr DR were also relevant. The Respondent had appeared before Mr Justice Morgan in the Chancery Division on 28 May 2012 at the hearing of an application for specific disclosure which had been made by AM against IB which was dismissed with an order for costs against AM in the sum of £20,000 which the Respondent did not oppose but about which he did not inform his clients. On 1 June 2012, the Respondent sent a report to the clients about the hearing and made no reference to the order for costs against them; it gave a very positive impression of the Judge agreeing with their case. Mr Allen accepted people tried to extract positives in such situations but that the Respondent had gone too far. The key point about the report was that there was no hint of an adverse costs order. In e-mail exchanges with DR and WK on that day in response to queries the Respondent gave replies which Mr Allen submitted actively misled the clients. In his e-mail DR on 1 June 2012 at 10.13 asked both about the solicitors for the other side seeking compensation and did the Judge agree on any costs that should be paid by the clients. The Respondent replied "No on both counts; it is within our existing budget and no order for costs was made." It was difficult to imagine a clearer statement that no costs order had been made against the clients. Mr Allen referred the Tribunal to the transcript of a telephone conversation between the Respondent, WK and DR which is quoted in the background to this judgment during which the Respondent stated that "this is included in our budget". WK came back to the question of costs and asked if there were any further costs "neither for you, not for the court not for [IB] or [F], not anyone?" and the Respondent replied "Not for anyone…" there was no room for ambiguity in what the Respondent said. In his e-mail at 15.38 on that day WK reverted to the Respondent after having heard from another person that there had been a costs order and used the words "especially no costs order against us" and asked if the Respondent could confirm that his informant was wrong and the Respondent replied "Yes I can". In his response, the Respondent sought to attribute an ulterior motive to the clients in asking about the costs order as if they were trying to trap him but Mr Allen submitted that this was not

needed; the Respondent had told a barefaced lie. WK had lost patience with him because he had been lied to. This was the origin of WK wanting to move firms. As to the exact deadline for notifying the clients, the Applicant considered that it should be taken to run from 28 May including the weekend expiring on 4 June and the retainer was terminated on 5 June 2012 but in any event the breach had occurred because termination of the retainer did not relieve the Respondent of his obligation to tell the clients. The obligation continued until the seven days expired or he would be in breach. It could not seriously be suggested that a legal representative's professional obligations under CPR rule 44.8 came to an end simply because the retainer had been terminated.

200.2 Mr Allen submitted that the Respondent's suggestion was fanciful in his response that his statements should not be construed as confirmation that no adverse costs order was made against his clients; the statements were clear and only admitted of one possible meaning. Moreover, having conducted the advocacy on behalf of his clients at the hearing on 28 May 2012, it was inconceivable that the Respondent did not know the statements were false. It was to be inferred that the Respondent was deliberately misleading them. It was submitted that it was plain that he must have been acting dishonestly when he told them that no adverse costs order had been made against them despite knowing that it had been.

Submissions by and evidence of the Respondent

200.3 The Respondent submitted that the issue of ambiguity applied particularly to this allegation. He stated that once he took over this case, budget was an obsession, especially for WK; the Respondent believed that WK thought the firm would disavow the cap on fees and seek to charge in a different way although WK did not say that in evidence. The Respondent referred to the firm's file note dated 12 April 2012 of a telephone call with WK and DR during which the Respondent told the clients that he had stepped into Ms M's shoes. He had said also, having given the clients an explanation of the disclosure application:

> "R: Anything in addition you want to ask?
>
> WK: What are the costs and timing around looking for these documents?
>
> R: No it's within the budget we've agreed. It's what any lawyer would do, to minimise risk. Time is fine – we've given them 7 days. It makes them see sense…"

The Respondent referred to WK's statement; he spoke of being told there could be adverse cost consequences of the disclosure application in a telephone call by Ms M and that he queried this with the Respondent before the hearing and was not advised of any downside. This was a rosy tinted reflection not put to the Respondent in cross examination. It was inherently improbable that a lawyer more than a week into a case would say everything was fine. The file note was accurate but not verbatim and the important wording was "it's within the budget we've agreed". In his evidence, WK said he recalled the budget as a distant thing something a way off in the background that he had not focused on. The Respondent submitted that this was not credible bearing in mind the conference call on 12 April. This was the first time the

Respondent had spoken to WK and the only point WK made was, what was it going to cost the clients, so obviously he had the budget in mind and he was an experienced financial manager. He said in cross-examination that he took great care to go through the retainer letter and budget to explain to the underlying funds. If the budget was attached to the Respondent's e-mail of 21 May 2012, WK never asked what it was this thing from the distant past. Giving evidence, DR also said that there had been no budget but if that were true what did DR think when he received the invoice charging him 29%; he would have said 29% of what? This coyness made one wary of the witnesses; this was an area that they did not want to be exposed as being familiar with because they did not want to give the impression that budget costs were ever in issue. The Respondent submitted that it was wholly implausible because budget costs were their main issue. The adverse costs order was nothing like what they would have to pay going along; of course they knew about the budget.

200.4 The Respondent stated that he had put to WK in cross-examination what did he mean about costs and WK replied "everything"; he did not distinguish between budget cost and adverse costs. WK said he was familiar with adverse costs orders although he said he had never been involved in English litigation and he saw costs orders as court fees, barristers' fees and external suppliers' fees. When during the 12 April 2012 telephone call he asked about costs, WK meant all costs and it was obvious that the Respondent did not mean that; the Respondent obviously meant budget costs. WK was the leader of the clients and the main point of contact with Ms M. He approached costs as a portmanteau expression without telling the Respondent and the Respondent was certainly not approaching it from that perspective. If WK said "within budget" the Respondent only meant the firm's fees. The barristers' fees were a contingency, floating. Bearing in mind their different approaches where was it said that the Respondent misled the clients. As to the e-mail exchanges on 1 June 2012, one had to look at the context. The Respondent told DR that the costs of the disclosure hearing were "within our existing budget" in reply to his question about there being any costs and this was in the same way as the Respondent used the terminology when he was speaking about it on 12 April 2012. It was the same in the transcript of the telephone call on 1 June; WK asked about the cost of the disclosure hearing and the Respondent said they were "included in our budget" but WK meant everything and then asked about "any further costs" and the Respondent replied "Not for anyone. The only people who have spent more time on it, is me doing the application but it is all the same price... "This was an obvious reference to the budget; that is no further costs for the barristers because the Respondent undertook the advocacy and it was from the £10,000 budget for the disclosure hearing. As to the fact that WK specifically mentioned IB and the other side's solicitors, F; they were all capable of generating costs and if WK was defining the ambit of the costs he was not succeeding, was it in court fees or what IB spent on counsel. When earlier in the conversation WK said "has this produced any additional costs or fees or whatever for us?" The Respondent said that his point was that there was no extraneous wording in the answer that the Respondent gave him. On WK's evidence, he meant all the different types of costs but the Respondent was talking about the costs as the budget, solicitor and own client and they had a capped budget. What WK said was meaningless to the Respondent's mind; the Respondent did not dispute WK's evidence, if WK meant adverse costs the Respondent "sure as eggs" did not. He was answering questions on the budget and it was not commonplace for a client to regard costs as running so wide and WK had been talking about budget costs since April 2012. Maybe the Respondent should have

said exactly "what do you mean?" but it was said that he had deliberately lied which was not the case if he was talking about one thing and WK was talking about another. This even extended to the e-mail exchange between the Respondent and WK on 1 June 2012 when WK referred to what he had heard based on what another hedge fund manager had passed on and asked the Respondent if he could confirm that the hedge fund manager was wrong and used the words "But you said in our call this morning that there are no further costs for us out of the hearing on Monday (May 28th) – especially no order against us." And the Respondent replied "Yes I can". The Respondent submitted that it could be a language difference in Germany that costs might mean all costs to WK but he was a sophisticated witness. It could be cultural that WK said he understood. If WK had asked about an adverse costs order the Respondent would have said something different.

200.5 The Respondent accepted that he said in evidence that this was not the time to tell the clients about the adverse costs order but if they had raised it, it would have to be dealt with. He felt the clients were flighty and needed to be standing on a "clear bit of strategy" so close to the trial.

200.6 The Respondent thought that WK had very firmly in mind that if he broke the retainer there would be a "very enormous" bill for AM. The Respondent referred to the default provision in the retainer letter which set out the details of time based charging at clause 4.1. In cross-examination, the Respondent put it to WK that it was expensive and WK knew a lot of work was going into it and not least because the Respondent kept telling him. Clause 9 provided for the costs; the whole case was only a claim for declaratory relief and the budget was attached to the letter. The clients were aware that the £75,000 cap did not represent the cost of the action hence the provision for a bonus. Clause 9.3 which provided for the estimate being exceeded on the basis of billing by hourly rates, had been deleted by agreement between the parties because the clients thought it was a way round the cap. By late May 2012, the clients must have known that costs based on an hourly rate would have been way over £75,000 if clause 23.5 relating to termination came into effect as a result of their decision to terminate the retainer. WK said he went through the retainer letter very carefully and as a result one of its clauses was struck out. He said in evidence in respect of termination without being pressed by the Respondent that what happened depended what the cause was. The Tribunal did not know when he gathered that knowledge. WK knew that he had to show cause, a proper basis for breaching the contract. Invoking clause 23.5 was something that the Respondent could still do; he had only seen the papers a month ago. He had been happy to wave goodbye to AM. He had not known about this scenario at the time.

200.7 The Respondent thought the clients preferred Ms M and submitted that Ms M was always at WK's shoulder. He said he spoke to her at least five times. She had no business doing that as she was an ex-partner of the firm and WK was a client of the firm. Why was there a four-day delay after the telephone conversation on 1 June 2012 and termination of the firm's retainer? 1 June was Friday and sometimes people worked over weekends especially in Germany. It was likely as part of the factual matrix that Ms M said "We can't just stop the retainer it will cost a fortune. Let's see if you can generate probable cause." The Respondent submitted that he was not saying that happened because Ms M was not here to answer. DR said in evidence that by 1 June 2012 he knew of the adverse costs order and that either Ms M or WK had

told him. It was known that WK was the "point person" for Ms M; the person she went to. Then knowing there was a costs order, DR sent the e-mail on 1 June at 10.13. DR did not say he was told there was a costs order because he knew the answer would be that there was. If he was looking for good cause he would phrase the question in a half ambiguous way to half ask so that he could get a half ambiguous answer. The hand of someone looking for a synonym for costs could be behind this question; none of the questions asked what he wanted to ask. The Tribunal should consider that the questions were not clearly framed on purpose. In respect of the fact that he included the words "did the judge agreed on any costs that should be paid by us???" This question could have been phrased more clearly because the Respondent had given the clients the report. The Respondent felt strongly about this but he was more inclined to the view that WK thought that costs meant everything.

200.8 The Respondent referred to the timing of the e-mails. When WK sent his e-mail to the Respondent at 17.38 seeking confirmation and mentioning the "friendly hedge fund manager" he had the adverse costs order in his possession. In his statement, WK said that at some point during the afternoon of 1 June 2012 he had a call from Ms M and she informed him that there was a costs order against the clients; that he then had the exchange with the Respondent and after that asked Ms M to go to Court to get a copy of the order but there was not time for Ms M to go to Court to obtain it after the e-mail exchange. It was clear from the statement that WK knew from the telephone conversation with Ms M that there was an adverse costs order and this predated his e-mail to the Respondent. There were copy e-mails from Ms M to WK dated 1 June 2012 with the subject Court order. [There were several of these and it was not clear whether they were several versions of the same e-mail or several copies of the same e-mail sending the order to WK timed at 17.23, 17.24 and 17.44.] If it were as WK said in evidence that the e-mail timed at 5:38 pm had actually been sent at 4:38pm London time, this made the position even worse for him because he had had the order for an hour when he sent the e-mail.

200.9 In cross-examination, the Respondent accepted that he did not comply with CPR 44 (8) and that the seven day time limit expired on 4 June 2012. It was put to him that he did not say in the report dated 1 June 2012 that the application was dismissed. The Respondent stated that in substance it was successful; the Court accepted their arguments that attempts to introduce the policy statements of the defendant's home government were irrelevant and therefore the clients' application was also irrelevant. The application was successful in arguing about the political basis of introducing the statements. As to his not having asked for the costs order to reflect the measure of success, the Respondent stated that the application had taken all day and the costs point did not occupy anyone for a long time.

200.10 The Respondent accepted that he had not mentioned the adverse costs order in his report to the clients because they were a very flighty constituency of clients; very fractious and the matter of the Swift instruction and WK annoyed the Respondent a lot; there were very fierce exchanges. It was his view that they needed to set the strategy going forward and he agreed that he had made a conscious decision not to mention it.

200.11 In respect of DR's email of 1 June 2012 at 10.13 asking were any costs involved for the clients and referring to the solicitors for the other side and the Judge, the

Respondent stated that it was hard to see what DR was asking. It was known that DR knew about the costs order and the Respondent did not know what he meant about F the solicitors for the other side asking for compensation for their time. DR was not asking did F seek a costs order or did the Judge make a costs order. The Respondent did not read the e-mail as an unambiguous request to tell DR if there was a costs order. He did not ask if F asked for the clients to pay for the costs of the application. In respect of the reference to the Judge, the Respondent read it at the time as asking, did the Judge consider the costs that the clients would get back using the words "any costs that should be paid by us", as some sanction of costs, saying what were the costs of the application and did the Judge say anything about it in respect of the clients' costs some of which went to the firm, some by way of court fees and some to the barristers. The Respondent's reaction at the time was that DR thought that he was to get some of his costs back and the Respondent's response was to "get him off that planet". It was the Respondent's understanding that DR was raising a budget costs point, hence his replying "No on both counts; it is within our existing budget and no order for costs was made." It was true in the sense that DR was not getting an order in his favour. The Respondent was talking with DR in two hours time and he did not regard this one line e-mail as a comprehensive statement on the costs position. The Respondent was worried that he might have pepped up the report too much and DR might need damping down a bit regarding getting his costs; the clients always asked about the budget. At some point they would have to deal with the costs issue. He was getting them over the hump of the strategy discussion which was the important thing. Why else would he be talking about budgets? As to the Respondent's e-mail of 1 June 2012 at 10.15 just quoted, it was put to him that it was knowingly false and he said "Absolutely not". DR's English was not brilliant and the Respondent was trying to say very simply that there were no more costs to pay but the other side were not the subject of an order. He could see why Mr Allen put the points he did but they were not his view at the time. He was trying to get across that this was not a recovery situation. They had made good progress. The European clients did not understand the costs order.

200.12 In respect of the telephone conference call on 1 June 2012, the Respondent was referred to the transcript quoted earlier. He said he still had in mind his exchange with DR. Any time the Respondent talked to WK, he was concerned about costs and they were at daggers drawn about it. The hearing had lasted two days and it must have been obvious that it cost more than the budget item but the Respondent wanted to kill off the point; they did not need to pay any more. In respect of WK then asking about the other parties' costs position, the Respondent said that this was a telephone call not studiously examining the sequence of the points WK was making. As to the Respondent having said "Not for anyone" the Respondent was picking up on WK's last point (about the other parties costs) and the Respondent meant it was all for the same price for WK. He made no bones about the fact that he did not mention the £20,000 adverse costs order; this was not the right time to let loose the hare of the costs order; it would scatter the three of them apart and he stated that Mr Allen could see what he was trying to do. How could the Respondent understand that WK was asking about costs liability to the other side? F had a sizeable team; the Respondent meant that there would be nothing for S QC or a counsel element to be added to the budget [as the Respondent had done the advocacy]. He was just conversationally picking up on WK's last comment. Regarding "Not for anyone" – he was talking about the budget costs which were capped; there was no big bill for counsel.

200.13 As to saying this was not the right time to tell them about the adverse costs, the Respondent stated that the defendant was trying to get the case out of the English court because there were high issues of foreign government policy – there had been a five lever arch file affidavit from the foreign State's bank's chief economist. Of course the clients would have to be told about the costs order but the Respondent did not want a two hour discussion which would descend into them saying that he had messed it all up; it was not the time to do it. They were three weeks off the trial and he needed the clients with him. Then they would "do sweep up stuff". As to when it would be time to tell them, the Respondent thought that he had in mind probably the next day. There would probably be a conference call with counsel. As to the fact that 1 June 2012 was Friday and the following Monday would be the last day within the CPR time limit to tell them; the Respondent stated that he knew that he had a professional obligation. They were talking behind-the-scenes telling him to calm down. They did not like him or trust him as a safe pair of hands. He thought that behind-the-scenes they had been told by Ms M that the application had been a wild goose chase regarding chasing up documents. Their asking about costs was because they thought they were being charged through the nose for this exercise. There had been a voicemail from Ms M in April or May 2012 from MB saying that he had got her call and asking her to give him a ring; MB must have thought that she was still at the firm and so the Respondent had sent her an e-mail saying that these were the firm's clients.

200.14 As to whether the Respondent had taken a deliberate decision not to tell the clients and deliberately to mislead them, the Respondent said that if they asked about the costs order against them for the defendant there could only be one answer. The Respondent referred to the telephone call on 12 April 2012. Costs was one of the issues raised then; they were in that frame of mind. He did not believe that they were asking about an adverse costs order; even now (in evidence) WK said when he was talking about costs he meant everything.

200.15 The Respondent also stated that the defendant was looking to adduce a whole slew of evidence and the clients were looking for evidence about them. The Respondent thought they had been warned about an order for disclosure against them. The e-mails did not bear the weight of this type of analysis. WK might have been worried about a further disclosure order. He could have meant any order. Although the words followed other words regarding costs it did not seem that way to the Respondent at the time. WK might have had a copy of the order. The Respondent did not believe the two parts of the sentence were linked when WK said in his e-mail on 1 June 2012 at 17.38:

> "But you said in our call this morning that there are no further costs for us out of the hearing on Monday (May 28th) – especially no order against us."

200.16 He rejected the suggestion that the word "especially" must refer back to costs. He thought they meant some sort of cross-order for disclosure. WK could have been concerned about any number of things. As to why he did not reply to WK, the Respondent stated that this was a one hour conference call and he thought it was reopening the question of whether the firm was going to charge them more money. The Respondent did not know whether any other hedge fund manager was involved in the 1 June conference call because he did not go round the participants to find out

who was there during the call. The custodian of the investment funds was involved as were lots of others. He was not convinced that Ms M was not involved. The clients were talking to Ms M on that day and they could have asked about the costs order and they did not; they were asking about the costs of the work on the hearing. The Respondent wanted them to understand that they would stick with the budget.

If WK had asked him about an adverse costs order the Respondent would have told the clients and he would have dealt with it with all the fleeing that would cause. If he thought he was asking about an adverse costs order he would have told WK.

Findings of the Tribunal regarding allegation 1.5

200.17 The Tribunal considered the submissions and evidence for the Applicant and the submissions and evidence by the Respondent, and all the oral evidence including that of WK and DR. The Respondent denied both limbs of allegation 1.5. The Tribunal found in respect of allegation 1.5 as follows. In respect of allegation 1.5.1, the Respondent admitted that he did not tell the clients about the adverse costs order. In respect of the telephone conversation on 1 June 2012, on his evidence this was because he was concerned that it would distract them from the strategy that he wanted them to focus on. His retainer was terminated a few days later and neither before then or afterwards did the Respondent advise the clients that the order had been made. In his response Respondent stated:

> "Of course it is correct that I didn't raise the issue of the costs order proactively; neither did Ms [B] or Mr [C] [staff members whom the Respondent stated were present during the 1 June telephone call]. In my judgement the febrile nature of the constituency which we were advising, where one of their number had already lied to me and they were proving difficult to control to say the least, a call the day after the hearing to discuss strategy was not the best time to conduct an autopsy on an adverse costs order. I felt it was probably better to let the dust settle a little bit and I knew, of course, that I had to raise the issue with them anyway within seven days. As it was, as I say, we never got the chance. We were disinstructed on 5 June 2012; four days later."

The Tribunal found allegation 1.5.1 proved to the required standard.

200.18 In respect of allegation 1.5.2, the Tribunal found that the questions asked by DR and WK of the Respondent were quite clear. DR asked on 1 June 2012 at 10.13 having just received the Respondent's e-mailed report of the disclosure hearing:

> "Paul were any costs involved for this??? I mean did [F, the other side's solicitors] ask for any compensation for the time they spent?? and indeed did the judge agreed (sic) on any cost that should be paid by us???"

The Respondent replied by e-mail dated 1 June 2012 at 10.15 in which he stated:

> "No on both counts; it is within our existing budget and no order for costs was made"

The Tribunal found that this was obviously a question about an adverse costs order and that the Respondent's statement in his response that he took it to be a reference to costs to be billed and/or recovered and answered accordingly, was implausible. The Respondent's reply to DR was a lie. During the telephone conversation on 01 June 2012, the following exchange took place:

> "WK: Now and the fact that you asked for that, has this produced any additional costs or fees or whatever for us?
>
> R: No, no and as I was saying when we first spoke about it, this is included in our budget.
>
> WK: OK
>
> R: I'm bound to tell you, if the bank had preserved the entitlement to put these documents before the court, then we would have pressed hard… we clearly would have pressed for the documents to come out that's why we are doing it, but it has fallen away at the first hurdle, so it hasn't produced any further costs for you, no.
>
> WK: OK-any further costs-neither for you, not for the court, not for [IB] or [F], not anyone?
>
> R: Not for anyone. The only people who have spent time on it, is me doing the application but it is all the same price, and it was worth doing…"

The Tribunal found that when the Respondent said "Not for anyone." he was again lying and after the telephone conference when WK was still not satisfied and sent a further e-mail:

> "… you said in our call this morning that there are no further costs for us out of the hearing on Monday (May 28th)-especially no order against us.
>
> Another friendly hedge fund manager who attended the meeting said differently.
>
> Can you pls confirm that this guy said wrongly."

The Respondent replied to that e-mail on 1 June 2012 at 18.36 hours: "Yes, I can", again repeating the lie. The Tribunal did not find it necessary to determine whether when various interchanges took place, the client in question had a copy of the adverse costs order and whether or not it could have been obtained to a particular timescale by Ms M and indeed what the motives of the clients might have been in asking their questions because the allegation was quite a simple one that the Respondent made false statements as to the existence of the adverse costs. The Tribunal found that the meaning of the clients' questions was quite plain and obvious on their face even allowing for the fact that English was not their first language. The Respondent worked hard to present the clients' questions as obscure but they were not and the Respondent gave false statements in reply. The Tribunal found allegation 1.5.2 proved to the

required standard. The Tribunal also found that by his conduct in respect of allegation 1.5, the Respondent had breached Principle 2 (integrity), Principle 4 (best interests of client), Principle 5 (proper standard of service), Principal 6 (public trust) and Principle 7 (complying with legal and regulatory obligations etc). He had also failed to achieve outcome O(1.1) (treating clients fairly) and O(1.2) (providing services to his clients in a manner which protected their interests in their matter subject to the proper administration of justice), outcome O(1.3) (when deciding whether to act, or terminate his instructions, to comply with the law and the Code) and outcome O(1.16) (informing current clients if he discovered any act or omission which could give rise to a claim by them against him).

200.19 In respect of the dishonesty alleged in respect of allegations 1.5.2, the Tribunal found that by the standards of reasonable and honest people, the Respondent's statements to his clients when they not only asked him but pressed him to tell them about the adverse costs order were objectively dishonest. As to the subjective test, the Respondent admitted in evidence that he decided to withhold the information from the clients for the time being and would only tell them if asked a specific question. He then engaged in detailed semantic evidence to try and prove that such a question had not been asked when clearly it had on several occasions. The Tribunal thoroughly disbelieved his over elaborate explanations and found that the Respondent knew when he made the false statements in question to his clients that he was being dishonest. Accordingly dishonesty was proved to the required standard in respect of allegation 1.5.2.

201. **Allegation 1.6 - On or about 29 May 2012 and thereafter, he [the Respondent]failed to account to a client for, and used for his own purposes and/or those of the firm, a duplicate payment which was made to the firm by the client in error, despite indicating to the client that the sum would be repaid, and thereby breached all or alternatively any of Principles 2, 4, 6, 7 and 10 of the SRA Principles 2011 and further or alternatively breached all or alternatively any of Rules 1.2(a), 1.2(c), 14.3 and 20.1 of the SRA Accounts Rules 2011 and further or alternatively failed to achieve all or alternatively any of outcomes O(1.1), O(1.2), and O(1.16) of the SRA Code of Conduct 2011.**

201.01 For the Applicant, Mr Allen relied on the facts set out in the Rule 5 Statement and the evidence of Mr DR. The firm had not refunded the duplicate payment despite the fact that DRF obtained a default judgment against the firm on 1 August 2012. The duplicate payment should have been treated as client monies and held in the firms client account until it was returned to DRF or PTF but it must have been used for other purposes because of the generally nil balances, when the firm's bank accounts were closed between 12 October 2012 and 15 October. DR dealt with this matter in his statement dated 17 June 2013 when he said:

> "I forwarded the invoice £11,600 to our Luxembourg client [GTA] (trustees of another company [PTF], which was ultimately responsible for reimbursing [DRF] for the payment. I informed the client that I had settled this invoice and asked for the relevant reimbursement."

The result was that the firm was paid twice. The Respondent accepted this in his e-mail exchange with GTA on 29 May 2012 quoted in the background to this judgment;

his position was that he gave instructions to someone else to return the money and was not aware that they had not carried out the instructions. He said that he was not chased for repayment after 29 May 2012. The client account bank statements showed that on 29 May 2012 the duplicate amount was transferred to office account. There was no justification for that because no bill had been raised or disbursements incurred; at worst the money should have sat in client account. There was no documentary evidence of the instruction to repay the money and the Respondent had had every opportunity to get it from Devonshires and he had not done so. It was untrue that he had not been chased after 29 May 2012; he was being repeatedly chased by Mr JS of the firm HH which had taken over the case. On 15 June 2012 at 12.04, JS e-mailed:

> "I understand that you were paid twice by [DRF] and that the sum of £11,600 must be refunded by you (regardless of your position on any other amounts paid to you).
>
> I have seen e-mails to and from you in late May about this issue. Have you taken steps to refund this amount? If not, please transfer it today and confirm that to me."

At 16.08 on the same day JS e-mailed again:

> "Do you intend to answer my earlier e-mail? In case you are in court etc, I'll expect a response by 5:30 pm."

At 12.50 on 18 June 2012, JS e-mailed:

> "As you did not respond to my e-mails on Friday (see below), I will work on the assumption that you have no intention of responding whatsoever."

On 22 June 2012 at 11.10, JS e-mailed including

> "Let me know your position on the duplicate payment of £11,600. Are you going to take steps to return that as you said you would in your e-mail of 29 May."

The Respondent replied on the same day at 11.17:

> "I will get back to you on all points today. I have been enmeshed in a hearing which lasted five days rather than two but I'm out now and in the office all day."

The Respondent did not reply again and so on 9 July 2012 proceedings were commenced by DRF. A default judgment was entered on 1 August 2012. The address used in the proceedings for the Respondent was the office address. The money was still not returned. The Respondent hinted in his response that forfeiture of the lease might explain why he did not receive the claim but the dates did not work as the proceedings were issued and judgment entered before forfeiture took place on 8 August 2012.

201.02 Dishonesty was alleged in respect of this matter. Mr Allen submitted that it was inconceivable that the Respondent did not appreciate that he was not entitled to retain the benefit of the duplicate payment. He acknowledged as much in his e-mail of 29 May 2012 and it was clear that he was being chased for repayment into late June 2012 and that default judgment was obtained before forfeiture of the lease of the firm's offices. Nevertheless the Respondent failed to make arrangements for the repayment of the money to DRF or PTF and it was clear that the money had been spent for the benefit of the firm, the Respondent or third parties as the bank accounts were empty when the firm closed and that such conduct was plainly dishonest. Mr Allen submitted that the Respondent's conduct in respect of the duplicate payment constituted both a breach of all the rules in the allegation and dishonesty.

Submissions by and evidence of the Respondent

201.03 The Respondent admitted that the duplicate payment should not have been taken to office account. There had been only one bill to the client DR; it was an error which should not have happened. The error came about because the Respondent relied on the accountant to do compliance work and previously the accountant had told him off for moving money about without involving the accountant. So when he was told to move funds against this invoice he did. It was not true that he moved the money after receiving the e-mail stating that it was a duplicate payment; the money had moved first thing in the morning and the e-mail came at lunchtime. The Respondent gave instructions for it to be checked and reversed and the money paid back. Two weeks went by and no one said anything and it was his assumption that if there had been a mistake it would have been corrected and if there were no mistake there was no need to correct it. In the third week he was chased by HH; the Respondent would have expected DR to ask him directly if the money had not gone back. The Respondent thought that it was quite likely that HH's instructions were stale. The Respondent did not see the legal proceedings that followed or it would have been looked at. He did chase the accountant after the second e-mail from HH. The accountant told the IO that he had not done any work for the firm for ages. The firm had paid the accountant around £20,000 to do its work in 2012. It was only when the Respondent saw the accountant's e-mail to the IO that the situation became clear. Whatever the accountant was doing he let the ball drop or the Respondent would not be before the Tribunal fighting for his professional life. The Respondent accepted that he should have been more astute in following up but that did not amount to dishonesty. The Respondent was doing the best he could in a difficult situation and it would have helped if the accountant did his job to catch the duplicate payment. For a very long time the Respondent had been indifferent to what the Applicant said. His life had been destroyed in a week and he had come to set the record straight. He had no motive to lie.

201.04 In cross-examination, the Respondent accepted that it was probably he who had transferred the first payment of £11,600 to office account on 22 May 2012; he was the only one authorised to transfer from client to office. He also accepted that he authorised the transfer of the duplicate payment on 29 May 2012 and that he was aware on 29 May that there had been a payment on 22 May. His basis for making the transfer was that the firm's accountant received a form from the firm before they moved any monies and he cleared it. The accountant would tell the Respondent to transfer money and he told him to transfer this money. The Respondent was not trying

to weasel out of his responsibility; it was just a mistake triggered by the accountant. He did not recognise that it was a duplicate payment at the time. He was not expecting payment of that amount from another client and all the relevant documents "happened" beforehand. It was the accountant who looked at what monies the Respondent was being asked to transfer. One of the accountant's briefs was compliance with the Applicant in respect of client and office account and normally he would check. The Respondent accepted there had been a breach of the Accounts Rules as the transfer was not paid against a bill. The accountant was in Cambridge and had remote access to the firm's bank account and all the bills on OPSIS, so when payments came in, he married up the payment to the bill. The accountant allocated a number because previously the firm had trouble with not making transfers fast enough. It gave the Respondent comfort that someone was making checks on a daily basis. His brief was to ensure that there was "nothing silly" around the client account and to identify reasonably promptly if money was client or office and put it on deposit. He did not want to say that it was the accountant's mistake.

201.05 The Respondent stated that obviously he did not recognise that the amounts were identical or he would not have transferred the second payment. When it happened he had not seen the email from VW of GTA on 29 May 2012 referring to DR explaining to the Respondent that it was a duplicate payment. The Respondent thought that he had had a telephone call from D. The e-mail from VW was timed at 13.26 (possibly sent at 12.36 London time) but the Respondent stated that he did "office stuff" at around 09.30 to 10.30 so the transfer would already have been effected. The Respondent stated that when he replied that the firm would refund the money he instructed the cash office on a standard form which would be on the client voucher files. He confirmed that the document was not before the Tribunal and as to the fact he had not visited the offices of the intervention agent to check for it, the Respondent explained that for a long time he did not pay any attention to these proceedings. He had asked Devonshires to see specific documents; he could not go through everything as he was deep in preparing his response. Then he received the e-mail about the power failure over the weekend at Devonshires. The Respondent lived elsewhere in London and the last thing he needed was to sit in Devonshire's offices all day and he had been busy ever since. He was a "one man band" in doing this and that was why he did not go. He was sure the document was there. Devonshires had given a pretty strong caution about the power failure situation. The Respondent's way in order to marshal his funds was to come into central London by train and walk the six miles back and he did not want to go in and find that he could not access the documents.

201.06 In his response the Respondent said:

> "But I want to point out that since the e-mail of 29 May 2012 was received by me and I asked for the payment to be made back, I never heard anything else about it at all so had no reason to believe the money had not been returned in accordance with the instructions I had given…"

The Respondent accepted that this was not correct but at that point he had not seen the e-mails from HH. As to whether he accepted that he was being chased for a refund, the Respondent stated that he was surprised that DR did not pick up the telephone or e-mail him. He would have treated an e-mail from DR more seriously; often when lawyers said that they did not have money, when the clients checked their bank

account they had. It did not raise a red light as if a client said they did not get their money back. There was "abrasion" between law firms when clients moved. The e-mail received two weeks later from JS of HH on 15 June 2012 at 12.04 asking about the refund was the kind of abrasion that the Respondent was talking about. He was not saying that he should not have responded but it did not raise the same warning light as if the client had contacted him. And as to the second e-mail on the same day at 16.08, this was the way legal practice worked these days, two e-mails in four hours when the matter had not been raised in two weeks. As to JS's further chaser e-mail on 18 June 2012, the Respondent stated that as there was little prospect of his ever practising again he would tell the Tribunal that he did not appreciate this type of e-mail; it got his back up if someone assumed he was ignoring them. He was not ignoring them; he probably raised the matter with the cash office but he did not raise it at the same level as if DR had raised it; the tone of the e-mail at the time was that they were fencing on an issue that was already resolved. If after two weeks the refund had not been made the Respondent thought that the client would raise it. He and DR got on very well. The Respondent did not think that the clients had left his firm because they felt the firm had let them down. Ms M was a partner at HH. The Respondent had not fallen out with DR such that DR would not send him an e-mail. As to his e-mail to JS on 22 June 2012 at 11.17 in response to JS's reminder of 11.10 that day, he had not got back to JS but the Respondent stated that he would have asked the accountant to get on it. He was sure it was being looked at but he did not know what stage the process had got to.

201.07 The Respondent agreed that he had personal access to the bank accounts but stated that he was not a "bank checker". The accountants were paid to do that. He had issues in the past when he tried to get involved and the accounts were qualified. The Respondent was very conscious that matters should be dealt with by the accountants. If DR had said that it was his money and for the Respondent to get onto it, the Respondent would have done, but getting "snidey" e-mails from HH, the Respondent did ignore JS slightly and when he came back at the end of June, the Respondent asked the accountants to look into it.

201.08 As to whether he ensured that the accountants came back to him on the matter, the Respondent stated it was on the agenda for the accountants meeting at the end of the month. He was pretty sure that if he had asked the money would have been paid back. It was not a question of getting to the bottom of what happened but of regularising the accounting position and getting it all properly documented. If the accountant said, send the money back to the client he would have done. He was not heedlessly holding onto client money. He did not know that proceedings had been issued by DRF; he did not see the proceedings or the judgment until he got the trial bundles. This was not a difficult claim to deal with; he would have put a rocket under the accountant and if the matter had fallen through the gaps, it was the Respondent's fault.

201.09 The Respondent would not characterise his actions as dishonest; he would not disagree that there was a lack of grip. It was an incredibly busy time with back-to-back trials and the firm was shedding staff. He was trying to deal with things all over the place and keep all the plates spinning. It did not help him that HH did not raise it for two weeks. It was not a "red hot chase" by the client. The Respondent was in court. It required management grip to keep all the plates spinning and he didn't have enough management grip.

201.10 As to their being only £0.65 left in the firm's accounts when they closed, the Respondent stated that all the money went to his former wife.

Findings of the Tribunal in respect of allegation 1.6

201.11 The Tribunal considered the submissions and evidence for the Applicant and the submissions and evidence by the Respondent, and the oral evidence of DR. It found in respect of allegation 1.6 as follows. It was not disputed that a duplicate payment had been made to the firm and that the Respondent was aware of it. The Respondent's assertions included that he had asked the firm's accountant to deal with looking into it; that he was not, as he put it "a bank checker" and so it was not for him to look into it himself and that he could not act without authorisation from the accountant. He affected to accept responsibility but indicated that he had not taken the enquiry seriously because the client had not chased him personally and he was irritated by being chased by HH, the firm to which the client had moved. He assumed that HH had stale instructions. The Respondent had been told that the money was owed and he did nothing to look into it or return the duplicate payment. Furthermore the Tribunal accepted the Applicant's submissions that it was to be inferred that the overpayment of £11,600, which the Respondent acknowledged and agreed to reimburse in his e-mail to HH on 29 May 2012, was used by the Respondent for his own benefit and/or for the benefit of the firm because when the firm's bank accounts were closed between 12 and 15 October 2012 a balance of only £0.65 remained. The Tribunal found allegation 1.6 proved to the required standard and that by his conduct the Respondent had breached all of Principle 2 (integrity), Principle 4 (best interests); Principle 6 (public trust), Principle 7 (complying with legal and regulatory obligations etc) and Principle 10 (protect client money and assets) of the SRA Principles 2011. He had also breached all of rules 1.2(a), 1.2 (c), 14.3 and 20.1 of the SRA Accounts Rules 2011. He had also failed to achieve outcome O(1.1) which required him to treat clients fairly, O(1.2) which required him to provide services to his clients in a manner which protected their interests in their matter subject to the proper administration of justice and outcome O(1.16) (informing current clients if he discovered any act or omission which could give rise to a claim by them against him) of the Code.

201.12 In respect of the dishonesty alleged in respect of allegation 1.6, the Tribunal noted that HH's e-mail of 22 June 2012 said:

> "Let me know your position on the duplicate payment of £11,600. Are you going to take steps to return that as you said you would in your e-mail of 29 May?
>
> Are you going to deal with the other outstanding points raised in earlier correspondence as you said you would in your e-mails of 11 and 12 June?"

201.13 In his response for Respondent said:

> "But I want to point out that since the e-mail of 29 May 2012 was received by me and I asked the payment to be made back, I never heard anything else about it at all so had no reason to believe the money had not been returned in accordance with the instructions I had given. In particular:

- When [HH] took over the instructions on 5 June, I had extensive e-mail exchanges with [JS] of that office and he raised a number of issues some of which have been adopted by [the Applicant] in this matter, but the non-payment of [DR] money was not one of them. Had it been then I would have had a chance to double back and check that the payment had gone out as I thought it had done.

- Neither [DR] nor [GTA] (which I understand actually made the payment) ever sent me a follow-up e-mail which would have alerted me to the possibility that something had gone wrong with the return of the money..."

The Respondent said it would have been the work of a moment to deal with the accountant and in evidence that the e-mail from HH was not a red light as he thought that HH had stale instructions and the client did not contact the Respondent. He attributed the failure to make reimbursement to his not having sufficient grip of matters. The Tribunal noted that as at 25 June 2012 there was only £492.03 in office account following the transfer on 29 May 2012 of £11,600 to the office account business reserve. The Tribunal found that there was no evidence that the Respondent had asked the accountant to look into reimbursement. In his response, the Respondent said that he was sure that the signed instruction would be with the accounting forms which were in the hands of the intervention agent but he had made no attempt to obtain them. He knew that he owed the money and he did not consider that a solicitor chasing him in June 2012 was serious. He did not have enough money to make the repayment. The Respondent admitted that he would have made the transfer on both occasions and the Tribunal noted that they occurred within days of each other. JS of HH had chased the Respondent on 15 June 2012 on which day he sent two e-mails and on 18 June and then again on 22 June. The Respondent had been notified of the duplicate payment by VW of GTA on 29 May 2012 and on the same day had confirmed that DR had contacted him about it and in respect of a refund he said: "Yes he has and we will do. I am on that now." The Respondent had described the contact with HH as an abrasion between law firms and stated that he did not appreciate what he described as their aggression and he said that if there had been a problem DR would have told him because they were still on quite good terms. The Tribunal did not accept his explanation; it was clear that the Respondent had been reminded several times that the amount of money was still outstanding and he chose to dismiss the reminders. The Tribunal considered that by the standards of reasonable and honest people what the Respondent had done was dishonest and that in retaining the money which he had personally transferred to office account only a matter of days after the first payment and in ignoring all the reminders, the Respondent knew that he was being dishonest. The Tribunal found dishonesty proved to the required standard in respect of allegation 1.6.

202. **Allegation 1.7 - Between around 16 August 2012 and 22 October 2012, he [the Respondent] practised as a solicitor without a valid practising certificate in breach of one or both of sections 1 and 20 of the Solicitors Act 1974 and thereby breached all or alternatively any of Principles 1, 4, 5 and 6 of the SRA Principles 2011 and further or alternatively failed to achieve all or alternatively any of outcomes O(1.2), and O(1.3) of the SRA Code of Conduct 2011.**

202.01 For the Applicant, Mr Allen relied on the facts set out in the Rule 5 Statement, the evidence by way of witness statements of Ms RA, Mr DA and the witness statements and oral evidence of Mr EM and Mr AG as well as the FI Report. Mr Allen referred to the history of the matter including that the bank statements for the firm's office account for the relevant period did not show any payments to the Applicant in respect of renewal fees. The Applicant had been recorded on the MySRA system as starting applications on 10 February 2012 and 10 September 2012 both of which were shown as having a cancelled status. On 28 March 2012, RA contacted the Applicant and enquired when she would be likely to receive her new practising certificate. Her enquiry included:

> "On joining the firm, it confirmed it would deal with the renewal of my practising certificate. I understand that the application for renewal is in hand. The partner who was stealing has left the firm and [the Respondent] is dealing."

On 18 April 2012 the Applicant replied to RA including:

> "I can confirm that our records show that you have not submitted an application for a practising certificate.
>
> It appears that your firm has started an application for renewal of practising certificates but has not yet submitted it. You will need to discuss the status of the application with your firm and if necessary submit an individual application for your practising certificate…"

In an e-mail to the Applicant dated 25 April 2012, RA stated:

> "Thank you for your e-mail of the 18th April. I forwarded it on to [the Respondent] and spoke to him the following day and I understand that he was intending to get in touch and resolve matters.
>
> I've been out of the country for a few days and I'm not sure whether the firm's application has been submitted and if the technical glitches have now been resolved. [The Respondent] is in court this week and so he's not been able to come back to me to confirm the position.
>
> From your e-mail, I think it's best if I go ahead with an individual application…"

On 28 April 2012, the Applicant e-mailed RA:

> "… I have looked into your record and am pleased to confirm your individual application for a practising certificate has been processed…"

Mr Allen pointed out that RA had made the Respondent aware that the firm's application although started had not been submitted. Mr Allen accepted that there was no evidence before the Tribunal of RA's e-mail being forwarded to the Respondent but RA said that the Respondent was to get in touch with the Applicant and she found obtaining her practising certificate easy to do in three days which put into perspective

his complaints about the difficulties of the system. One would expect an experienced solicitor to make extra sure that the application has gone through. On 15 May 2012, RA e-mailed the Respondent including: "regarding the reimbursement for the practising certificate, thank you for signing the expenses form," so he was aware of her success. EM's application started by the Respondent had also been unsuccessful and so the Respondent might consider that there was an issue about his own application. In his response, the Respondent said that he arranged for the fees to be paid and then took it that the process was complete. He continued:

> "As far as I was concerned, that was it. As will be apparent from some of the points raised earlier in this statement, I had more than enough on my plate to be getting on with going into March 2012, without having to worry about technical defects in the application process.
>
> A month or so later I was told by [RA] and [EM], two of the solicitors for whom I had completed an application, that they hadn't yet received their certificates. They both said that they would prefer to cancel the existing applications and make their own. I had no problem with that and when they told me they had completed them again I reimbursed both of them for the relevant fees. At this remove, I suppose I assumed that if the certification process hadn't been completed properly then [the Applicant] would tell me. But it is fair to say that in the run of activity over the succeeding months (where I had three trials scheduled) it was not particularly high up on my radar."

Mr Allen submitted that this was an abdication of responsibility by the Respondent and that he was on notice there was an issue with the applications of the two other solicitors. The Respondent said that the Applicant was not entitled to revoke his practising certificate because it had received an application for renewal but research showed that the Applicant had not received a completed application. The correspondence between RA and the Applicant showed that and so the Applicant was entitled to revoke his practising certificate with only one and a half months of the subsequent practising year 2012/2013 left. Mr Allen submitted that the Respondent's reaction to being told on 6 September 2012 was quite revealing. The e-mail exchange was as follows:

> IO: "It has just been brought to my attention that your practising certificate for 2010-2011 has been revoked, accordingly you should not be undertaking any reserved work whatsoever. The revocation was due to your failure to renew your certificate."
>
> R: "I renewed my certificate in March [IO]"
>
> IO: "I will advise Mr [K] (the practising certificate supervisor at the Applicant) however he states that you are without a pc."
>
> R: "I am bound to say I am stunned by that. I applied on the MySRA site and renewed everybody's pcs including mine and paid all of the fees. Surely somebody would have said something in the intervening months if none of them went through?"

Mr Allen submitted that the last e-mail from the Respondent was astonishing; he knew that he had not successfully renewed all the practising certificates and paid all the fees because he was aware that RA and EM had been forced to renew their own practising certificates and pay the renewal fee themselves before seeking reimbursement for the fee from the firm. In an e-mail on 4 March 2013 to the Applicant, the Respondent stated:

> "By the time of the meeting in September I had been told by [the IO], out of the blue, that my Practising Certificate had not been renewed for 2012. In fact, as I was told by the time of the meeting, an application had been made to renew the certificate (on the labyrinthine MySRA website) in March, but for some reason the fee had not been taken (given I renewed and paid the fees for all of the solicitors practising at [the firm], I am bound to say that I found and still find that surprising)."

Mr Allen submitted that this e-mail was misleading at the very least in saying that the Respondent had renewed the practising certificates for all the solicitors and went on to gild the lily. It was not supported by the facts; RA and EM had renewed their certificates personally and the Respondent reimbursed them. The Respondent met the IO on 10 September 2012 and told him that he would apply that day; this was the second cancelled application shown on the records but the Respondent acknowledged that the IO told him that it was incomplete. The Respondent said in his response:

> "I made a further application as soon as I got back home to my computer after leaving [the IO] at the Law Society (on 10 September). It was completed and submitted that day and I sent an e-mail or a text (I forget which) to the IO saying I had done it. He then sent me an e-mail or a text (again I don't remember which) saying that it was incomplete. He never subsequently told me why that was."

Mr Allen submitted that that was the end of the story; the Respondent was told the application was incomplete, complained that he was not told why and so he knew that it had not been processed and by the time of intervention no practising certificate had been granted. The position regarding his practising certificate formed part of the grounds for recommending that the firm be intervened into; it included:

> "… [The Respondent] stated on 10 September 2012 that he would attend to the renewal of his practising certificate however as of the date of this case note, [the Respondent] has neither completed or (sic) submitted his application with payment for a practising certificate or the renewal of the recognition for [the firm]. The Authorisations department of [the Applicant] have confirmed that notwithstanding that [the Respondent] had begun to complete his renewal application forms online, these were showing as "draft" on [the Applicant's] records in that although [the Respondent] had started the applications, they have not either been completed and submitted with the relevant fee. The position remains as at the date of this report."

202.02 The Respondent continued to practice as a solicitor after 10 September 2012; he appeared in court, he represented clients and dealt as a solicitor with them. He practised in breach of the Solicitors Act and he did nothing to ensure that he was

properly authorised to do that. The Respondent said he paid fees in February and September 2012 but no trace of the evidence could be found of that on the office account bank statements although it could have been paid by some other method. On 10 September 2012, the balance on office account was £30.86, insufficient to pay the practising certificate fee. The case did not stand or fall on the payment of fees but the practising certificate was not in place and his steps to put it in place was inadequate and a breach of the Solicitors Act.

202.03 In his closing submissions on the law, Mr Allen submitted that the Applicant relied on regulation 10.2(a)(ii) of the SRA Practising Regulations 2011. The Applicant's position was that as at mid August 2012 it had not received an application for a practising certificate from the Respondent. The Tribunal had seen the e-mails that the Applicant sent to RA to the effect that an application had not been submitted. The evidence showed that whatever the final step required to submit the form in February 2012, it did not happen. It was the IO's evidence that the application was a draft until accepted by the Applicant. He used the word "submitted". The final step of pressing the submit button had not happened in February or September 2012 and so the Applicant had a legal power to revoke the Respondent's practising certificate.

Submissions by and evidence of the Respondent

202.04 The Respondent submitted that he did not recognise the Applicant's linguistic approach to the practising certificate application. If there were two types of application draft and formal and the IO said that everything was draft until the fees were paid and accepted, formal was the accepted application and ceased to be an application once it was accepted. The Respondent did not understand the distinction. Still less did he understand how an application could be completed in February and the fee paid and the Applicant say nothing to him about the fate of the application. The Tribunal had seen screenshots showing that the application had been cancelled but it was not cancelled by the Respondent. It was completed; all relevant boxes were completed. The Respondent got to the end of the form and even dealt with the overseas language abilities of the lawyers. Wholly unsurprisingly he thought the application had been dealt with as the Applicant took the fee. He accepted that out of the shambles of the MySRA website it might take time. He had not seen a practising certificate for years; his secretary printed it off and put it in the file. RA and EM made their own applications and neither told the Respondent that the block application had been withdrawn; it would have amazed him because he had asked them both to ensure that they were off the block application so that the firm did not pay twice. When it was raised with him on 6 September 2012 that his practising certificate had been revoked, the Respondent immediately spoke to the IO on 10 September and completed the entire form again and paid the fee again. All that came back from the IO was that the form was incomplete – there might be some details wrong. In that case the Applicant should tell him. It could not be assumed that the completed form should be left as a draft and cancelled at some point – that was a recipe for disaster. It was not a case of the Respondent hiding from the position; the IO did not know why the applications were rejected [or in the case of the September application denied]. The Respondent did not think that the Applicant had the power to revoke his practising certificate. The Respondent referred to the FI Report which quoted the SRA Practising Regulations 2011, regulation 10.2 which said:

"(a) The SRA may revoke a practising certificate...:

(i) at any time, if the SRA is satisfied that the practising certificate ... was granted as a result of a error or fraud;

(ii) on a date chosen by the SRA, if the replacement or renewal date has passed and the SRA has not received an application for replacement of the practising certificate… in accordance with regulation 1";

The Applicant's only power in this case was (ii). It had received an application by August 2012 and at some point the regulator was obliged to do something with the application. If it was declined it must be on a basis. Regulation 10(a)(ii) was not engaged because there was an application; the Applicant was still sitting on the February 2012 application which had not been dealt with. The Respondent submitted that he had a practising certificate and the Applicant did not have the right to revoke it.

202.05 In cross-examination, the Respondent stated that he remembered having conversations with RA and EM; he was keen not to pay twice and keen to get them off the block application. He thought he did have a look at it and ask them. He did not check with the Applicant because he knew that the process was a shambles. Ms M had done it quite a lot and then left and she sent it to Mr H and he virtually did no work for days at a time (because he was doing the application). It did not fill the Respondent with dread and alarm when the practising certificate did not come through in the post in April or that two solicitors said that they would do it alone. The delay in the production of the paper certificate did not strike the Respondent as a problem.

202.06 The Respondent could not remember whether as RA said in her e-mail to the Applicant dated 25 April 2012 she had forwarded the Applicant's e-mail to the Respondent and spoken to him the following day when she had been told that the firm had started an application for renewal but had not yet submitted it. Her e-mail said that he was intending to get in touch and resolve matters. She did not tell him that the Applicant had said that the renewal application had not been submitted. He did not remember seeing the e-mail exchanges between RA and the Applicant. It was not a big issue at the time. The day when RA told the Applicant that she had forwarded the e-mail to him was the second day of the D trial. If he had seen it he would have thought it the product of the shambles. RA might well have said that they should speak to the Applicant but no way would the Respondent have spent half a day on the phone to the Applicant in the week of the trial. He remembered the conversation as they were walking up the corridor. If he had got the e-mail and read it, it said that he had been on the system and if he had filled out the form and sent it in, he would regard it as "bananas" for someone to say it had not been submitted. When RA said she wanted a paper certificate on the wall, if she wanted it, let her do it. The Respondent stated that he did not register that what he had done in February 2012 had been cancelled. If he had told RA that he was to take her off the block application, he must have thought that it was extant and he asked for a refund if she obtained the certificate (under the block application). As to RA's e-mail to him on 16 May 2012 at 11.03 when she said:

> "In terms of admin. priority and costs, in my opinion getting the SRA authorisation//practising certificate renewal and the client accounts & procedures brought up to date, is more important than PLC. Has the renewal application and payment been submitted now?"

It was put to the Respondent that in this e-mail RA was telling him that the renewal application had not previously been submitted but the Respondent stated that she had not told him that the application had been cancelled and as far as he was concerned the answer to her question was "Yes" they had put the application in. In the last sentence of her e-mail, she stated:

> "I appreciate that it's probably not possible to delegate much to me but if for example you're still having issues with IT aspects of the SRA account I might be able to help there."

The Respondent stated that he had no difficulties; he had not done anything regarding the application. RA thought that he had messed her application up because he was too old and IT illiterate. The e-mail exchange was about taking RA's application off the block application. As to the handwritten note on an e-mail which he had sent to RA on 25 June 2012 at 14.32 about membership of the LLP where she had written: "What about renewal? P.C.?" The Respondent did not remember that she was raising the question of whether he had a practising certificate. She had definitely not raised concerns with him between April and August 2012 about his having a valid practising certificate in place, notwithstanding that in her report to the Applicant on 20 July 2012 she specifically referred to it. She never ever said "Paul, have you got a practising certificate?" and that the Applicant had told her that he did not have one. If RA had been into the MySRA website and seen the block application and it was not marked as a draft she would assume the application had been made. After the IO told him in September 2012 that his practising certificate for 2010/2011 had been revoked and then that the further application he made was incomplete, he took no more steps because he knew that he had made the application.

<u>Findings of the Tribunal regarding allegation 1.7</u>

202.07 The Tribunal considered the submissions and evidence for the Applicant and the submissions and evidence by the Respondent, and the oral evidence. It found in respect of allegation 1.7 as follows. The Respondent admitted allegation 1.7 to the extent that the Applicant had revoked his practising certificate but denied that the Applicant was entitled to do so and also denied that no application for a practising certificate was made on the basis that two applications had been made, one in the period of complaint. The Tribunal had no doubt that the Applicant was entitled to revoke the Respondent's practising certificate and it accepted the evidence that the Respondent had not successfully applied to renew his certificate. Any difficulties he might have encountered with the MySRA website would constitute mitigation and were not a defence. The Tribunal found allegation 1.7 proved to the required standard and that by his conduct the Respondent had breached sections 1 and 20 of the Solicitors Act 1974 and all of Principles 1 (upholding the rule of law and the proper administration of justice), Principle 4 (best interests); Principle 5 (proper standard of service) and Principle 6 (public trust) of the SRA Principles 2011. He also failed to achieve outcomes O(1.2) (providing services to clients in a manner which protected

their interests in their matter, subject to the proper administration of justice) and O(1.3) (when deciding whether to act, or terminate his instructions, to comply with the law and the Code.)

203. **Allegation 1.8 - From around April 2012 to 19 October 2012, he [the Respondent] failed to make adequate arrangements for the financial stability and proper management of the firm, including in particular:**

1.8.1 not appointing a new member of the firm or making an application for recognition as a sole practitioner following Mr H's departure from the firm on or about 9 February 2012 in breach of Rule 16.3 of the SRA Practice Framework Rules 2011;

1.8.2 not making proper arrangements for the management of client files following the forfeiture of the lease at the firm's offices at 1 Kings Arms Yard, London, EC2R 7AF

and thereby breached all or alternatively any of Principles 1, 4, 5, 6, 7, 8, and 10 of the SRA Principles 2011 and further or alternatively breached Rule 16.3 of the SRA Practice Framework Rules 2011 and failed to achieve all or alternatively any of outcomes O(1.1), O(1.2), O(7.2), O(7.3) and O(7.4) of the SRA Code of Conduct 2011.

For the Applicant, Mr Allen relied on the facts set out in the Rule 5 Statement. The witness statements of RA and the evidence and witness statements of the IO, EM and PL and the FI Report were also relevant. In summary it was alleged that:

- The Respondent failed to renew his own practising certificate and those of his employees in or about February 2012 and September 2012 (see allegation 1.7 above);

- The Respondent failed to ensure that the firm kept up to date with rent payments due in respect of the lease of the firm's office premises and the firm's other financial commitments from March or April 2012 onwards and did not report the firm's financial difficulties to the Applicant;

- The Respondent also failed to make adequate arrangements for the safekeeping of client files following the forfeiture of the lease of the firm's office premises;

- The Respondent failed to ensure that a second member joined the firm within six months following the departure of Mr H on or about 9 February 2012.

203.01 Mr Allen submitted, in respect of the failure to appoint a second member to the LLP that the Respondent said that he was doing what the Applicant told him but although the breach arose in mid August 2012, by mid October no second member was in place. Two months was enough to appoint a corporate LLP member and this was a clear failure to ensure proper management of the firm.

203.02 The firm was in serious financial difficulties; the Respondent said that the firm was solvent and Mr Allen assumed that meant that the balance sheet was solvent; one could not really tell but there were major cash flow issues. The firm could not pay important trading debts as and when they became due and this was not reported to the Applicant at any time. RA reported to the Applicant on 20 July 2012 by e-mail:

> "...I feel duty bound to raise concerns that I have regarding the management and financial status of the firm…
>
> …
>
> Clearly [the Respondent] has been left with the unenviable task of trying to run a firm as well as dealing with a heavy caseload.
>
> Over the last two or three months I have become aware of various debts that are being chased…
>
> …
>
> Two weeks ago, on Friday, 6th July, bailiffs attended the office following a liability order that had been obtained for unpaid business rates in the region of £120,000… [The Respondent] had reassured me the previous week that the matter had been resolved. No sooner had the Bailiffs left a debt collector from HMRC then arrived regarding unpaid VAT.....
>
> …
>
> In addition to the debt matters that are being brought to my attention, I have had other concerns which relate to:
>
> -Whether the firm is properly authorised and if [the Respondent] has a valid practising certificate;
>
> -What happens next month when six months have passed since the last member partner left?
>
> -Professional indemnity insurance;
>
> -Accounting system-the firm uses OPSIS for its internal accounting/raising bills et cetera when the person who dealt with this left in March, despite reassurance, to my knowledge, nobody was dealing with it. E.g. I do not know when clients have paid a bill because it is not posted on the system.
>
> -Client not being kept properly informed. This relates to a matter that a trainee brought to my attention last week where a client had been chasing for months for some information/confirmation that costs have been paid by the firm and there were issues were (sic) Counsel had not been paid. Again, having raised the issues, [the Respondent] has

> contacted client (sic) and confirmed to me all other issues raised are resolved.
>
> In respect of Authorisation/practising certificates. On numerous occasions I have asked [the Respondent] for confirmation that all was in hand. When I discovered in late April that I still didn't have a practicing (sic) certificate, I applied for my own PC (which I was reimbursed for) as did 2 of the other lawyers. I have subsequently asked [the Respondent] (and e-mailed the contact centre) if he had submitted whatever renewal application was required for 2011/2012, again I had been told that had been dealt with. When I spoke to the [Applicant] yesterday I was informed that only a draft application was submitted. It may be that all is fine but in the circumstances it is obviously prudent to check. [The Respondent] has in the past said that the firm is authorised and has until the middle of August to find another member for the LLP.
>
> …
>
> Of course, given the nature of our job I would expect to be able to trust and accept the word of a partner/my boss however as the weeks go by and more information comes to light it becomes increasingly difficult. As I mentioned to him yesterday, he tells people he has transferred money or sent cheques and frequently that turns out to be untrue. The nature of the lie is that it doesn't take long to find out that it's untrue!
>
> …
>
> … I am conscious that he may also have his head in the sand…"

Mr Allen submitted that RA was a conscientious solicitor in a difficult situation seeking guidance. She had expressed concerns before; on 29 May 2012, RA e-mailed the Respondent including:

> "As you know from our previous chats over the last month or two, I have raised a number of concerns with you regarding the operation of the firm. The purpose of talking to you was to get an honest insight into the current state of the firm and what its future is, if any! Each day I come in with a positive outlook and each day, some new gem of information comes to light which casts doubt on matters. Consequently I'd be grateful if we could have another chat. I am out seeing a friend and potential new client from 1225 to approximately 2:15/2:30, other than that I'm around…"

On 25 June 2012, RA e-mailed the Respondent again including:

> "I know that you have been making great inroads to get things on track… I'm aware that chap was in the building last week re the OAC debt. Wondered how the summons for business rates went? What the position is with rent, etc? I know you have categorically stated, on a number of occasions that the firm is

> solvent but given the rent and rates not paid, amongst other things doubt still remains."

The e-mail was annotated in handwriting "3 pm 20 5/6/12/meeting with [the Respondent]… rent paid" on July 5, 2012, RA e-mailed the Respondent including "I know however that AON have been chasing for months…" On 9 July 2012 the Respondent e-mailed to RA:

> "AON and [C] are paid, so is the rent, I am waiting for the Corporation of London to reply this afternoon on our rates reduction (set-off)."

Also on 9 July 2012, RA e-mailed the Respondent including:

> "I must admit though given the visit on Friday I am wondering whether the firm will still be operating by the end of the week? Am I being pessimistic or realistic? Can you let me know what your thoughts are please-is the firm solvent or not? I know you have confirmed to me several times that the firm is solvent and all is okay and the issues have been related to you having to deal with the "admin"/accounts issues as well as the legal work, but now I know that the VAT hadn't been paid and the rates (is rent still outstanding?) it brings into question again the state of the firm. I truly hope all is ok but if it's not then we need to know so we can take whatever steps are needed re: clients etc."

Mr Allen submitted that it was not true that AON had been paid and as to rent, ultimately the lease was forfeited. This could not have been a surprise; the quarterly instalment due on 26 March 2012 was not paid, the next rent instalment was due on 24 June 2012 and a judgment was obtained on 9 July 2012 for £90,000. All along the Respondent was telling RA otherwise. He sent an e-mail saying that the rent was paid but it was £180,000 in arrears at the end of June. The City of London had also obtained an order for outstanding business rates. The office account balance was £492.03 on 25 June 2012 and the client account balance was nil. On any view, the firm was struggling to pay its debts and the Respondent failed to take proper steps to safeguard clients' interests.

203.03 On August 14, 2012, PL of HK, the landlord's solicitors e-mailed the Respondent acknowledging receipt of over £90,000 paid in settlement of the High Court judgment dated 9 July 2012 and referring to matters that were still outstanding including:

> "Tenant's possessions
>
> Following forfeiture of the lease there remains in the Premises a substantial amount of tenant's possessions i.e. files, office equipment etc
>
> You have until mid-day next Wednesday 22 August, 2012 to remove the same. In that regard my clients will co-operate with you and afford reasonable access to the premises."

PL asked the Respondent to acknowledge the email which he did on 15 August promising to respond later that day. When that response was not forthcoming, PL e-mailed on 16 August including:

> "In respect of the Tenant's possessions I would enquire as to what progress you have made with regard to your arrangements to clear the same?"

PL chased the Respondent by e-mail again on 17 August 2012. On 21 August, PL e-mailed including:

> "Also, please note that the deadline for you to remove all files and papers etc expires close of business tomorrow. If not removed then my instructions are to invite the Solicitors Regulatory (sic) Authority to remove the same into safe custody."

The Respondent acknowledged that e-mail the same day indicating how long he would need to be in the office. On 23 August 2012, PL e-mailed the Respondent including:

> "My clients have today inspected the Premises and note that no attempt has been made to remove possession belonging to [the firm] and/or what appears to be personal possessions of you and your staff.
>
> A firm timetable for you to clear the Premises forthwith is required by 2 pm tomorrow…"

The correspondence continued until on 3 October 2012, when HK wrote formally to the firm by recorded delivery and first-class post including:

> "Accordingly, you have until close of business on Friday, 26 October 2012 to either:
>
> Take over the storage contract with [IM] thus relieving our clients of any future liability to [IM], or
>
> Make arrangements for all of your client files and computer equipment to be removed from store with [IM]."

203.04 No steps were taken by the Respondent to take responsibility for the client files and the Applicant intervened into the practice. If not there was a significant risk that HK would have fulfilled its threat to get rid of the client files. At the request of the Applicant, HK gave an undertaking to give the Applicant five days notice before removing the files. Mr Allen drew attention to RA's witness statement dated 21 June 2013 referring to other issues after the forfeiture of the lease including lack of for example checking with clients and keeping remote access in place to allow some work to be done; the remote access facility was withdrawn at one point. The exhibits to RA's witness statement included printouts of text messages she had sent to the Respondent. There was a long stream, all of them to him and there was not one single message coming back. This was a serious case of failure to make adequate arrangements for the firm. As Sole Principal, the Respondent had sole responsibility

for management issues but it fell largely to RA to raise issues. After the forfeiture of the lease he displayed almost total disassociation from picking up the pieces, regarding client files and his responsibility to clients, ensuring staff access to files and that all but remote access was maintained and he had not paid attention to his own practising certificate. Mr Allen submitted that the intervention was justified as there had been a wholesale disregard for management responsibilities. He asked the Tribunal to read all the e-mails attached to the statements of PL and RA.

203.05 In response to submissions from the Respondent about client files, Mr Allen submitted that this was one of the planks that the Applicant relied on in respect of allegation 1.8. The Applicant's point was that in a regulated firm there was a responsibility to look after its own client files and where the landlord had forfeited the lease by August 2012 it was incumbent on the people running the firm to look after client files and not to leave them in the forfeited premises or to leave it to the landlord to store them or to the Applicant to intervene and pick up the pieces. More than two months after the intervention no concrete steps had been taken by the Respondent to take over control of his client files after he lost control at forfeiture.

203.06 There was also a more general point about the breadth of the allegation. RA provided evidence of her dealings with the Respondent about the management of the firm from February/March 2012 onwards. The Applicant did make a case that these issues were such that there was a management obligation on the Respondent to bring his regulator into the process if there was a risk to the financial viability of the firm and plainly there was because of the cash flow issues.

Submissions for and evidence of the Respondent

203.07 The Respondent submitted that this allegation related to not having a second member of the LLP and putting papers at risk and he struggled to understand it. In respect of the papers neither client files nor data on computers were ever at risk. What was said in HK's letter of 3 October 2012 was not seriously intended. They were trying to put pressure on him; PL had said that in evidence and the IO understood that to be so as well. Someone had picked up that letter and thought that it was seriously meant. In evidence the Respondent said that he did not for a moment think that the landlord's solicitors would destroy the client files but saw it as an attempt to get the firm to pay for the storage, a bluff. He might have seen their letter about it but he didn't know. While as Mr Allen said it was "jolly unfair" on the landlord paying for the storage that was not the allegation; it was that the Respondent rendered papers unsafe. The Tribunal had heard evidence about the Respondent's efforts to move to the Cannon Street offices; the Respondent was trying to fashion a safe harbour and the IO confirmed that the storage facilities were satisfactory. The Respondent did not accept that a law firm had an obligation to keep files on its own building; 75% of firms kept them elsewhere. The Respondent submitted that he had made arrangements; he had signed the lease by late August for the Cannon Street offices and the builders had not come good; access was promised in a week but it dragged into the next month and then into the long grass. The firm was offered a small meeting room which they would have to vacate if it was booked for a meeting. The files were safe in storage and the Respondent was not sure they would be safe in the meeting room. It was utterly untrue that he left it to the Applicant to intervene. The files were not unsafe in the meantime and the firm had taken steps. In evidence, the Respondent stated that he

knew the files were safe because they were in storage. He knew there was an issue about who should pay for the storage but he was seeking to deal with the situation by signing the lease in Cannon Street and if the builders had moved more quickly and DA had paid his bill the firm would have moved. At some point the Respondent would have had to bite the bullet; if the firm had moved later on he would offer to pay off the storage fees in instalments to the landlord. As to the fact that the Respondent knew that the powers of intervention had arisen, he did not regard anything as inevitable until it happened.

203.08 The Respondent submitted that the firm had a plenipotentiary financial adviser in to look as a second pair of eyes and in February 2012 the Respondent asked him to look at financial issues. They asked the financial adviser if they should report their situation to the Applicant and he said no. In evidence the Respondent stated that this began when Mr H was still in the practice. They wanted to be sure that cash flow strictures were not making them insolvent and they had asked their financial adviser should they report to the Applicant and he went over all the projections. The Respondent thought this was back in March 2012 but the adviser was still talking to them after that and he had been coming all the way through June. There was the same sort of cash flow issue as a lot of businesses were experiencing. Monies were coming in; they were getting £80,000 a month regularly and a substantial amount from D. They were not insolvent until October 2012. The Respondent relied on others to help him regarding the insolvency issue and they got it right; the firm would have moved to a smaller platform but life and the accountant did not help.

203.09 In respect of the additional member of the LLP, the Respondent submitted that this was not something that he ignored. Merger talks were going on with a firm in the City of London; letters of intent had been exchanged. The firm was well-known and talks were at an advanced stage. There were also discussions with someone whom the Respondent had targeted. It was difficult in a small firm to find someone that the Respondent could trust. The person he would want could be in the upper echelons of a major city law firm and it would be a big jump for them to come to a small firm. On 22 August 2012, the IO "pitched up" and suggested a corporate member. The Respondent gave instructions to a firm to do that. He accepted he had not acted quickly enough but this was one of three things that he was trying to deal with. He thought he could make it work if he worked harder but it was not easy in respect of the merger.

203.10 In cross-examination, in respect of the management of the firm, the Respondent stated that after Ms M left in October 2011, she stayed on as a consultant but they terminated her consultancy. One of the reasons was that she had taken up a consultancy with HH without telling the Respondent. He had legal advice that if he terminated her contract within six months of her giving birth it would cost £2 million so they stuck to the contract. After Mr H left, the Respondent stated that he had an exchange of e-mails with the Law Society and they said he had until 15 August to obtain a replacement member for the LLP. The Respondent informed RA of this in an e-mail of 25 June 2012 and said he was talking with two candidates at the moment. The Respondent stated that RA had raised it with him a few times as she was a corporate lawyer and so he sent her the e-mail of 25 June 2012. The Practice Framework Rules struck him as unfair; he appreciated it was a black and white rule. He dealt with these points with the IO. He had been talking to a firm but that did not

work out and he had a discussion with another firm about a possible merger and there were head hunters sniffing around about filling the gap. The IO suggested incorporating a shelf company which struck the Respondent as odd but he went along with that. The firm he had been talking to about a merger was a pretty big firm and they were not messing around, so the issue was not left in the wind. One of the discussions was with an employment lawyer and old friend but as the firm was involved in financial services this was not quite right.

203.11 As to the Respondent having told RA that he was dealing with the Applicant, this was one of the first concerns he discussed with the IO; he wanted to know who the second member was to be and the Respondent told him that he was in discussion with the employment lawyer. The Respondent said that the FI Report gave the impression that he was blithely carrying on in September 2012; he acknowledged that when he met the IO he was already past the deadline but he had asked one of the firms he was in discussion with about adding it as a corporate member to the LLP. He had mentioned it to the IO on 10 September when he met him at the Law Society and the IO said that the particular firm would be a safe pair of hands; it was a panel firm. He had not done anything about it by the time of intervention in October 2012 because the other firm was very slothful in getting back to him. DA had not made one of its fee payments and so the firm could not move to the Cannon Street office. There was a desultory discussion going on about corporate membership and when DA did not pay at the end of the month when he was supposed to, the Respondent pushed the issue to October.

203.12 In respect of the office premises, the Respondent did not dispute the fact the firm had missed the 25 March 2012 rent payment and on 15 June 2012 proceedings had been issued resulting in a default judgment for around £93,000 on 9 July 2012. They had missed the quarterly payment due on 25 June 2012 and were two quarters behind owing around £180,000. The lease was forfeited in late August and the March arrears were paid on 10 August 2012. The Respondent accepted that some of the monies received from D went to pay the arrears. Proceedings regarding the June arrears were issued on 17 August 2012 and the Respondent accepted that they were never paid because the firm had contracted; two big pieces of litigation were over. The offices were really expensive and too big. The landlord had been haranguing the most junior members of staff to embarrass them. There was eight years left on the lease and when the landlord forfeited the lease he relieved them of eight years' obligations. The landlord then wanted to frighten them to go back into the offices. The second set of proceedings was for a quarter's rent in advance. The landlord was entitled to rent for June 2012 to August 2012 but after forfeiture he only had an additional claim for mesne profits. They thought about it for a day or so and did not want to pay more rent and revive the lease. The landlord knew he had made a tactical mistake and the Respondent was not prepared to go back into the offices. The Respondent had several discussions with a director of the landlord; he did not ignore the outstanding monies and went over cash flow projections with the firm's financial adviser. One close family member then had a heart attack and another had cancer. As a result the Respondent was out of the office for over a week when the financial adviser was trying to fix a meeting.

203.13 The Respondent agreed that an e-mail from RA to him of 25 June 2012 at 11.09 was annotated in handwriting timed at 3 pm that day including "rent paid". He did not challenge that he had told RA this because he did not open up to staff all the issues; he

did not think he should be sharing financial problems with them. He rejected the suggestion that he had been dishonest in specifically telling RA that the rent was being paid; it was necessary when the firm was going through big cash flow issues like that or they would get a big exodus of staff. RA had no financial investment in the firm. The Respondent had no intent to get an advantage of or to suborn her. He was trying to give her comfort on high-level stuff which was his strategy now that Ms M had left. If RA had asked him about the state of the firm's bank account he would not have told her that either. He did not want such things spoken about over the coffee machine. RA had e-mailed the Respondent on 9 July 2012 enquiring about the future of the firm as set out above. She referred to a visit by the bailiffs. The Respondent stated that this was her way of saying would she still have a job and she was not asking as a solicitor. She was employed by the Respondent and he did not treat it as a regulatory enquiry; also it was not regulatory but financial. The Respondent was slightly abashed that in his reply the same day, he stated that the rent has been paid which was untrue. He never closed his door to RA and she was always asking as she said in her report to the Applicant. The Respondent was trying to tell her all that he could but the finances of the firm were none of her affair.

203.14 The Respondent stated that it was untrue but not dishonest to tell RA that the rent had been paid. He compared it to a doctor telling a patient that there was a good chance of recovery when there was not. The consequences for the firm of telling her the truth would be disastrous. [There was no allegation of dishonesty in respect of this matter but Mr Allen pursued it with the Respondent in respect of the Respondent's view generally of dishonesty.] If she had asked him about a merger he would have told her "No"; there were some areas that employees needed to be kept away from.

203.15 As to the press coverage of the forfeiture of the lease, the Respondent could not control what journalists said; one article referred to the firm missing its rent deadline by two weeks. The only issue ultimately was that around £15,000 was owed by way of mesne profits. When he spoke to this journalist the firm did not owe £180,000. The Respondent agreed there was an element of lost in translation when he spoke to the journalist.

203.16 In his response the Respondent had said:

> "We had enough work in the pipeline and the best part of £140,000 in cash and sums due back from the Corporation of London by way of rates to make it feasible to downscale and carry on."

As to how he had come up with this figure, the Respondent stated that they had no overdraft and no loan facility and had cut loose from the lease. The monthly payroll was around £17,000 and they were meeting the payment. The firm was not laden with debt they had cash flow from clients of around £100,000 including from DA of around £50,000 a month and there was more work to do for D. This would be alright with a smaller platform.

203.17 In an e-mail of 17 August 2012 to the IO, the Respondent said:

> "Our builders have not hit their threshold time so we can't move the files as intended this weekend…"

The Respondent was referring to builders who were contracted to look after the serviced offices at Cannon Street. The firm had its own builder but was not allowed to use them there. They went and looked at the floor plate in the week of 17 August. Their builder could have done the work over the weekend but the landlord said that it would take at least a week. The work would cost about £20,000 which the Respondent would pay. It took weeks and nothing happened. The Respondent never got to the stage of paying the landlord. The Respondent had signed a rental agreement but on the basis that the offices would be finished in a week. The Respondent was not able to say whether the person he was in discussion with was the same Business Development Manager referred to in Devonshires' note of 19 October 2012. As to the reference to arrears regarding Cannon Street in that note, the Respondent stated that he did not think he should pay rent during the fit out. He had visited the offices with the landlord's representative and drawn rough plans out so that an estimate could be prepared but they were in a queue of 60 with the builders and he did not feel he should pay rent. The Respondent would have had to pay £23,000 to the new landlord for the works to be done and DA missed his bill payment and the landlord's representatives at the former premises would not advise the Corporation of London that they had left so that the Corporation would not refund the rates.

203.18 When the lease was forfeited the Respondent stated that the firm's IT supplier arranged IT access almost immediately for the staff so they could all keep working. The nature of the practice was that most work was undertaken by e-mail; they hardly ever looked at paper files. The Respondent would not want to tell staff or they would never come into the office but they could deal electronically. Their IT platform was initially switched off because the provider miscalculated the monthly tariff. The Respondent raised this and a couple of days later the provider brought the platform back up. The Respondent stated that when the platform was again switched off on 17 September 2012 as notified by e-mail from the provider, this was not because the firm was not paying him but because the landlord's solicitors had told him of the forfeiture. As to the payment of £946.42 on 28 September 2012 which was more than the normal monthly payment, the Respondent said that the provider might well have had additional costs in getting the service reconnected. The Respondent accepted that they had been without access to e-mails and client files for a week but he had fixed it.

203.19 The Respondent was made bankrupt on 19 October 2012 by HMRC in respect of a dispute concerning payment of tax in the USA rather than the UK on his drawings from a previous firm. The Respondent stated that this was such a ridiculous basis for the Revenue to petition on. The letter was sent to his ex-wife's home and he was not there. His immediate reaction was that he would apply to set the bankruptcy aside; no rational person could think that he had to pay 90% tax. He was on his own with nowhere to live and the intervention occurred in short order. In his divorce he had given his ex-wife everything including their home because he had the prospect of earning a living from the firm which was valued at £2 million in the divorce proceedings. He had no personal bank account and was more or less living off office account and its credit card at the time of the intervention. His wife took over the personal account and the firm's accounts were closed. In seven days he had absolutely nothing and was living on the street for a time. The intervention would not have been

inevitable if things had been timed differently. The Respondent stated that he should have applied to set the bankruptcy aside; it was not a real bankruptcy but they took the fight out of him. If the bankruptcy had happened in February 2012 there was no way that it would have led to the intervention. He did not realise that the firm would be intervened in although the finances were creaking a bit.

203.20 The letter of 8 October 2012 from the Applicant to the Respondent informing him that the matter was to be referred including a request to consider intervention, were sent to his former apartment at C House which the Respondent stated he had left on 11 September 2012. HK's letter of 3 October 2012 was also sent there and the Respondent stated that Mr Green of Devonshires was mistaken about their telephone conversation in respect of which he said the Respondent had described it as his home. He understood that the HK letter bounced back when the Applicant tried to serve it electronically.

203.21 The Respondent accepted that as at 19 October 2012, he faced several issues. He stated that he had not thought that the issue of the client files was a serious issue; it would be dealt with when they got to new premises. The sole member issue was running on; he did not think it would take long to form a company. He thought that the accountant saying what he had about not having done any work for the firm for some time was what brought things crashing down. He agreed that he had last met the IO on 10 September and the Respondent went off to do his practising certificate application and the IO went off to chase the accountant. The IO said he could use section 44 of the Solicitors Act on the accountant if he did not reply and the Respondent had said that this was a good idea. These were not major issues. As to whether it was acceptable for the manager of a law firm to leave issues of that nature on hold for two months, the Respondent stated that the accountant should have provided the information immediately and the builders should have acted faster. It all took time and the Respondent was chasing things down. If they had all jumped to his tune [it would have been alright] but the landlord at Cannon Street would not let him speak to the builders. The Respondent had never formed a limited company before and it was a mystery why the accountant took so long. Cash flow and viability was always an issue; they were looking at life in five months time. The Respondent did not know by late September that there was an intervention issue because he did not know what the accountant had told the IO. He now realised that the issuing of a section 44B request was a major issue but he had not realised it at the time. The accountant told the IO that he had had no involvement with the firm for over a year which was not so. Client account reconciliations did not look that complicated; they should be able to be reconciled at the drop of a hat. The Respondent thought that the office move and the number of LLP members were bigger issues.

<u>Findings of the Tribunal in respect of allegation 1.8</u>

203.22 The Tribunal considered the submissions and evidence for the Applicant including the oral evidence of Mr PL and the submissions and evidence of the Respondent. The Respondent denied the allegation 1.8 save he admitted that no second member was appointed to the LLP but that the issue was under guidance from the Applicant from 22 August 2012 onwards. The Respondent admitted that there was no question but that D's repeated failures to pay the firm were impacting substantially on its cash flow and that from mid 2011 a plenipotentiary Finance Director was appointed to work

alongside the firm's accountants. The situation was grave enough that the Respondent stated in his response that the adviser was called in, in January 2012 to consider whether a report to the Applicant was necessary and the partners even asked the adviser if the firm was insolvent. The Tribunal found that the Respondent was only too aware of the firm's financial problems. There was the witness statement of RA a solicitor working in the firm and increasingly concerned about its problems, such that she sent a series of e-mails to the Respondent in May and June 2012 including an offer to help the Respondent, referring to visits by debt collectors/bailiffs, and raising a range of enquiries culminating in a report to the Applicant on 20 July 2012. Before making her report she was either ignored by the Respondent or given assurances some at least of which were untrue. In his response the Respondent accepted the bailiffs were instructed in connection with the outstanding rates and that he had missed a rent payment because it coincided with a trough in cash flow.

203.23 Whatever efforts the Respondent was making behind the scenes the Tribunal found that he had failed to make adequate arrangements for the financial stability and proper management of the firm. Having particular regard to the failure to appoint a new member following the departure of Mr H in February 2012, whatever discussion the Respondent may have had with the IO about appointing a corporate member, the responsibility for adding a second member was squarely on his shoulders and he failed to discharge it or to apply for recognition as a sole practitioner following Mr H's departure. The Tribunal found allocation 1.8.1 proved to the required standard.

203.24 In respect of the files which were left in the office when the lease was forfeited, the Tribunal considered that the Respondent's attitude was cavalier. The focus of his defence during the hearing was to prove that there was no real threat of the files being destroyed by the landlord's solicitors. His stated position was that he let the files be seized on the forfeiture of the lease, allowed them to be taken to storage paid for and controlled by the landlord on the basis that as and when he could, he would resume responsibility for them. The fact that firms of solicitors commonly stored files off site was irrelevant. The Tribunal found his approach completely unacceptable; the files were clearly his responsibility and he failed to discharge it. The Tribunal found allocation 1.8.2 proved to the required standard.

203.25 The Tribunal found that by his conduct in respect of allegations 1.8.1 and 1.8.2, the Respondent had breached all of Principles 1 (uphold the rule of law and the proper administration of justice), 4 (best interests), 5 (proper standard of service), 6 (public trust), 7 (comply with legal and regulatory obligations), 8 (run business or carry out role in the business effectively etc.) and 10 (protect client money and assets) and Rule 16.3 of the SRA the Practice Framework Rules 2011 and failed to achieve outcomes O(1.1) (treat clients fairly), O(1.2) (provide services to clients in a manner which protects their interests in their matter etc.), O(7.2) (to have effective systems and controls in place to achieve and comply with all the Principles, rules and outcomes and other requirements of the Handbook, where applicable), O(7.3) (to identify, monitor and manage risks to compliance with all the Principles, rules and outcomes and other requirements of the Handbook, if applicable to the Respondent and take steps to address issues identified) and O(7.4) (to maintain systems and controls for monitoring the financial stability of his firm and risks to money and assets entrusted to him by clients and others, and to take steps to address issues identified).

Previous Disciplinary Matters

204. None

Mitigation

205. The Respondent decided to absent himself from the final day of the hearing when at his own request he was due to give mitigation and he offered no mitigation. (See preliminary matters above).

Sanction

206. The Tribunal had regard to its Guidance Note on Sanctions. This was a case of considerable seriousness in which the Respondent had faced a range of allegations, a number of which included dishonesty. All the allegations had been found proved with the exception of dishonesty in respect of one allegation. The dishonesty had included the misappropriation of client funds which was the most serious misconduct and would almost invariably lead to striking off save in exceptional circumstances. The dishonesty had been perpetrated against a number of clients. The Respondent had shown no insight into what he had done and only in one case had he conceded that he should have corrected a false statement to the client (DA). The Respondent had opted not to appear on the final day of the hearing and offered neither mitigation nor testimonials. The Tribunal had to be concerned about the protection of the public and the reputation of the profession. The Respondent had shown a worrying arrogance towards his clients and his obligations which he maintained throughout the trial. The Tribunal had no evidence that there were any exceptional circumstances which would justify a penalty other than striking off.

Costs

207. For the Applicant, Mr Allen applied for costs in the amount of £169,406.02. He submitted that this was a complex case where the hearing had taken many days. This was not helped by the Respondent's lack of engagement until the end of February 2014 and then a flurry of engagement which led to additional costs. Mr Allen accepted that the Respondent had fully engaged with the hearing but he had not done so before that. He reminded the Tribunal that the costs of the first case management hearing had been ordered to be paid by the Respondent. Possibly the issues could have been narrowed if he had engaged but probably not as it transpired that he defended all the allegations. However the Applicant had not received his response until 3 March 2014 and so had to prepare the case in the dark. The Respondent's lack of engagement had made a difference to the management of the case so that the Applicant was constantly chasing regarding directions to no avail. There was a fairly large correspondence file as a result of the failure to engage. There had been an extensive process of filtering and reviewing documents in order to narrow them down for the Tribunal and focus them on the allegations. These had run to several thousand pages in respect of the D case which had been received from EC Chambers. Furthermore the allegations touched on almost every aspect of the Respondent's practice over an eight-month period. The Respondent had faced eight allegations all of which he had denied and all of which had been found proved (save for dishonesty in respect of allegation 1.3). Mr Allen clarified for the Tribunal that the bill was based

on a blended rate so that the rate for all fee earners at Capsticks were shown to be the same. It took account of the likely allocation of hours. Mr Allen also pointed out that no costs had been included for the final day of the hearing on 1 April. In respect of the Respondent's ability to meet any costs order, Mr Allen agreed that it was quite surprising as the Respondent had been a partner in a number of large city firms that he said he had no assets at all following his divorce, no pension, investments or bank account. The Respondent's explanation to Mr Allen was that on divorce he retained his interest in the firm and the rest of his assets had "gone away". The Tribunal had before it a personal statement for the Respondent which was signed only in typescript declaring no income or assets save Jobseekers Allowance.

208. The Tribunal had the option of carrying out a summary assessment of the bill or sending it for detailed assessment. Mr Allen expressed a preference for a fixed sum summary assessment because the cost and delay in its detailed assessment could be considerable and he felt that a summary assessment could do more justice between the parties. Having regard to the fact that the Respondent was accepted to be in receipt of Jobseekers Allowance, Mr Allen urged the Tribunal not to make an order not to be enforced without leave of the Tribunal. The Applicant had some doubts about the Respondent's asset position and as a general policy it acted as a responsible regulator. The Applicant had an experienced cost recovery team and would only use the threat of bankruptcy as a last resort. If the Tribunal made an order not to be enforced without leave this would add a further layer of complexity. The Tribunal considered that in the particular circumstances of this case while the amount of costs sought was considerable it would be in the interests of both parties for the Tribunal to carry out a summary assessment. The Tribunal felt that there was a potential overlap in respect of the time spent on perusing documents and made a reduction accordingly. In respect of the Respondent's ability to pay, the Tribunal had regard to the cases of Merrick v Law Society [2007] EWHC 2997 (Admin) and D'Souza v The Law Society [2009] EWHC 2193 (Admin) and that by striking off the Respondent it had removed his livelihood. The only information that the Tribunal had about the Respondent's means was that he was in receipt of Jobseekers' allowance. The Tribunal summarily assessed costs in the sum of £160,000 and awarded that amount to the Applicant but costs were not to be enforced without leave of the Tribunal.

Statement of Full Order

209 The Tribunal Ordered that the Respondent, Paul Francis Fallon, solicitor, be struck off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £160,000.00 such costs not to be enforced without leave of the Tribunal.

Dated this 28th day of May 2014
On behalf of the Tribunal

D. Green
Chairman