SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11176-2013

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

KONSTANTINOS ADAMANTOPOULOS Respondent

Before:

Mr J. P. Davies (in the chair)
Mr R. Nicholas
Mr M. Palayiwa

Date of Hearing:
8-12 June 2015 and 13-15 October and 27-29 October 2015

Appearances

Mr Edward Levey, counsel, of Fountain Court Chambers, Fountain Court, Temple, London EC4Y 9DH, instructed by Suzanne Jackson, solicitor, of The Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

Mr Bruno Blanpain, advocaat with the Brussels Bar, of Marx Van Ranst Vermeersch and Partners, Tervurenlaan 270 Av.de Tervueren, Brussel 1150 Bruxelles for the Respondent, who was present.

JUDGMENT

Allegation

1. The allegation against the Respondent, Mr Konstantinos Adamantopoulos, made in a Rule 8 Statement dated 8 August 2013, was that he had occasioned or been a party to an act or default in relation to legal practices which involved conduct on his part of such a nature that it would be undesirable for him to be involved in a legal practice in one or more of the ways mentioned in Section 43(1)(A) of the Solicitors Act 1974 (as amended by the Legal Services Act 2007) ("the Solicitors Act") in that:

1.1 He utilised for his own benefit monies belonging to the firm of solicitors Hammonds LLP (later Squire Sanders LLP and subsequently Squire Patton Boggs LLP) ("the Firm") without authorisation to do so;

1.2 He billed or attempted to bill personal expenses to his clients as disbursements, namely the costs of travel and accommodation for family holidays.

2. Although not a necessary ingredient of the application, it was alleged that the Respondent's conduct was deliberate and dishonest in the following particulars:

2.1 The Respondent took a conscious decision to charge personal expenses which he was not entitled to charge to the Firm or to clients;

2.2 The Respondent then allocated some of those personal expenses to client matters without authorisation or any reasonable belief that they were authorised;

2.3 Some of the personal expenses were then included as part of the disbursements charged on invoices sent to clients;

2.4 No reasonable, prudent or honest person would have acted as the Respondent did;

2.5 The Respondent knew that what he was doing was wrong, but proceeded regardless and such conduct amounted to dishonesty.

Documents

3. The Tribunal considered all of the documents submitted by the parties, which included:

Applicant:-

- Application dated 7 August 2013
- Rule 8 Statement, with exhibit "SEJ1", dated 7 August 2013
- Trial bundle:

File A1 Application, Rule 8 Statement and first part of exhibit "SEJ1" comprising:
Witness statement of Peter Crossley ("Mr Crossley") with exhibits "PMC1" to part of "PMC5".

File A2 Continuation of "SEJ1", comprising:
Remainder of exhibit "PCM5" and exhibits "PCM6" to "PCM12"
Additional documents from the Firm;
Forensic investigation report of Mr Esney, dated 22 November 2013;
Representations by the Respondent, with annexes 1 to 23;
Respondent's Answer to the Rule 8 Statement

File B Orders and Memoranda of the Tribunal

File D1 Documents from the Firm disclosed to the Respondent as part of ongoing disclosure (paginated as pages 1-379)

File D2 Further documents from the Firm disclosed to the Respondent as part of ongoing disclosure (paginated as pages 380-688)

File D3 Further documents from the Firm disclosed to the Respondent as part of ongoing disclosure (paginated as pages 689-1096)

File D4 Further documents from the Firm disclosed to the Respondent as part of ongoing disclosure (paginated as pages 1097-1532)

File D5 Further documents from the Firm disclosed to the Respondent as part of ongoing disclosure (paginated as pages 1533-1763)

File W Witness statements, comprising:
2nd witness statement of Mr Crossley dated 9 February 2015
3rd witness statement of Mr Crossley (undated)
Witness statement of Mr Martin Dougall ("Mr Dougall")(forensic accountant at KPMG) dated 7 October 2013
Witness statement of Mr Eduardo Lima ("Mr Lima") of CRC Corporation Ltd ("CRC") dated 7 February 2014
Witness statement of Catherine Jayne Doyle ("Ms Doyle") of the Firm, dated 13 August 2014
Witness statement of Batonnier Alex Tallon ("Mr Tallon") dated 20 March 2015
Witness statement of Mme Pascale Roulez (Mme Roulez") dated 2 July 2014
Respondent's witness statement dated 11 May 2015
Respondent's supplementary (i.e. second) witness statement dated 15 May 2015

File R1 Respondent's documents (various)

File R2 Further Respondent's documents, including letter from the Applicant to Respondent with initial disclosure, disclosed forensic investigation file and bundle of documents prepared by Applicant for Case Management Hearing ("CMH") on 13 November 2014

Authorities bundle - various

- Applicant's statement of costs for the hearing 8 to 12 June 2015

Respondent:-

- List, with explanation, and documents in files R1 and R2
- Respondent's statement of costs for the hearing commencing 8 June 2015
- Respondent's Answer dated 26 March 2015, and witness statements, as set out above

4. The following further documents were submitted by the parties during the course of the hearing:

Applicant:-

- Current account transaction printouts re the Respondent and Mr Crossley (produced by Mr Crossley in evidence June 2015, following request for information by the Tribunal)
- Firm's general ledger trial balance as at 16 March 2010 (produced by Mr Crossley in evidence, as above)
- Applicant's closing submissions dated 23 October 2015
- Copy in re D: [2008] UKHL 33
- Statement of costs for resumed hearing 13-15 October 2015
- Copy court summons re Belgian proceedings by Respondent against the Firm and KPMG, issued 15 June 2015, with (informal) translation from Flemish to English prepared by the Firm (introduced 13 October 2015)
- Fourth witness statement of Mr Crossley, dated 14 October 2015
- 41 pages of emails involving the Respondent and "Finance Partner Admin" (produced on 14 October 2015)
- Email KPMG to Firm 11 March 2010, with attached interim report (produced 28 October 2015)
- Email Mr West to Mr Crossley 11 March 2010 (produced 28 October 2015)
- "Clean" copies of pages 360 and 407 of hearing bundle
- Statement of costs for hearing 27-29 October 2015

Respondent:-

- Respondent's second supplementary (i.e. third) witness statement dated 11 June 2015
- Respondent's third supplementary (i.e. fourth) witness statement, dated 8 October 2015
- Clip of emails between Mr West and Mr Dougall, 2010, obtained from Ms NS
- Respondent's application for "abusive process" dated 11 October 2015
- Respondent's statement of costs for hearing 27-29 October
- Respondent's closing submissions dated 23 October 2015

Preliminary Matter (1) – Dramatis personae and terminology

5. As a number of individuals, entities and events will be referred to in this document, it is convenient to set out a brief summary of the dramatis personae and the terminology which will be used throughout.

5.1 The Respondent, Dr Konstantinos Adamantopoulos, is a Greek Dikigoros who was at all relevant times regulated, inter alia, by the Athens Bar and the Flemish-speaking Bar of Brussels. At hearings in spring 2014 it was determined that the Applicant and the Tribunal had jurisdiction to consider allegations against the Respondent as a result of his position with the Firm. At all relevant times, the Respondent was the Managing Partner of the Firm's Brussels office;

5.2 The Firm is and was at all material times regulated by the Applicant, as it is and was a law firm based in England and Wales. At the relevant time, the Firm was known as Hammonds LLP. The Firm underwent changes, including mergers, in the years from 2010 and by the time of the hearing was incorporated within Squire Patton Boggs LLP. As the changes in the name of the Firm were not material to any matters in this case, it will be referred to throughout as the Firm;

5.3 Mr Peter Crossley ("Mr Crossley") was at all relevant times the Managing Partner of the Firm;

5.4 Mr Chris West ("Mr West") was at all relevant times the Finance Director of the Firm;

5.5 Mr William Downs ("Mr Downs") was at the relevant times the head of the Firm's Corporate Practice Group and was, in effect, the Respondent's line manager as that Group included the Brussels office;

5.6 Mr David Hearn ("Mr Hearn") was at the relevant time the non-executive director of the LLP Board of the Firm;

5.7 Mr David Hull ("Mr Hull") was a partner of the Firm who was appointed to oversee the Firm's offices outside the UK;

5.8 Ms Catherine Jayne (Kate) Doyle ("Ms Doyle") was the Firm's partnership accountant, based at the Firm's Leeds office;

5.9 Ms Tanya Duggelin ("Ms TD") worked for the Firm at the Brussels office. She was described by the Respondent as the office's Chief Operating Officer and by Mr Crossley as the Office Manager of the Brussels office. Ms TD left the Firm during March 2010;

5.10 Ms Nevena Solic ("Ms NS") worked for the firm at the Brussels office, as an accountant or accounts assistant;

5.11 Mr Martin Dougall ("Mr Dougall") is and was at all relevant times a forensic accountant and partner in KPMG LLP, which is an international accountancy firm. In March 2010 Mr Dougall was instructed by the Firm to conduct an investigation into certain concerns which had been raised about the operation of some aspects of the accounting at the Brussels office. Mr Dougall produced a report ("the KPMG Report") dated 4 June 2010, which contained matters relevant to these proceedings;

5.12 The Respondent acted for a number of clients, including a group which will be referred to as the CRC group, which included subsidiaries which will be referred to as TFC and IFC. These were the principal clients involved in the matters in issue in the case. The CRC group, which had its seat in the Dominican Republic, had a number of senior managers/directors who instructed the Respondent from offices in the Dominican Republic, Belgium, the Netherlands and elsewhere;

5.13 The Respondent and a number of other partners in the Firm were also partners in a firm known as Hammonds Direct ("HD"), which had demerged from the Firm some years before the events in question. In or before 2009 HD went into liquidation, as a result of which the partners in that firm were required to make a personal capital call totalling £75,000 each in a number of instalments. These payments will each be referred to as the "HD capital call"; the two capital calls in issue in these proceedings were in May and October 2009.

Preliminary Matter (2) – History of proceedings

6. The Application and Rule 8 Statement were made on 8 August 2013. A preliminary issue was raised by the Respondent as to the Tribunal's jurisdiction over him; he was not and never had been a solicitor and had never practised in England and Wales. Instead, he was a Greek Dikigoros who at all relevant times had practised in Brussels, particularly in the field of EU competition law, and was subject to regulation by the Flemish speaking branch of the Brussels Bar and the Athens Bar. The Applicant alleged that it had jurisdiction over him by virtue of his position in the Firm as an equity partner/member and Managing Partner of the Brussels office; the Firm was authorised and regulated in England and Wales.

7. At a Case Management Hearing ("CMH") on 4 December 2013 it was decided that there should be a preliminary hearing to determine: a) whether the Applicant and Tribunal had jurisdiction to deal with the Respondent in relation to the allegations in the Rule 8 Statement; b) if there was jurisdiction, whether these proceedings should be stayed until the conclusion of an investigation/proceedings by the Brussels Bar; and c) whether s43 of the Solicitors Act applied to this case. Directions were given to prepare for the preliminary hearing, which was listed with a time estimate of one day.

8. The preliminary hearing began on 10 February 2014. The Tribunal considered the Respondent's application for the hearing to take place in private, with appropriate restrictions on publication of any documents arising from the hearing. For the reasons set out in a Memorandum dated 21 March 2014 the Tribunal directed that the proceedings should be in public, unless and until otherwise ordered. However, the Tribunal later directed that the Preliminary Judgment on this issue should be anonymised, as no allegations had been proved but the legal principle involved may be of wider application.

9. The preliminary hearing concerning jurisdiction issues was not concluded on 10 February 2014 and was resumed on 10 March 2014. For the reasons set out in detail in a Memorandum dated 7 April 2014 the Tribunal directed that the Respondent's application to dismiss and/or stay the proceedings was dismissed and determined that the Tribunal had jurisdiction to deal with the Respondent from 31 March 2009, when s43 (1A) of the Solicitors Act came into force. The Tribunal

directed that there should be a CMH, with a time estimate of 2 hours, to consider further management of the case in the light of the decision on jurisdiction. The Tribunal further determined that it should not stay the proceedings pending any proceedings which may take place in Brussels.

10. A CMH took place on 23 June 2014 and the Tribunal's directions and reasons were set out in a Memorandum dated 3 July 2014. The Tribunal gave directions as to the dates by which various steps should be taken, including with regard to provision of documents, and the Respondent was directed to file and serve his Answer to the allegations by 22 September 2014. Thereafter, there would be a further CMH and the case should be listed for substantive hearing on the first available dates after 5 January 2015, with a time estimate of 3 days.

11. Thereafter, on 1 July 2014, Mr Blanpain for the Respondent emailed the Tribunal concerning the listing of the case and other matters. The Applicant responded and the matter was put before the Chair of the division which had dealt with the CMH on 23 June 2014. For the reasons set out in a Memorandum dated 15 July 2014, the Tribunal agreed to adjourn the substantive hearing which had been listed for three days from 13 January 2015 and to re-list it for three days after 1 April 2015. No other variation to the directions was made.

12. As directed on 23 June 2014, a further CMH took place on 13 November 2014. For the reasons set out in a Memorandum dated 2 December 2014, the Tribunal decided to list a hearing of the Respondent's request for disclosure, with a time estimate of half a day. At that CMH it was noted that the substantive hearing had been listed to take place on 9 to 11 June 2015, that there were issues between the parties concerning disclosure of documents and that the Respondent had not at that point filed and served a written Answer to the allegations.

13. At a further CMH on 17 December 2014 the Tribunal considered the Respondent's application concerning disclosure of 50 documents or categories of documents. Agreement had been reached between the parties about disclosure of most of those items, but four categories remained in dispute. The documents in issue were understood to be in the possession of the Firm, not the Applicant, and the Tribunal was not able in any event to order a third party to give disclosure; however, the High Court could order the production of documents by a third party. The Tribunal noted the position concerning those four categories in the course of the hearing and the agreements made between the parties and therefore adjourned the disclosure application generally. The Tribunal directed that there should be a further CMH on 6 May 2015 and that the substantive case would be listed to take place on the five working days commencing Monday 8 June 2015. Directions were given as to filing and service of witness statements before the hearing. The Tribunal's decisions were recorded in a Memorandum dated 13 January 2015.

14. A request was made by email to extend the time for the agreed disclosure to be provided by the Applicant. The Chair's decision in relation to that request was emailed to the parties on 30 January 2015.

15. At the CMH on 6 May 2015 the Tribunal considered the preparation of the case for the final hearing, including: whether there should be further disclosure; management of the hearing timetable; which witnesses were to be called and on which days (and in particular whether any witnesses would attend by video-link); and the preparation of a trial bundle. For the reasons set out in a Memorandum dated 8 May 2015, the Tribunal gave directions for preparation, filing and service of the trial bundle and concerning witnesses. The parties were also directed to liaise with the Tribunal office to identify a further three days as it was noted there was a risk that the case would not conclude within the five days allowed.

Preliminary Matter (3) – Progress of the hearing
June 2015

16. The hearing began at approximately 11.20am on Monday 8 June 2015.

17. The Chair noted that this was a public hearing. The Tribunal had earlier determined that it had jurisdiction over the Respondent from 31 March 2009; the Tribunal may need to hear submissions about whether it could or should take into account any conduct which occurred before that date. The Chair told those present that from all that had been seen on the documents, it could be taken as read that the Respondent's professional background, qualifications and standing in the legal profession were exemplary. The Tribunal was already aware that there were no previous disciplinary issues considered by the Tribunal concerning the Respondent; this had been covered in the Respondent's statements and written submissions. The Tribunal's present understanding was that the Respondent accepted that various factual matters were as stated by the Applicant, but the Respondent denied that his motivation and conduct had been inappropriate. This division of the Tribunal had dealt with a number of the CMHs and preliminary matters in this case and the members of the division were reasonably familiar with the papers in the case.

18. The Chair also noted that Mr Levey would open the Applicant's case, which may take the remainder of the day. The Applicant would then call Mr Crossley and Mr Dougall to give evidence and would tender the statements of Ms Doyle and Mr Lima. It was noted that the Respondent may give evidence and that his proposed witnesses, Mme Roulez and Mr Tallon, may not be required to give evidence as their evidence appeared to be uncontroversial. Mr Blanpain told the Tribunal that he would keep his options open with regard to other witnesses and documents, but had no preliminary applications to make.

19. Mr Levey then began the opening of the case. The Tribunal adjourned for lunch between approximately 12.45pm and 1.35pm. Mr Levey continued opening the case. There was a short break from approximately 3.05pm to 3.30pm and the hearing concluded for the day at approximately 5.30pm.

20. The hearing resumed at approximately 9.45am on Tuesday 9 June 2015. The opening of the case was concluded at approximately 10.40am, at which point the Tribunal took a short break and resumed at approximately 10.55am. The Applicant called Mr Martin Dougall to give evidence. After confirming that he believed his statement dated 7 October 2013 and his report (the KPMG Report) dated 4 June 2010 to be true, Mr Dougall was cross examined by Mr Blanpain. The Tribunal adjourned for lunch

at approximately 12.50pm and the cross examination of Mr Dougall continued from approximately 1.40pm. A short break was taken at approximately 3.05pm and the hearing resumed at approximately 3.20pm. A further short break was taken shortly before 5pm and the hearing resumed at approximately 5.05pm, when the Tribunal considered issues of timing and management of the hearing. It was noted at that point that Mr Dougall may be required to attend on the following day, having agreed to make some further enquiries arising from the cross examination.

21. The hearing resumed at approximately 9.40am on Wednesday 10 June 2015. Mr Blanpain raised a query concerning the Applicant's case, then Mr Crossley was called to give evidence at approximately 9.50am. After confirming that he believed his witness statements to be true, Mr Crossley was asked a number of supplementary questions by Mr Levey which were said to have arisen from the evidence then before the Tribunal. A break was taken from approximately 11.25am to 11.45am, at which point the cross examination of Mr Crossley by Mr Blanpain began. The Tribunal adjourned for lunch at approximately 1.10pm and the hearing resumed at approximately 1.50pm with the continued cross examination of Mr Crossley. A break was taken from approximately 2.55pm to 3.20pm and the cross examination of Mr Crossley continued. Mr Crossley stood down from the witness stand at approximately 4pm, whilst the Tribunal heard submissions concerning the line of cross examination being pursued. Having heard submissions, the Tribunal retired briefly and considered the issues which had arisen. The hearing resumed at about 4.55pm, when the Tribunal gave some indications concerning further management of the case. The Tribunal adjourned for the day at approximately 5.10pm.

22. The hearing resumed at approximately 9.40am on Thursday 11 June 2015. Certain preliminary matters were considered. Mr Dougall, who remained on oath, was recalled to continue his evidence at approximately 9.50am. At the Respondent's request, further documents had been obtained and produced on the morning of 11 June 2015. The hearing was adjourned at approximately 10am to allow the Tribunal and Mr Blanpain time to read those documents. The hearing resumed at approximately 10.45am and the cross examination of Mr Dougall continued. At approximately 11.20am Mr Dougall was asked to withdraw as Mr Blanpain wished to make an application concerning further documents, which had been shown to Mr Levey a short time before. The Tribunal rose briefly whilst Mr Levey considered those documents and then heard submissions from about 11.40am. The Tribunal determined that the documents could be introduced and put to Mr Dougall, who returned to court at approximately 11.50am. After conclusion of the cross examination and re-examination, Mr Dougall was released at approximately 12.25pm. Before Mr Crossley returned to court to continue his evidence, Mr Blanpain made submissions concerning the line of questioning he was going to adopt. Mr Levey submitted that the questions were not relevant to the issues in the case. The Tribunal determined that the appropriate way to proceed was for the Chair to outline the issues to Mr Crossley and obtain his evidence on the issues now raised by the Respondent. Mr Crossley resumed his evidence at approximately 12.45pm, and was asked questions by the Chair before the cross examination resumed. The Tribunal adjourned for lunch at approximately 1.15pm and the hearing resumed at about 2pm. The cross examination of Mr Crossley continued until approximately 3.50pm, at which point he was permitted to withdraw for the day, having notified the Tribunal of a business commitment (and the Tribunal noting that he had expected only to need to

attend the Tribunal on one day). The Tribunal rose for the day at approximately 3.55pm.

23. The case resumed at approximately 10.05am on Friday 12 June 2015. The Tribunal first had to consider some preliminary issues, for which purpose it retired from approximately 10.15am to 10.30am. The Tribunal agreed that documents obtained by Mr Crossley – at the request of the Respondent during cross examination – could be introduced. Mr Crossley resumed giving evidence. A break was taken for Mr Blanpain to take instructions from about 11.30 to 11.40am. The cross examination of Mr Crossley resumed and he was then re-examined. Mr Crossley was released at approximately 12.50pm. The Tribunal then considered issues of timing and case management, noting that a further three days had been set aside in October. It was decided that it would not be possible to conclude the Respondent's evidence on the afternoon of 12 June and it would be undesirable for him to remain on oath for several months and unable to discuss the case with his advocate. The Tribunal decided to adjourn the case until October 13 (when three days were available) and also set aside the three days commencing 27 October, in case the three days were not sufficient to conclude the case. The Tribunal determined that it did not need written submissions before the resumed hearing. It was noted that Mr Levey had not formally closed the Applicant's case, as issues had arisen during the five days of the hearing which he needed to consider before closing the Applicant's case.

October 2015

24. The hearing resumed at approximately 10.20 am on Tuesday 13 October 2015. Mr Levey formally gave disclosure of documents which had come into the Applicant's possession after the June hearing dates, which related to court proceedings being taken in Brussels by the Respondent against the Firm and KPMG. Mr Blanpain had no objection to those documents being admitted and Mr Levey formally closed the Applicant's case.

25. The Tribunal then considered how and when to deal with the Respondent's "Application against the Applicant for Abusive Process" dated 11 October 2015, and determined that it would consider the matters raised in that document as part of the closing submissions in the case. This was in line with Mr Blanpain's submission about how the document should be treated.

26. The Respondent was sworn and began his evidence at about 10.55am on 13 October 2015 and was examined in chief until approximately 12.10pm. The Respondent was then cross examined by Mr Levey until the Tribunal rose for lunch shortly after 1pm. The hearing resumed at about 1.50pm and the cross examination continued until there was a short break from about 3.10 to 3.30pm. The cross examination of the Respondent continued until about 4.50pm, when the Tribunal adjourned for the day.

27. The hearing resumed at about 9.45am on 14 October 2015. The cross examination of the Respondent continued until about 10.55pm, at which point Mr Levey made an application to introduce a clip of emails to be put to the Respondent. The Respondent withdrew whilst the application was made and considered by the Tribunal. The Tribunal announced its decision about 12 noon, after which the clip of documents was given to the Respondent for him to read before his evidence resumed. The hearing

resumed at about 12.20pm, when the Respondent confirmed that he had had enough time to consider the new documents. The cross examination of the Respondent continued until shortly after 1pm, when the Tribunal rose for lunch. The hearing resumed shortly after 2pm and the cross examination of the Respondent continued until about 4.50pm, with a short break from about 3.10 until 3.20pm. Towards the end of the day, Mr Levey made an application to introduce a further statement from Mr Crossley (his fourth) which had been signed on 14 October 2015. The Tribunal took a short break, from about 4.50pm to 5.05pm to allow Mr Blanpain to take instructions from the Respondent on that application. After hearing submissions from the parties, the Tribunal directed that the statement could be presented in evidence. This decision was announced at about 5.30pm. The Tribunal expressed concern that not all of the evidence may be completed during 15 October, in which case the Respondent would not be able to discuss the case with his advocate for about two weeks, when the hearing was due to resume. Without imposing a guillotine on the parties, the Tribunal indicated that the advocates for both parties ought to take steps to make sure the evidence could be concluded during 15 October. The Chair indicated that the hearing would begin as soon as practicable after 9am on 15 October, after which the Tribunal rose.

28. The hearing resumed at approximately 9.15am on Thursday 15 October. Mr Levey raised a preliminary issue before Mr Crossley was recalled to give evidence. The Tribunal ruled on that issue at about 10am and thereafter Mr Crossley was recalled to give evidence. Mr Crossley's evidence was completed shortly before 11am, at which point the Tribunal took a short break. The cross examination of the Respondent resumed at about 11.15am. The Tribunal took a break for lunch from about 1.10pm until about 2.10pm. The cross examination concluded at about 2.30pm. Mr Blanpain confirmed that the written evidence of Mr Tallon and Mme Roulez was also to be included as part of the Respondent's evidence and then re-examined the Respondent. The Tribunal also had some questions for the Respondent before he was released shortly after 4pm. The Tribunal then gave directions for the steps to be taken before the hearing resumed on 27 October 2015 and the hearing concluded for the day at about 4.20pm.

29. During the morning of Tuesday 27 October 2015 the Tribunal met to begin consideration of the evidence and the written submissions of the parties, but did not conclude any determinations on any points. At about 2.30pm on 27 October, the hearing resumed. Mr Levey made closing submissions until approximately 3.40pm, at which point the Tribunal took a short break. The hearing resumed at about 3.55pm and Mr Blanpain made closing submissions on behalf of the Respondent. During the course of those submissions, Mr Blanpain submitted that the interim report of KPMG, which had been introduced into the case during the hearing in June, was a false document and had been back-dated; the date on the face of the document was 11 March 2010. The Tribunal then heard from the parties with submissions on how to deal with this submission. At about 6.30pm, the Tribunal informed the parties that it would not make any decision on this point immediately. The hearing would resume at 9.30am on 28 October. It was noted that Mr Blanpain had indicated he was about half way through his general closing submissions, and he would therefore have about thirty minutes to complete his submissions.

30. The hearing resumed at approximately 9.50am on 28 October. Mr Levey referred to an additional document obtained overnight concerning the interim KPMG Report and the Tribunal heard submissions from both parties about this issue. Mr Blanpain resumed his closing submissions at about 10.10am. The Tribunal took a short break at about 10.30am to allow Mr Blanpain to identify page references for matters to which he had referred. The hearing resumed at about 10.50am and Mr Blanpain finished his submissions at about 11.10am. Mr Levey was then given the opportunity to respond to what were said to be four new points raised in the course of Mr Blanpain's submissions and then Mr Blanpain had the opportunity to respond to Mr Levey's final comments. The Tribunal adjourned to begin its deliberations on various matters at about 11.50am. At approximately 1pm, the Tribunal decided to release the parties until the morning of 29 October, and this message was passed to the parties by the Clerk.

31. The hearing resumed at about 11.20am on 29 October, when the Chair outlined the Tribunal's findings. Mr Levey then made an application for the Respondent to pay the Applicant's costs of the proceedings. The Tribunal allowed Mr Blanpain the opportunity to take instructions on the costs application, from about 11.55am until about 12.10pm. Mr Blanpain then made submissions in relation to costs and anonymisation of the Judgment. After considering those submissions, the Tribunal announced its order at about 1pm and the hearing concluded.

Preliminary Matter (4) – Applications and documents introduced in the course of the hearing

During Applicant's Opening

32. In the course of the Applicant's opening, the Chair requested that a copy of the KPMG interim report should be produced by Mr Dougall when he gave evidence. Mr Levey submitted that the burden was on the Applicant to prove the case, and any interim report by KPMG did not form part of the case against the Respondent; the Applicant relied on the Rule 8 Statement and the documents served with that, including the KPMG Report.

33. The Chair asked Mr Levey to confirm the date that client ledgers had been opened for IFC and CRC, to which the Santo Domingo holiday had been charged. The Chair also raised a query concerning whether there was any wording on the reverse of the Firm's invoices which set out rights to challenge a bill and/or went into more detail about the bills.

34. A query was raised about the admissibility of Mr Lima's statement and/or the weight to be attached to it. This statement had been read in advance of the hearing by the Tribunal, as it had been expected that Mr Lima would give evidence (by video-link). Mr Levey told the Tribunal that the Tribunal's Rules provided that a Civil Evidence Act ("CEA") Notice could be served not less than 21 days before the hearing. At that point, it had been expected that Mr Lima would give evidence, so there had been no Notice served. Mr Levey submitted that s1 of the CEA provided that if no Notice was served, then there would be an issue as to the weight to be accorded to the statement. The Tribunal noted this issue and indicated that submissions on this could be made in due course.

35. The Chair indicated that the Tribunal would like to see the contractual documents between the Firm and the clients i.e. the client engagement letters ("CELs"). Mr Levey told the Tribunal that those documents were not within the Applicant's possession, so had not been disclosed; these documents had been requested by the Respondent as part of disclosure but had not been produced by the Firm to the Applicant.

36. Mr Blanpain told the Tribunal that the Firm had agreed to provide the engagement letters to the Applicant on 12 May 2010. On 4 June 2010 Mr Crossley wrote to the Applicant but did not explain what had happened to the documents. Mr Blanpain submitted that it was imprudent for the Applicant to make the allegations against the Respondent without these documents. As the Respondent stated at paragraph 185 of his witness statement he was not able to recall all of the billing details and so was unable to defend himself. Mr Blanpain referred to paragraph 193 of the Respondent's statement in which he expressed surprise that the Applicant proceeded with the allegations without having reviewed the CELs and the covering letters sent with the bills, amongst other documents. Mr Blanpain submitted that the Applicant would have difficulty in proving its case without these documents.

37. It was noted that the letter of 12 May 2010 from Mr Crossley to the Applicant offered various documents, including "a copy of engagement letters we had in Brussels with the clients where the major expense items and refunds had taken place". It could be that this had not been followed up, the Firm had not handed the documents over or they were not in the Firm's possession. It was noted that the Respondent appeared to suggest that the documents had been suppressed and not produced, despite requests. Mr Levey submitted that the Applicant had disclosed what it had. The Tribunal would have to consider what the documents *might* have said, for example whether they indicated that the Respondent's holiday costs could be passed on to clients. However, the Respondent had not indicated what the documents might have contained; he had simply referred to a provision which was included in the covering letters indicating that clients could query the bills.

38. Mr Levey accepted that it appeared that some documents had been offered by the Firm but had not been obtained by the Applicant. A letter from the Firm in April 2015 set out the Firm's efforts to locate documents in response to the Respondent's disclosure requests and indicated that the Firm would request the hard copy files from external storage in order to search them.

39. Mr Levey told the Tribunal that the Firm had been able to locate retainer letters concerning other clients, for example one dated 7 January 2009. Mr Levey submitted that the passage in that letter concerning disbursements was formulaic – it stated that:

> "We will charge incidental expenditure such as travel and accommodation, postage, telecoms and photocopying separately at cost…"

The Applicant's position was that the only reasonable reading of a passage such as this would be that the travel, accommodation and other outgoings were those necessarily incurred on client business. It was submitted that it could not mean that a lawyer could charge the cost of his holiday villa because the lawyer did some work

whilst on holiday. The Tribunal noted all of these submissions but made no ruling at that stage on the impact, if any, of the CELs and covering letters being unavailable.

40. At the end of the Applicant's opening, Mr Blanpain was invited to make some preliminary submissions if he wished to highlight points concerning the nature of the case against the Respondent.

41. Mr Blanpain told the Tribunal that the Respondent had been asked to attend a meeting with Mr Crossley in London (on 12 March 2010), for which there was no agenda. The Respondent had felt it necessary to resign in the circumstances and had then been locked out of the Firm's offices in Brussels, with no access to documents and information. The Respondent had not been aware of the complaints made to the Applicant until he was contacted by Mr Esney (of the Applicant) in March 2011. There had been haphazard disclosure. The Report by KPMG was one-sided and contained distortions; it did not take into account all of the evidence. There had been a General Ledger at the Brussels office since 2000. The accounts team in Leeds carried out all of the processing and approved all of the transactions, all of which were available for inspection by the Managing Partner of the Firm, Mr Crossley. Mr Blanpain submitted that it was mind-boggling that this account/Ledger could have existed for over 10 years without authorisation by the Leeds office. It was surprising that the Applicant was bringing this case, based as it was on what Mr Blanpain described as "manipulation" by KPMG and others.

42. The Chair asked Mr Blanpain if it was part of the Respondent's case that the payments for the Santo Domingo and Greece trips were made with the knowledge of people at the Firm's head office. Mr Blanpain told the Tribunal that the Respondent never admitted that these were "holiday" costs. Mr Blanpain submitted that Ms TD, whom he described as the Firm's Chief Executive Officer at the Brussels office, had left the Firm in March 2010 and her departure terms included a secrecy clause. It was Ms TD who had dealt with some of the transfers in issue. Mr Blanpain told the Tribunal that the Board minutes of the Firm in 2010 referred to the settlement agreement with Ms TD dated 27 April 2010. Mr Blanpain understood that the Applicant had asked the Firm for Ms TD's address, but it had not interviewed her. There was contradictory information about what information had been given by Ms TD to KPMG and/or the Firm; Mr Crossley said she had supplied information whereas Mr Dougall of KPMG said she had not given information. Mr Blanpain told the Tribunal that Ms TD would have been able to give "interesting" information to the Respondent. The Respondent only met with Mr Dougall for about half an hour, at the beginning of his visit to the Brussels office. Mr Blanpain submitted that the KPMG Report had been copied by the FI Officer of the Applicant such that the KPMG findings had been adopted and then used as the basis of the Rule 8 Statement. The allegations said that the Respondent made various payments but the Respondent would say that Ms TD made all of the payments. Mr Blanpain stated that he had asked for disclosure of all of the authorities and proxies held by Ms TD at the relevant time.

43. The Chair queried if this was leading to an application of some sort. The Chair confirmed that the Applicant would present its evidence, with cross examination of the witnesses. It was for the Respondent and Mr Blanpain to decide how to conduct the defence e.g. whether to make any applications that there had been an abuse of

process or that the case had not been made out. That said, it appeared from Mr Blanpain's earlier comments that the Respondent wanted to put his full defence. Mr Levey noted that in the event of an application at the end of the Applicant's case that there was no case to answer, the convention in civil proceedings was that the party making that application would not then be able to make closing submissions.

44. There was a brief discussion about whether the Applicant's witnesses could be in court whilst others gave evidence; Mr Levey submitted that normally witnesses were not excluded and the burden was on the party seeking to exclude a witness to show a reason for that. The Chair indicated that normally in the Tribunal witnesses did not sit in court, particularly where the evidence was potentially controversial. Accordingly, neither of the Applicant's witnesses was in court to hear the evidence given by the other.

45. On the morning of 9 June, in the course of hearing submissions before beginning the evidence, the Chair queried whether the CELs had been found. Mr Levey told the Tribunal that Mr Crossley could deal with that in evidence but, in short, the Applicant did not have those documents. The Applicant could proceed on the basis of the assumption, favourable to the Respondent, that the engagement letters referred to travel and accommodation as possible disbursements; this seemed a realistic assumption. It may have been that the documents were "offered" by the Firm on the assumption that they existed and could be found but, in any event, the Applicant never received them. Since then, the Firm had searched the files but had not found the letters. Mr Levey could not say what had happened to the documents, but it was likely that the CELs referred to travel and accommodation as being chargeable to the client.

46. Mr Levey told the Tribunal that whilst the evidence of Mr Tallon was not formally agreed, it was not challenged by the Applicant.

47. The Chair referred to the Judgment of this Tribunal in the matter of Gilbert (11159/13), a copy of which was provided and inserted into the Authorities bundle. Mr Levey submitted that this was a very different case to the present one as the disbursements were different in nature. However, it was noted that the Tribunal had found that Mr Gilbert had not acted in the best interests of clients, in disguising the disbursements which were incurred and was fined; in the present case, the issue was whether the Respondent ought to be regulated. Mr Levey submitted that the litany of errors in the present case was such as to show that the Respondent had not acted in the best interests of his clients and had shown a lack of integrity.

48. Mr Levey noted that on the first day of the hearing a question had arisen as to whether Mr Blanpain had asked for the interim KPMG Report as part of disclosure; this document had not been produced to the Applicant by the Firm in the course of the proceedings. Mr Levey told the Tribunal that in a letter from the Applicant dated 9 December 2014 it had been agreed that the Firm would not be asked to disclose that interim report. Mr Dougall was expected to tell the Tribunal that the document had been archived as no-one had asked for it. Under a "hold harmless" agreement between the Firm and KPMG, the interim report was confidential, so the permission of KPMG would be required in order for it to be produced. Mr Dougall would, in any event, tell the Tribunal that the final report incorporated the interim report. Mr Levey

submitted that as it had been agreed between the parties that the interim report did not have to be produced, there should be no adverse inference arising from the fact it had not been provided.

49. Mr Levey told the Tribunal that although there had been correspondence concerning disclosure, the Tribunal had not ordered this document to be disclosed. The interim report had been archived by KPMG as it did not concern an active matter, so far as KPMG was concerned. In any event, Mr Levey submitted, he had opened the case on the basis of the documents and not on the basis of what was or was not said to Mr Dougall in the course of his investigation.

50. Mr Levey referred the Tribunal to the list of the disclosure requested by the Respondent, and referred in particular to items 13, 14 and 15 on that list, which were the sections which dealt with KPMG documents. The request referred to:

> "13. All contracts between KPMG and [the Firm] from January 1st 2009 to April 1st 2012;
> 14. All correspondence between KPMG and [the Firm] from January 2006 to April 1st 2012;
> 15. All working documents that were used to back up the KPMG forensic audit".

51. Mr Levey submitted that Mr Blanpain had made it clear before the CMH on 6 May 2015 that his request in relation to items 13 and 14 was limited to the contract between the Firm and KPMG and variations thereto. In relation to item 15, Mr Blanpain had agreed in a meeting between the parties that there was no need to disclose documents in this category.

52. Notwithstanding this submission, the Chair indicated that he would want to explore with Mr Dougall the contents of the interim report; the Chair noted that the KPMG Report itself was in the form of a letter, so the interim report could come within category 13 of the disclosure list. Mr Levey indicated that KPMG would try to locate the interim report as the Tribunal had asked for it; until 9 June no-one, including the Respondent, had asked for the KPMG interim report.

Matters in the course of Mr Dougall's evidence

53. It was put to Mr Dougall in the course of cross examination that the Respondent had recorded and charged his time to clients in respect of work done whilst he was in Greece in August 2009. Mr Levey queried if this line of questions indicated a departure from the Respondent's case, as it had been understood until now. The Respondent's own evidence was that he had not worked any billable hours and had been carrying out "inception" work whilst in Greece; the line of questions needed to be consistent with the Respondent's case. Mr Blanpain told the Tribunal that the Respondent's case was that whilst he was in Greece he recorded and billed time. The Chair enquired where that was set out in the Respondent's case. Mr Blanpain stated that the Respondent had said he had worked whilst in Greece. It was noted that the Applicant had to date understood the Respondent to be saying: a) he did not charge clients for the time spent working as it was "inception" work; and b) that although that work was not chargeable, a proportion of the holiday costs had been apportioned

to various clients. Mr Blanpain was asked to point out where in the Respondent's Answer and/or witness statement the proposition that he had recorded and billed his time whilst on holiday was set out.

54. Mr Blanpain referred the Tribunal to the Respondent's representations to the SRA on 9 December 2011 which set out his response to the concerns about the trip to Greece. Mr Blanpain told the Tribunal that when he wrote that letter the Respondent did not have access to the timesheets. It was noted that the Respondent's witness statement was produced on 11 May 2015, after disclosure had taken place; disclosure included time recording records and the List Billing Guides ("LBGs") for the relevant client matters. Mr Blanpain referred to a further section of the representations in December 2011 which referred to work done by the Respondent whilst he was in Greece. Mr Levey submitted that this passage did not refer to the time spent being billable time. It was noted that in the Respondent's witness statement it was stated "I chose not to charge CRC/IFC/TFC with this time…" Mr Blanpain stated that the Respondent had decided not to charge for *all* of this time. It was noted that Mr Blanpain had been putting to Mr Dougall that the Respondent had charged for time he had worked; the Tribunal would have to consider why this point had not been raised until now, given that the Respondent had had the timesheets/billing guides for some time now. Mr Blanpain submitted that there had not been much time to prepare the case and this point had only been discovered recently, when reviewing the defence. The Respondent had given his statement to the best of his ability. The point of the questions to Mr Dougall (who had been allowed to leave Court during this exchange) was to show that he had misrepresented the work done by the Respondent in August 2009.

55. It was noted that it now appeared to be part of the Respondent's defence that a bill for €77,000 to TFC included work done by the Respondent in August 2009.

56. Mr Levey queried whether Mr Blanpain intended to pursue a line of questions, which he had begun, concerning whether or not Mr Dougall was an independent or a partial witness; if so, those issues must be put to him fairly and squarely. Mr Blanpain indicated that he would deal with this at the end of his questions to Mr Dougall. Mr Blanpain submitted that it had always been the Respondent's case that he worked during his travels to Greece; the Tribunal noted that it had not been stated until today that the work done had been charged to clients.

57. On resuming Mr Dougall's evidence after a lunch adjournment, Mr Dougall stated that it appeared that more had been billed to client IFC in November 2009 than was recorded on the Firm's time recording system for the relevant period. The Tribunal noted that it would be for the advocates to point out which client and/or which bills were involved. Mr Levey submitted that he had not yet carried out this analysis but it raised an issue about whether or not the Respondent's bills had been "padded". Mr Levey submitted that whatever the position concerning the Respondent's time recording and whether he had charged more than the value of the time recorded on the timesheets, this did not affect the Applicant's case, which was that it was not appropriate to charge clients for the Respondent's holidays, whatever work had been done. The question of billable work had been raised by the Respondent as part of his defence; the Applicant had previously understood the Respondent to be saying that he had not done any billable work whilst on the trip to Greece. The misconduct relied on

by the Applicant was billing holiday costs to clients; the number of hours worked did not affect the Applicant's case. The issue was whether a client would have understood that the disbursements on the bills included the Respondent's holiday costs. Mr Levey accepted that the Tribunal would have to determine if the trip to Greece was a holiday or a business trip, but this may not make much difference where the Respondent had, in effect, charged a proportion of the cost of his villa to various clients.

58. During Mr Dougall's evidence, the Chair commented on the number and types of accounts or ledgers that a partner in a firm may have. Mr Levey told the Tribunal that he wished to correct one point which may have been misunderstood. Mr Crossley had not said he was unaware of the General Ledger/Account at the Brussels office; it was not a "hidden" account. Whilst paragraph 12 of Mr Crossley's first witness statement referred to having the account drawn to his attention, it was not a surprise to Mr Crossley that there was a general account at the Brussels office. It was noted that the allegation was not that the General Account had been hidden, but that the Respondent was charging personal items to it and then passing those items on to clients.

59. As Mr Blanpain cross examined Mr Dougall concerning the General Ledger and in particular the payment of the HD capital call from that ledger, the Chair asked Mr Blanpain if it was the Respondent's case that payments had been made by Ms TD without the Respondent's knowledge. Mr Blanpain told the Tribunal that it was not being said that it was done without the Respondent's knowledge. The Respondent would say that he had passed Ms Doyle's email (of 19 May 2009) to the Brussels accounts staff, who acted on that. The Chair asked Mr Blanpain what the Respondent said he had told the Brussels staff to do with the email; Mr Blanpain replied that the Respondent told them to "deal with it". The Chair asked Mr Blanpain where the money to make the payment was to be found. Mr Blanpain told the Tribunal that the money was on the current account of the Firm (i.e. the Firm's office account). Mr Blanpain was asked if the Respondent had directed Ms TD to send the money from the Firm's General Ledger to pay his personal cash call to the Leeds office. Mr Blanpain stated that the Respondent's case was that he had passed Ms Doyle's email to Ms TD. Mr Levey interjected that this was not the Respondent's evidence; at paragraph 121 of his witness statement the Respondent stated,

> "I forwarded Mrs Doyle's email to … [Ms TD] in Brussels with copy, I believe, to her assistant [Ms NS] at the Firm's accounts department in Brussels and *asked them to make such payments from my current account* properly registering the transactions". [Emphasis added].

60. The Chair queried if the Respondent was saying that Ms TD misunderstood his instruction. The Respondent interjected that he had asked for correspondence about this matter but this had never been received. He would say that an accounts authorisation code was needed before a transaction could be entered onto the system. The Chair noted that it appeared from the Respondent's statement that he had forwarded Ms Doyle's email to Ms TD with an instruction to make the payment from his current account, which was overdrawn. The amount had been debited to the Firm's ledger and had later been repaid.

61. When Mr Blanpain asked Mr Dougall about whether he had discussed the work done in August 2009 with the Respondent during "the second meeting" (at the Brussels office), the Chair asked Mr Blanpain to clarify if he was saying there was or was not a second meeting between the Respondent and Mr Dougall. Mr Blanpain stated that the Respondent had set out in a letter to the Applicant that he had undertaken substantial activity in August 2009, over and above the time he had recorded. The Respondent's position was that if there had been a second meeting, he would have been able to explain matters and the KPMG Report would have been different. The Respondent stated that there was no "second meeting".

62. After Mr Dougall had told the Tribunal that the comments made to him by the Respondent had been included in the Report, Mr Blanpain submitted that the wording he used was very similar to that included in the notes made by Mr Hearn of a meeting which had taken place on 12 March 2010 (appended to Mr Crossley's first witness statement). Mr Blanpain submitted that the Respondent had been asked questions at that meeting, which had taken place without an agenda, in London on 12 March 2010. Mr Blanpain suggested that the answers given by the Respondent at the meeting on 12 March 2010 had been included in the Report in order to make it appear that there had been a second meeting. Mr Levey submitted that these remarks had the flavour of closing submissions. Mr Blanpain had not actually put it to Mr Dougall that there was no second meeting, or that he had made up his Report; any such points should be put squarely.

63. The Chair enquired if there had been any progress in locating the interim report and/or the KPMG file. Mr Levey told the Tribunal that the interim report had only been requested, for the first time during 9 June and there had been no request made for the whole file. Mr Dougall told the Tribunal that the file (including the interim report) would be in KPMG's archive, but before it could be released the authority of their legal team would be needed. Mr Levey submitted that the Firm was happy to disclose the interim report, subject to clearance by KPMG. The Chair commented that there appeared to be an issue of credibility about whether or not there had been a second meeting and it could be that Mr Dougall's file would be revealing. Mr Levey indicated that he would try to extend the enquiry to cover KPMG's file.

64. The Chair commented that the LBGs which had been put to Mr Dougall did not include the source documents for the disbursements. The Respondent had indicated that the reason Ms NS had been unable to produce the supporting documents to Mr Dougall was because of issues with the travel agents in obtaining a document to show the amount charged for hotel and travel costs. The Respondent had suggested that he would not have incurred the disbursements unless he was doing the work for the client, but Mr Dougall's evidence was that there was no underlying audit trail to show what costs were incurred and passed on to clients.

65. Mr Levey submitted that he would like to consider whether he could dispense with re-examination. If Mr Dougall was being accused of lying about there being a second meeting, that must be put to him so that he could respond. It had also been suggested that KPMG had been "lent on" by the Firm; again, that must be put to Mr Dougall and it was not enough to ask Mr Dougall if he was "impartial". The Chair commented that if it was being asserted that there was no second meeting between Mr Dougall and the Respondent then it must either be put that Mr Dougall was mistaken or that he

was telling an untruth. The Chair invited the parties to review the position, as Mr Blanpain needed to consider what to put to Mr Dougall, so a short break was taken. On resuming, the Chair noted that it was understood that Mr Dougall was making enquiries about his file i.e. whether it could be found and whether or not KPMG objected to its production. It may be that Mr Dougall would have to return to court to continue his evidence, with the file or an explanation about it. The Chair commented that there appeared to be a fundamental factual issue about whether or not there had been a second meeting; Mr Blanpain could reflect on whether to put it to Mr Dougall that he was lying or mistaken. The Chair noted that Mr Crossley would give evidence on 10 June and Mr Dougall may return on 11 June. The Chair confirmed that Mr Dougall could discuss with Mr Levey and those instructing him any logistics issues about the file/whether it was available etc. but should not discuss his evidence until his evidence had been concluded.

66. Mr Blanpain submitted that it was the Respondent's case that Mr Dougall had arrived at the Brussels office on the afternoon of Monday 1 March 2010 and had left on the Thursday (4 March). Mr Blanpain invited Mr Dougall to produce his expenses claim or other documents showing his travel in that period. The Chair commented that Mr Dougall's file might shed light on this.

67. On resuming the hearing, on 10 June 2015, Mr Blanpain told the Tribunal that the timesheets and billing guides were consistent in showing that the Respondent worked 30 hours in August 2009. The Chair noted that if Mr Blanpain wanted to put any points on this to Mr Dougall when he returned, it would be helpful if he could refer to the bills, LBGs etc. by page reference and it may be helpful if this were discussed in advance with Mr Levey. Mr Levey submitted that an issue mentioned by Mr Dougall in his oral evidence about the timesheets and possible overcharging was irrelevant to the case; there was nothing in the Rule 8 Statement about alleged overcharging for time. The Chair commented that it could raise an issue about credibility, if the Respondent had been overcharging. Mr Levey confirmed that this was not an issue being pursued by the Applicant; the only question had been why the billing guide and timesheets differed, but this was not pursued by the Applicant.

68. Mr Levey told the Tribunal that he understood that KPMG was taking steps to locate the file, but he had not yet had an update on this. The Firm was prepared to disclose the interim report and the engagement letters between the Firm and KPMG, subject to the consent of KPMG. Mr Levey confirmed that if Mr Blanpain wanted to suggest that Mr Dougall had lied about the second meeting, or that KPMG had been "used" by the Firm and/or that Mr Dougall was not independent, those points had to be put to Mr Dougall.

69. On resuming the hearing on 11 June, it was noted that there were some preliminary points to be heard before Mr Dougall resumed his evidence. Mr Blanpain confirmed that he had considered the questions he should put to Mr Dougall. Mr Levey told the Tribunal that the Firm was happy to disclose the engagement letters between the Firm and KPMG, and the interim report. KPMG had indicated that they would send a letter to confirm that these could be disclosed. It had not yet been received, but it was being chased. No questions could be asked on the basis of those documents as neither Mr Blanpain nor Mr Levey had seen them yet. Mr Dougall had no involvement in deciding whether or not the papers could be disclosed but he could explain why the

investigation file was not available. Mr Levey told the Tribunal that in May 2015 the parties had agreed that these items would not be pursued. The Chair confirmed that it was the Tribunal which asked for the file, as it may shed light on some of the issues raised by the Respondent.

70. Mr Blanpain submitted that the Respondent wished to submit a second supplementary statement, dealing with his travels in February/March 2010. The Chair indicated that such an application could be made when there was a statement available. The Chair noted that it was unlikely the Tribunal would hear from the Respondent until October, but the contents of the proposed statement should be indicated to Mr Levey. Mr Levey indicated that he would reserve his position concerning a further statement from the Respondent.

71. In his resumed evidence, Mr Dougall told the Tribunal that his investigation file was not available during this week; it was in an archive. The Chair commented that it was unlikely the case would be concluded this week. The Tribunal would therefore ask for the file in its entirety before resuming the case in October. If there were any issues concerning privilege, Mr Blanpain and Mr Levey should discuss these. It was accepted that there was a logistics problem in obtaining the file this week. Mr Levey indicated that he appreciated that the Tribunal had asked for the file and it was hoped that KPMG would be able to assist. However, if KPMG declined to produce the file, Mr Blanpain would have to make an application, in good time before the hearing resumed in October. Mr Dougall told the Tribunal that KPMG would not produce the file without a formal summons to do so. Mr Blanpain told the Tribunal that he had made an application for disclosure at the CMH and he was not renewing the application to the Tribunal. Mr Blanpain indicated that he was aware that if the Respondent wanted those documents he would have to make an application to the Administrative Division of the High Court. (This point was not pursued before the hearing resumed in October 2015).

72. Mr Levey told the Tribunal that he had now obtained from the Firm (with KPMG permission) the engagement letter of 1 March 2010, the second engagement letter of 23 March 2010 and a KPMG document of 11 March 2010 headed "Project Hercule – Phase 1" i.e. the interim report. It was noted that those documents would need to be paginated and the parties would need time to read them. The Tribunal therefore rose shortly after 10am and resumed at about 10.45am. The documents were added to the hearing bundle, with the agreement of both parties.

73. In the course of the resumed cross examination of Mr Dougall, the Chair reminded Mr Blanpain that he needed to clarify the Respondent's case: was he saying Mr Dougall was mistaken about there being a second meeting or that he was telling a deliberate untruth? The Chair suggested that it appeared from the interim report that there must have been a discussion after the first meeting as Mr Dougall would not have been aware of some of the issues discussed until he had carried out part of the investigation.

74. In the course of asking Mr Dougall about a previous investigation, concerning allegations made against the Respondent in 2003, Mr Blanpain indicated that he had submissions to make; Mr Dougall left court whilst those issues were considered.

75. Mr Blanpain told the Tribunal that he wanted to file some additional correspondence between Mr West and Mr Dougall concerning comments made about the 2003 investigation. The Chair commented that any such documents should have been disclosed before now, if the Respondent wanted to use them or they were relevant, and Mr Blanpain was asked how the Respondent had obtained them. Mr Blanpain told the Tribunal that they had been obtained from Ms NS, who left the Firm in 2011. The Chair commented that the duty of disclosure applied to both parties, where relevant to an issue including the Respondent's defence. Mr Blanpain knew that Mr Dougall was to be called and had not asked to introduce the documents earlier. Mr Blanpain stated that he did not know they would be relevant. The Chair commented that it appeared he did think they were relevant, as he had asked questions leading to this point. Having asked Mr Dougall if he had been partial in his preparation of the Report, it appeared that Mr Blanpain was trying to set Mr Dougall up for a fall. Mr Blanpain told the Tribunal that the Respondent had given the documents to him that morning; they comprised 10 emails on 3 pages. A copy had been passed to Mr Levey, who was starting to read them now. The Tribunal rose whilst Mr Levey considered the position and whilst the parties considered whether the documents should be passed to the Tribunal.

76. On resuming (whilst Mr Dougall waited outside court), Mr Levey submitted that he had no objection to the documents being introduced. However, he was concerned that they were in the Respondent's possession but he had kept them up his sleeve in order to ambush the witness. The duty of disclosure was a two-way street. Mr Dougall was a professional man, who was attending the Tribunal for a second day, under a witness summons. Mr Crossley, who was also a third party, was being kept waiting to resume his evidence.

77. Mr Levey told the Tribunal that he was concerned about the timing of these documents and the progress of the hearing. Mr Levey told the Tribunal that he understood that Mr Blanpain would want to examine the Respondent in chief and Mr Levey expected to cross examine the Respondent for about a day. Mr Levey told the Tribunal that it may need to impose a guillotine on the cross examination of these witnesses or on lines of cross examination. In relation to the HD cash call matter, the Respondent's position in his pleadings was that this was a mistake, possibly caused by a misunderstanding about the nature of the current account. With regard to the Santo Domingo trip, his position was that it was understood that the client would be paying for it. The issue of charging his holidays and the HD cash call through the business account were separate issues. The Tribunal would need to consider what the relevance of the cross examination was. Even if the "conspiracy theory" being suggested by Mr Blanpain had any basis, the question was simply whether the Respondent had made a mistake or not. The Chair commented that the credibility of witnesses could be an issue; this applied in relation to the question of whether there was a second meeting in Brussels and possibly with regard to the emails which had just been produced.

78. In the course of further cross examination, Mr Blanpain asked Mr Dougall if he was aware that a regulated body, such as the Firm, had a duty to report serious professional misconduct. The Chair queried whether it was clear that the 2003 issue, which had been raised by Mr Blanpain, amounted to serious misconduct. Also, the Chair noted that it had previously been accepted that the Respondent was of good

character, but Mr Blanpain was now bringing in issues about alleged misconduct by the Respondent in 2003. Mr Dougall told the Tribunal that he did not know what the Respondent had been accused of in 2003. It was noted that Mr Crossley could be asked about this. The Chair commented that Mr Dougall had given evidence that he recalled that some issues from 2003 had been mentioned and that he did not recall the email exchange, the documents for which had been introduced on 11 June 2015. It may be that Mr Blanpain would make submissions about Mr Dougall's failure to recollect these emails, but it was not clear where that would lead.

79. Mr Blanpain referred to an issue mentioned by Mr Dougall earlier in his evidence, that the Respondent had "padded" his bills. The Chair commented that it had been understood that Mr Blanpain had almost finished his cross examination, but it now appeared that he was going over the same ground. The Chair commented that the Tribunal did not intend to consider any suspicions about "padding" time; it was not part of the allegations.

80. After re-examination of Mr Dougall by Mr Levey (and some questions from the Tribunal) Mr Blanpain indicated that he had no questions arising from those questions, but needed to put to Mr Dougall whether he had been lying. The Chair commented that this issue had been flagged up much earlier, and Mr Blanpain would now need permission to further cross examine Mr Dougall; he should have put these questions before. Mr Levey told the Tribunal that he would not raise any technical objection to such questions. It had been noted that no allegation had been put to Mr Dougall that he had acted improperly or had lied; that issue had been left "floating". If Mr Blanpain wanted to say that Mr Dougall had been biased, he must put the question now. It was then put to Mr Dougall by Mr Blanpain that he had not told the truth about there being a "second meeting" and that he had not acted as an independent investigator. Mr Dougall told the Tribunal that he refuted both of these propositions. Mr Dougall stated that he had been entirely independent and had acted in good faith. Mr Dougall noted that he had not been challenged about the accuracy of the Respondent's explanations as recorded in the Report.

Matters during the evidence of Mr Crossley

81. Before the cross examination of Mr Crossley began, the Chair reminded Mr Blanpain to focus on the allegations in the Rule 8 Statement and the relevant evidence; the same reminder applied also to Mr Levey.

82. An issue arose about whether there had been any request for documents under the Consent Order/settlement agreement made between the Firm and the Respondent in civil proceedings. Mr Blanpain told the Tribunal that there had not been any requests under this provision, but there had been requests sent to the partners of the Firm by the Applicant with regard to specific documents. Mr Levey submitted that if Mr Blanpain was to submit there were "missing" documents, the Respondent could have asserted his contractual rights, or obtained a witness summons/summons for production of documents from the High Court. Mr Levey submitted that in any event, the relevance of these documents was not clear. The Respondent was aware of the procedure he could follow. Mr Blanpain told the Tribunal that the problem was that the letters accompanying the bills in issue had not been found and produced.

83. Towards lunchtime on 10 June, Mr Blanpain told the Tribunal that to that point he had asked Mr Crossley about one-fifth of his questions. It was noted that this meant it was likely that Mr Crossley would need to return the following day. The Chair indicated that the Tribunal had no objection to Mr Crossley making enquiries about an "information pack" about the HD capital call matter, to which he had referred in his oral evidence. Mr Blanpain asked that Mr Crossley should also make enquiries about the "ledger codes", something about which Mr Blanpain had been asking questions. Mr Levey told the Tribunal that the documents concerning the £20,000 HD cash call payment in October 2009 showed that the payment had been made from the Firm's Brussels office bank account to the Respondent's personal account, so the Leeds office had not been involved in receiving that money.

84. The Chair commented that the Respondent's case appeared to be that he had interpreted Ms Doyle's email of 19 May 2009 as meaning that he would be given credit by the Firm. The relevance of the questions about which accounts payments had been made from and to was queried.

85. The Chair asked Mr Crossley why an internal report to the Board (in February 2010), prepared by Mr Crossley and others, was still being withheld, given that what happened afterwards was well known. Mr Crossley had stated that he would not answer questions about that report and that it was legally professionally privileged. Mr Levey submitted that it was not appropriate for the Tribunal to go beyond Mr Crossley's evidence that the report was covered by legal professional privilege; it could not question the reasons for the Firm asserting privilege. It may be that Mr Crossley would be prepared to waive that privilege. Mr Crossley indicated that he would want to take external advice on whether or not to do so. Mr Levey submitted that if the Respondent had wanted the document he could have sought a summons from the High Court; arguably, the Respondent had a contractual right to the document under the terms of the settlement agreement. Mr Levey was aware that Mr Blanpain had asked for the document but it had not been raised at the Tribunal in the list of 50 categories of documents. Indeed, the Tribunal had no jurisdiction to order production of this document from a third party. If the Respondent thought it was an important document, he was aware of other routes to try to obtain it. The Tribunal noted that there had been a request by Mr Blanpain for this document in May 2015, which had been refused by the Firm.

86. Mr Crossley commented that he was not sure of the relevance of the line of questions being put to him by Mr Blanpain about FY03, when billing figures in the Firm had been "inflated". Mr Crossley was invited to withdraw whilst the relevance was considered. The Chair noted that the first incident before the Tribunal related to events in 2007/8 and it was not clear why 2003 was relevant. Mr Blanpain told the Tribunal that the bill reversals (required after a number of bills had been "inflated") had had an impact on the profit per equity partner, with a re-adjustment in FY04. The profit per point per equity partner reduced to £2,200 per annum. The effect of this was that the Respondent, as one of the highest ranking partners, only had £57,000 profit that year. The drawings by partners had been much higher and it had taken the accountants until late 2005 to approve the FY04 accounts. In FY05 the profit per point per partner was £2,500 per annum. This was an improvement, but all of the equity partners had been drawing down on an expectation of £12,000 per point per annum. Mr Blanpain was asked about the relevance of this to the allegations.

Mr Blanpain told the Tribunal that it was decided that the money which had been drawn should be recorded in a deferred drawings account from 2007 for 5 years. Mr Blanpain submitted that, from that point, all of the equity partners had a negative balance on their accounts. Mr Crossley had told the Tribunal that only those partners with positive balances could make the HD capital call payments from their accounts with the Firm but, as at 2010, all partners owed money to the Firm. Mr Blanpain explained that he was questioning the accuracy of paragraph 4 of Mr Crossley's second witness statement. Mr Crossley withdrew from Court whilst submissions were made.

87. Mr Blanpain told the Tribunal that there was also an issue that because of the size of the bill reversals in FY03, the partners who had overbilled and then written off bills should have been liable to repay; this was a point the Respondent had made to the Board. Mr Blanpain submitted that there had been serious misconduct by those partners, but it was not reported to the SRA under Rule 20.6 of the 2007 Code. This scenario was part of the Respondent's argument that there had been an abuse of process. The Chair queried where this evidence would lead Mr Blanpain/the Respondent. Mr Blanpain told the Tribunal that as a member of the Board, the Respondent had had privileged information. The Respondent knew that the Firm had failed to report misconduct by some partners, and that this failure to report had been a mistake. Mr Blanpain told the Tribunal that in 2005/6 some 23 partners left the Firm, with lock-in agreements; this had not been reported because there had been related litigation. The Chair noted that the Applicant could now consider whether there had been wrongdoing by the Firm/any need to investigate (now that the Respondent's allegation had been aired) but asked Mr Blanpain what this had to do with the current proceedings. Mr Blanpain told the Tribunal that Mr Crossley had forced the Respondent out of the Firm and had then filed a complaint with the Applicant which was "built on sand"; the Respondent had been "framed and silenced". The Chair commented that the latter had not worked, as all of these issues were now coming out in public. The Chair asked Mr Blanpain how he was planning to use the information about bill reversals etc. Mr Blanpain told the Tribunal that he had questioned Mr Crossley about the values of the Firm, including consistency, and submitted that Mr Crossley had been inconsistent with regard to the Respondent. The Chair commented that what was to be considered were the allegations in these proceedings. The Chair queried whether Mr Blanpain was submitting that the case should be thrown out because Mr Crossley was an unreliable witness and/or the Applicant's case was tainted. No application was made at that point, or subsequently.

88. Mr Blanpain made a number of further submissions before the cross examination continued. Amongst other points, Mr Blanpain submitted that:

88.1 The Firm had spent a lot of money in order to get KPMG to report "partially" in the Report;

88.2 The Firm wanted to keep the valuable Brussels office, whilst driving a rift between the Respondent and his clients. In particular, the Firm had told clients that the Respondent had resigned because he had "tampered" with disbursements. Mr Lima of CRC had stated in his witness statement that he had believed the Firm when it told him the Firm owed his companies money. One of the Respondent's assistants, Mr Akritidis, had taken over contact with the CRC group; he had been the

Respondent's protégé. Mr Blanpain submitted that Mr Akritidis had wanted to take over as Managing Partner of the Brussels office;

88.3 The Firm had not disclosed the February 2010 report, prepared by Mr Crossley and others. The Chair queried whether Mr Blanpain believed that this report would deal with relevant issues, and whether he was seeking to apply for disclosure of that report. Mr Blanpain did not answer directly, but submitted that he wanted to continue questioning Mr Crossley on the basis that he was not revealing relevant information;

88.4 The allegations in the case were worthless;

88.5 The Respondent had referred in his second witness statement to an investigation he had carried out with Mrs McKenna of the Firm, having been given a list of 20-30 partners of the Firm who were to be investigated. One of the Firm's litigation partners had stated in an email of 14 May 2015 that there was no such list. However, the investigation which the Respondent and Mrs McKenna had carried out was referred to in the Board minutes of June 2006;

88.6 The Respondent wanted to understand why the Firm wanted to fire a partner who made as much money for the Firm as the Respondent did. Mr Blanpain submitted that Mr Crossley had "wanted to bring him down" and ruin his financial position;

88.7 This case was about the Respondent's reputation; he would lose credibility if it were reported that he was being investigated by a "big four" accountancy firm;

88.8 Mr Crossley had not thought the Respondent would challenge the way he was treated; the costs estimate for the litigation between the Respondent and the Firm was around £200,000.

89. Mr Blanpain's application was to continue questioning Mr Crossley along these lines.

90. In response, Mr Levey submitted that the Tribunal had heard a diverse set of serious allegations, which were not set out in the Respondent's witness statement(s). To some extent, these allegations were being made for the first time; they included dishonesty and misconduct alleged against Mr Crossley and others. These allegations were not supported by evidence in the documents, the Respondent's Answer or his Statements. The Tribunal and the parties had a duty to comply with the overriding objective of dealing with cases justly and proportionately. The costs of this case, both Mr Levey's fees and Ms Jackson's charges, would be a cost to the profession as a whole in the first instance. The case was being turned into a dispute between Mr Crossley and the Respondent. The Firm was a third party in the proceedings; it had an obligation to assist but it was not a party. Mr Crossley was a senior partner in the Firm and was giving up his time to assist the Tribunal. The questions put to him should be relevant. Mr Levey queried what the Respondent's case theory was.

91. Mr Levey submitted that the Applicant's case was straightforward; the Respondent had used the Firm's office account to pay personal expenses, some of which were then charged to clients. Taking Mr Blanpain's proposition at its highest i.e. that the Firm/Mr Crossley wanted to get rid of the Respondent, that did not assist the Respondent. The Respondent either had an explanation for "dipping into" the Firm's

funds to pay the HD cash call obligation etc. or he did not. Whether or not it was legitimate for the Respondent to bill his expenses to clients would not be resolved by considering the motivation of the Firm. Mr Levey submitted that Mr Blanpain should not be able to question Mr Crossley oppressively, in what was a fishing expedition including obfuscation and mud-slinging. Nothing that Mr Blanpain had submitted about the Firm's motivation would assist the Tribunal in determining the allegations. It was improper to allege that the Respondent was "set up" by Mr Crossley and/or KPMG, without any supporting evidence. The question the Tribunal would have to consider was whether the Respondent believed he was entitled to use the Firm's money as he did. Mr Levey asked the Tribunal to refuse permission to Mr Blanpain to continue his current line of questioning.

92. With regard to documents which had been discussed in the course of evidence, Mr Levey told the Tribunal that privilege was asserted with regard to the report in February 2010. There had been a long disclosure process, which had been concluded, and the Respondent had not complained about not having this document until this hearing. The Respondent could have made applications to the Tribunal or the High Court about this document; there had been a number of years in which this could have been resolved. The Respondent had been told in the course of various preliminary hearings that he could apply for a High Court summons. If this privileged document was relevant, the Respondent should have applied to the High Court for it. With regard to the CELs and covering letters the search had reached the end of the road; the Firm said it had searched and could not find them. Again, the Respondent could have made an application to the High Court if he had not been satisfied with this. Mr Levey submitted that in any event those documents were irrelevant unless the Respondent asserted that there was something in those letters which changed the position. Mr Levey was not aware that the Respondent had made any application for witness and/or document summonses; there was an onus on the Respondent to try to adduce the evidence from third parties which he asserted was relevant.

93. Mr Blanpain told the Tribunal that he wanted to continue questioning Mr Crossley in relation to overbilling in the Firm in 2003/4 and how the Firm had dealt with that. Mr Blanpain told the Tribunal that he had raised the issue of the February 2010 report in respect of which privilege was asserted. The Respondent's evidence and Answer indicated that there was a case that the Firm had "framed" him. Mr Blanpain submitted that the Applicant had been "manipulated" by the Firm and the KPMG Report was "built on sand".

94. The Chair indicated that the Tribunal would consider the application, on which it had heard submissions. The Clerk was asked to indicate to Mr Crossley that he could leave the Tribunal for the day, as it was by then about 4.40pm.

95. At about 4.55pm on Wednesday 10 June, the Tribunal resumed. The Chair commented that he was aware that Mr Crossley had been released for the day and that Mr Dougall had been asked to return on the morning of Thursday 11 June, having investigated whether the KPMG file was available and if it could be disclosed to the Tribunal and the parties. The Chair indicated that the Tribunal hoped to conclude Mr Dougall's evidence on 11 June. The Chair noted that Mr Blanpain had made an application to continue with a line of questioning to which Mr Levey objected. The

Chair indicated that the Tribunal would rule on that application, on which it had heard submissions from both parties, after Mr Dougall had concluded his evidence.

96. The Chair commented that it appeared that a further issue had been raised: whether, despite the history of this matter and the stage the case had reached, there should be further disclosure. The Chair noted that that application had not been fully heard but Mr Blanpain could consider whether or not to make such an application; the Tribunal would need to know what it was being asked to rule on. It was presently understood that any such application may encompass documents which were with a third party, in particular a report made to the Board of the Firm on 23 February 2010. Until now, the Firm had claimed legal professional privilege for that document. As a preliminary view, it appeared that the Tribunal did not have power to order disclosure by a third party. The Chair indicated that the Tribunal was aware of the correspondence on this issue. The Chair noted that the Respondent had earlier in the year appointed an English solicitor to obtain witness summonses/ summonses for the production of documents. The Chair was not aware whether such a step had in fact been taken. In any event, the Respondent would have to ask the Tribunal for a disclosure order, but if it related to documents where legal professional privilege was asserted the Tribunal may well not have power to order those documents to be produced. The Tribunal directed that Mr Dougall should return at 9.30am on 11 June to complete his evidence and deal with the Tribunal's request for his file; he should be able to say if it had been found and/or was available. The Tribunal would rule on the application concerning the line of questioning of Mr Crossley and would consider if there was an application for disclosure. It was hoped that Mr Crossley's evidence would be concluded on Thursday, but he may also be needed on Friday (12 June).

97. The Chair indicated that it appeared that it was unlikely the Tribunal would hear the Respondent's evidence before the weekend. It would be wrong to start that evidence and then have the matter part-heard until October, during which time the Respondent would be unable to discuss the case with Mr Blanpain. Mr Levey indicated that he did not expect to take very long with the Respondent in cross examination, as there was not much ground to cover. Mr Blanpain indicated that he would want to ask the Respondent questions in chief.

98. After the completion of Mr Dougall's evidence (at about 12.25pm on 11 June), Mr Blanpain submitted that he wanted to continue the line of questions he had raised with Mr Crossley concerning the Firm's position in 2003/4 and the issue that all partners had been overdrawn in 2010. Mr Blanpain submitted that Mr Crossley's evidence about this was not correct; he had said that the HD cash call could only be paid from a partner's ledger if it was in credit. Mr Blanpain submitted that as the Respondent knew about the 2003 issues, he was considered to be dangerous.

99. The Chair noted that the Tribunal had heard submissions on this the previous afternoon; the parties should summarise what they wanted to do and the Tribunal would give a decision.

100. Mr Blanpain submitted that he wanted to discuss the investigation by the Board against 25-30 partners concerning "fraudulent" invoices issued in FY03 and reversed in FY04, together with overstating work in progress ("WIP"), which was regarded as

part of the Firm's income. The fall in profits in 2005 led to a reduction in profits per equity partner.

101. The Chair queried why questioning Mr Crossley about 2003/4 was relevant to the issues in the Rule 8 Statement. Mr Blanpain told the Tribunal that the Respondent had not been responsible for the Firm's losses yet was held liable to repay those losses, whilst the income of other partners increased. The Chair queried how the declaration of profits and partners taking higher drawings than they were entitled to was relevant to the allegations. Mr Blanpain told the Tribunal that the Respondent had been told he could pay the HD capital call from his current account and it was now suggested that was only the case if the account was in credit; however, no partners had had a positive balance. The Chair noted that the Respondent had not paid the HD capital call from his own monies, or his partnership current account, but from the Firm's office account; he had accepted he should not have done so, had apologised and repaid the money. Mr Blanpain stated that Mr Crossley had said the current account could be used to pay the HD capital call if the current account was in credit; without the "fraudulent" practices in the Firm, the Respondent would not have had a negative balance. The Chair commented that this did not appear relevant as the payment was not from the Respondent's current account but from the Brussels General Account, which was a general office account. Mr Blanpain submitted that the allegation was that the Respondent had created an unauthorised current account. The Chair commented that the issue concerned unauthorised *payments* from the Firm's Brussels office ledger. Mr Blanpain submitted that Mr Crossley had said the transfer could be done if there was a positive balance on the Firm's books; Mr Blanpain wanted to challenge that. The Chair commented that the Respondent's drawings account had not been seen but the Tribunal had been told it was overdrawn. The capital call payments had come from the Brussels office account and the allegation was that the Respondent should not have used that money for his own purposes. The Chair commented that he could not yet see the link between transactions five years before and the HD capital call payments.

102. Mr Blanpain referred to paragraph 4 of Mr Crossley's second witness statement in which he had stated that none of the partners who paid their HD cash call from their current account had overdrawn current accounts, save that one who was overdrawn had introduced funds the following month to bring the account back into credit and another two went overdrawn after the capital call payments; the overdrawn amounts had been repaid shortly afterwards. The Chair noted that this passage referred to the partners' current accounts, not a general office account or, indeed, the partners' deferred drawings accounts.

103. Mr Blanpain submitted that the current account gave an overview of liabilities and rights as between an individual partner and the Firm. The Respondent had a current account which set out what he owed to the Firm or the Firm owed to him. Mr Blanpain submitted that the Partnership Deed said that this account could be used and that interest was payable by the partner if the account went overdrawn. Mr Crossley's position was that as the Respondent was overdrawn, he could not pay the capital call from his current account. Mr Blanpain submitted that but for what happened in 2003/4, the Respondent would not have been in a negative position.

104. The Chair commented that this appeared to underscore the concept that the Respondent was aware there was no money in his current account; it therefore appeared he had "raided" the office account. The Chair noted that this appeared to be an issue which was troubling the Respondent and queried whether it could be explored, on a limited basis, with regard to the proposition that the Respondent could not fund the capital call from his current account because of what had happened earlier. That would suggest there was a motivation to tell Ms TD to transfer the funds from office account; it could explain why the Respondent did it.

105. Mr Levey submitted that there was no evidential basis for these questions, even within the Respondent's witness statements; as a result, Mr Crossley had had no advance notice these issues would be raised. The Chair indicated that he would ask some questions himself about the Respondent's suggestion that his account was overdrawn because of activities in 2003/4 and the need to repay those obligations. Mr Levey again submitted that there was no evidential basis for such questions and they were not relevant to the issues. Mr Levey submitted that there should be a guillotine on the length of cross examination, perhaps at the end of the day; it was by this time about 12.40pm. Mr Blanpain had set out that the questions he had been asking related to the suggestion that the Respondent had been "framed". However, the Respondent did not dispute any of the facts in the case and his explanations for what he had done would be tested in the Respondent's evidence. The idea that Mr Crossley/the Firm had wanted to get rid of a high billing partner as a result of something which happened about seven years earlier was not credible. Mr Levey objected that Mr Blanpain had raised an allegation that the Respondent had been "framed" without specifying what he said had been done.

106. The Chair indicated that to deal with this area, he would put questions to Mr Crossley; Mr Blanpain could then indicate if any areas had not been covered.

107. The evidence of Mr Crossley then continued. Mr Crossley told the Tribunal that the Respondent did not have authority to borrow money from other partners. The Chair commented that he could not see how the line of questions would assist the Respondent; it underscored the Respondent's motivation for using the Firm's money, as he did not have the money in his current account.

108. The Tribunal noted that Mr Crossley had a commitment which meant he would need to leave the Tribunal at 4pm and that as he had a morning meeting he could try to reach the Tribunal at about 9.30am. The Chair directed Mr Blanpain to reflect on where the line of questioning of Mr Crossley was leading; he needed to focus on the allegations raised in the Rule 8 Statement.

109. When Mr Blanpain asked Mr Crossley about "Finance Partner Admin" (which had been referred to in Ms Doyle's email of 19 May 2009) the Chair asked Mr Blanpain if it was the Respondent's case that Ms TD was entitled to transfer money from the Firm's office account in Brussels to pay the HD capital call and/or whether his request to Ms TD had been interpreted incorrectly. Mr Blanpain told the Tribunal that the Respondent's instruction to Ms TD was to "deal with it", or words to that effect. Mr Levey submitted that the Respondent's case on this point was set out at paragraph 121 of his witness statement which stated that the Respondent had passed Ms Doyle's email to Ms TD at the Firm's accounts department in Brussels and asked her and/or

Ms NS "to make such payments from my current account properly registering the transactions". There may be submissions on the evidence concerning this point.

110. Mr Blanpain began to ask Mr Crossley about the codes/references on the various ledgers. The Chair asked Mr Blanpain about the relevance of these questions to the allegations. Mr Blanpain told the Tribunal that the general ledger could be retrieved by using "segregation codes". Mr Blanpain told the Tribunal that the so-called Tax Account and General Account could not exist. The Chair queried whether Mr Blanpain was suggesting that some of the documents exhibited to Mr Crossley's witness statement were fictitious. Mr Blanpain submitted that he was not suggesting they were fictitious, but that they had been misrepresented as "accounts". The codes on the ledgers were used to filter information and that the ledgers appended to Mr Crossley's first witness statement did not mention other movements on the ledger concerning the Respondent's drawings and/or tax. The Chair queried whether the Respondent's current account ledger was available in the papers. It appeared that Ms TD had told the Firm in about January 2010 that there were two particular ledgers, one for Tax and one General Ledger, which had been used by the Respondent to pay personal expenses. The Chair indicated that it was not clear where this line of cross examination was leading. Mr Blanpain submitted that the Respondent had done nothing which was unauthorised; not all of the movements on the ledger had been seen within the papers.

111. Mr Levey referred to the General Account ledger and queried if Mr Blanpain was saying that this was in fact the Respondent's own/partnership account. Mr Levey referred to paragraph 3.1 of the KPMG Report and submitted that the document headed "General Ledger" had always been understood to be a general office ledger. Mr Levey submitted that for it to be suggested now, years after the KPMG Report, that this document was not what it was understood to be was unacceptable and the point should be put to the witness.

112. Subsequently, during the cross examination, the Chair noted that Mr Blanpain appeared to be suggesting that the entries on the General Ledger were in fact movements on the Respondent's account and that from 2007 onwards the balance had not been reduced to zero because of the amounts debited to the ledger.

113. It was queried whether the Respondent had been paid after 12 March 2010. Mr Crossley told the Tribunal that he was but the Respondent's position appeared to be that he had not been paid anything from that date.

114. Mr Blanpain began to ask Mr Crossley about when the Respondent was given a copy of the KPMG Report. The Chair noted that the written evidence was that the Respondent did not get it until 2011, so there was no need to pursue this point in cross examination. The cross examination should be aimed at challenging points of evidence. The Chair noted that Mr Crossley would have been cross examined for 6 hours by the end of the Court day. This witness could not assist with the point about when the Report was provided to the Respondent by the Applicant. Mr Crossley commented that he would be able to stay until about 4.15pm if required, but it was noted that he may be required on 12 June as well. Mr Levey told the Tribunal that he had about 10-15 minutes of re-examination. Mr Levey noted that Mr Blanpain might want to reflect on his lines of questioning; whilst he would not

take all possible technical points about the challenges to Mr Crossley's evidence, it was important that Mr Blanpain should put to Mr Crossley any points on which he challenged Mr Crossley's witness statement. The Chair directed that the Tribunal would sit until about 4pm and then Mr Blanpain could reflect overnight; it would be hoped the evidence would be concluded on 12 June. (By this time it was approximately 3.45pm).

115. Having completed a particular line of questions, it was agreed that the Tribunal would rise for the day so that Mr Blanpain and Mr Levey could reflect on the issues which had been raised. Mr Crossley was released until the following morning (but remained on oath). He was asked to make enquiries to locate the resignation email from the Respondent on 12 March 2010 to which he had referred in his oral evidence. Mr Crossley also agreed to enquire about the Respondent's partnership current account, the details of which were held in Leeds. Mr Blanpain asked for that from the year 2000; Mr Crossley agreed to do what he could in the time available.

116. The hearing resumed about 10.05am on Friday 12 June. Mr Levey told the Tribunal that some additional documents had been located by Mr Crossley, in response to the Tribunal's request. Also, the Respondent had made a third statement, dated 11 June 2015, about which he would like to ask the Respondent. It was agreed that the latter should be placed into the hearing bundles.

117. Mr Levey told the Tribunal that there had been no discussion with Mr Crossley about the documents he had produced; he could be asked what they were in evidence. Mr Blanpain had been given copies of the three items. Mr Levey understood that the first document (12 pages) related to the UK based partnership current account transactions for the Respondent; the second was Mr Crossley's own current account statement (15 pages). Mr Levey told the Tribunal that he was not sure what the third document (2 pages) was, but it appeared to show a contrast between the Respondent's position and that of Mr Crossley; Mr Crossley could explain it in evidence. Mr Levey submitted that whilst there had been discussions on the previous day about the reasons the Respondent was overdrawn in his accounts with the Firm, it appeared to be common ground that the Respondent was overdrawn. Mr Blanpain asked the Tribunal for some time to consider the documents he had received and the Tribunal agreed to this (at about 10.15am).

118. The hearing resumed about 10.30am, with Mr Crossley giving evidence. Mr Levey suggested that he should examine in chief on the new documents which had been called for by the Tribunal; the Tribunal agreed to this course of action. The documents had been produced in response to questions raised in the hearing, so Mr Levey should have the chance to examine in chief on them; Mr Blanpain could then cross examine on these items. Mr Blanpain submitted that he wanted an explanation why other documents had not been produced, including the Respondent's email resignation of 12 March 2010 to which Mr Crossley had referred.

119. In the course of his evidence, Mr Crossley told the Tribunal that the Respondent had not paid all of the instalments of money due under the settlement agreement (in the litigation between the Firm and the Respondent). Mr Blanpain commented that the Firm had not complied with its obligations either. The Chair noted that that was a matter for somewhere else, not this hearing.

120. There was some discussion/debate during the evidence on the partnership current accounts about what "positive" and "negative" meant. The conclusion appeared to be that a "positive" balance meant that a partner owed money to the Firm, whereas a negative balance meant the Firm owed money to the partner. In this regard, Mr Crossley asked the Tribunal to respect the confidentiality of his personal financial information in the Judgment. Mr Crossley's evidence was that at the relevant times the Respondent owed tens of thousands of pounds to the Firm; his current account showed a positive balance, i.e. he owed money to the Firm. Mr Levey submitted that if the Respondent's position was that the Respondent was in credit (i.e. the Firm owed him money), that should be put to Mr Crossley. Mr Blanpain told the Tribunal that he accepted what Mr Crossley said about these documents, but the Respondent's position was that overdrawings by all partners (from 2003) meant that all partners were overdrawn.

121. In the course of cross examining Mr Crossley about Ms Doyle's email of 19 May 2009, set out at paragraph 268, which indicated a requirement to deal with payments from the current account through the Leeds office, Mr Blanpain stated that he had asked for disclosure of the correspondence between the Respondent and Ms TD. The Chair noted that it appeared to be the Respondent's case that the Respondent received Ms Doyle's email; Mr Crossley had given evidence about what he understood to have happened then. The Respondent said he had asked Ms TD "to deal" with the issue. The Chair noted that Mr Crossley did not agree with the Respondent's interpretation of Ms Doyle's email. One of the issues for the Tribunal to consider was if the Respondent asked Ms TD to "deal with it" and she dealt with the request wrongly; the Tribunal would have to consider if it believed the Respondent on this. Mr Levey agreed that Mr Crossley's evidence was relevant to his understanding of the email. Mr Levey submitted that Mr Crossley had given evidence that "Finance Partner Admin" was an email address; if the Respondent did not accept this, the point should be put to Mr Crossley.

122. The Chair commented that Mr Crossley had given evidence about the circumstances of the transfers for the HD capital call; his evidence on this was clear. The Tribunal would in due course hear from the Respondent. So far as was known, Ms TD was not being called as a witness. Mr Blanpain told the Tribunal that he had already challenged Mr Crossley's position on whether or not a "loan" was offered in the email from Ms Doyle. The Chair noted that Mr Crossley's evidence was to the effect that it was incredible that the Respondent had interpreted Ms Doyle's email in the way he said. On two occasions, the Brussels office bank account was used to pay the capital call for the Respondent; once to the HD account, and once to the Respondent's personal bank account.

123. Mr Blanpain told the Tribunal that he would deal with the issues he had prepared overnight, dealing with challenges to Mr Crossley's evidence.

124. Mr Blanpain asked Mr Crossley about the overseas offices review (as set out in an internal report of the Firm dated December 2009). The Chair queried the relevance of this to the allegations in the Rule 8 Statement. The Tribunal had already noted that the Respondent disagreed with the approach being taken about "reining in" the overseas offices.

125. Mr Blanpain asked Mr Crossley about the "unauthorised accounts" and challenged the evidence that there had been two unauthorised accounts. The Chair commented that the Tribunal's understanding was that Mr Crossley had said he was unaware that the General Account ledger was being used for personal payments. Mr Crossley had accepted that the use of a general account was normal, on a temporary basis, but it was not an account which should be used for personal expenditure. The title given to it did not appear to be relevant.

126. Mr Blanpain put to Mr Crossley that the Respondent would not have been overdrawn (on his current account) if the Firm had made those partners responsible for the overbilling/bill reversals in 2003/4 responsible for paying monies back to the Firm. The Chair noted that this may be a point for submissions. Mr Crossley repeated (as he had already stated in his evidence) that the Respondent was overdrawn. Mr Levey submitted that he did not require Mr Blanpain to challenge every paragraph of Mr Crossley's statement. Mr Blanpain was an experienced advocate and should put the important issues which he challenged on behalf of the Respondent. Mr Levey noted that the question about the reasons for the account being overdrawn appeared to be based on the premise that the account was overdrawn; thus, the Respondent's case appeared to be that he accepted his current account was overdrawn.

127. The Chair asked Mr Blanpain how many more points he had to put to Mr Crossley. Mr Blanpain told the Tribunal that he had about thirty, but he could go quite quickly. The Chair commented that he appeared to be going over old ground. It may be that Mr Blanpain was inexperienced in this Tribunal and he may have misunderstood Mr Levey's attempt to be helpful, when he had pointed out that he must challenge the aspects of Mr Crossley's evidence with which the Respondent disagreed. It was not necessary for Mr Blanpain to give the Respondent's explanation – at this stage – but should challenge on the fundamental issues. It caused the Tribunal concern where one was told that there were another thirty questions at this stage. It was suggested that there should be a break for Mr Blanpain to take instructions. Mr Levey indicated that he would take about 5 to 10 minutes in re-examination. Mr Levey told the Tribunal that with regard to the "Finance Partner Admin" issue, Mr Blanpain could take instructions on whether it was agreed that this was an email address; the Applicant needed to understand the Respondent's case.

128. Thereafter, Mr Blanpain put various criticisms to Mr Crossley, including that the KPMG Report was false and that this had led to an abuse of process. The Chair queried whether Mr Blanpain may be leading up to an application for abuse of process. Mr Levey submitted that if any application were made on this, it would be misconceived. However, Mr Blanpain could make the application if he wished to do so. No such application was made in June 2015.

129. After Mr Crossley had been re-examined by Mr Levey, Mr Blanpain told the Tribunal that he wanted to ask Mr Crossley some questions arising from the re-examination. The Chair told the parties it was not appropriate to ask questions arising from re-examination. The parties could, however, ask questions arising from the questions put by the Tribunal. Mr Blanpain submitted that Mr Levey had asked questions about the Respondent's new statement. The Chair commented that it was the Respondent who introduced it. The Chair commented that the Tribunal wanted a fair hearing and the parties had the opportunity to ask relevant questions. Mr Blanpain indicated that

he wanted to ask if Mr Crossley could comment on the Respondent's time sheets. Mr Levey submitted that the point was that the explanation about being in Israel on 2 February 2010 had not been raised with Mr Crossley before now. The Chair observed that Mr Crossley had not previously been taken to the timesheets for that period (early February 2010).

130. The Chair asked Mr Blanpain if the Respondent had tried to call Ms TD to give evidence and, if so, whether she had said she could not be called as she was "gagged". Mr Blanpain told the Tribunal that she had not been approached to give evidence, so far as he knew.

Further conduct of the hearing

131. After Mr Crossley's evidence was concluded (approximately 12.50pm on 12 June), Mr Levey told the Tribunal that he could not say if the Applicant's case was closed, although he appreciated he would need permission to put in any new material. The witness statements of Ms Doyle and Mr Lima were put into evidence; the Applicant relied on these, but was not calling either of them to give evidence. The Chair noted that in the case of the witness statements, the Tribunal would have to consider what weight to give to them as the makers of the statements were not going to be cross examined. Mr Blanpain would be able to make submissions on the areas of challenge to the evidence of Mr Lima and/or Ms Doyle. Mr Levey told the Tribunal that as a result of an issue which had come out in the last few days he may want to put in extra evidence and was aware that he would need to apply in good time to do so. The Chair noted this position and that if the application were to be made in October, Mr Blanpain may object. If Mr Blanpain were notified of the subject matter, he may be able to make enquiries of witnesses in advance.

132. Mr Levey submitted that with regard to the weight to be attached to Mr Lima and Ms Doyle's evidence, Mr Blanpain would need to explain in what way the Respondent was disadvantaged by those witnesses not being present for cross examination by indicating the issues he would have raised with them. It was noted that the statements of these witnesses was not agreed. Mr Blanpain commented that Ms Doyle may be able to attend court in October. Mr Levey told the Tribunal that Mr Lima had indicated by email that he did not wish to assist further with the proceedings.

133. The Chair noted that the hearing would be adjourned until 13 October 2015 and asked Mr Blanpain how long he expected to examine the Respondent in chief. The Chair indicated that the usual procedure was for the statement to be confirmed, with a few supplementary questions only, but noted that Mr Crossley had been examined in chief for about 2 hours. Mr Blanpain told the Tribunal that he expected to be about 2 hours in chief with the Respondent. Mr Levey indicated that, based on what he now knew, he would take about a day with the Respondent. It was noted that the Respondent was the only "live" witness for the Respondent. From what the Tribunal had been told, the Respondent's evidence should be concluded in 2 days, perhaps with the third day for submissions. The Tribunal identified three further dates, 27-29 October, to continue the hearing if necessary. The parties indicated that these dates were available.

134. Mr Levey told the Tribunal that the Applicant would ask for permission to make closing submissions, given that there would have been a long adjournment. Mr Blanpain would, of course, have the last word. The Chair indicated that, given the gap, that might be helpful. The Chair confirmed to Mr Blanpain that he would have the chance to address the Tribunal after all the evidence and any submissions from the Applicant; written submissions would not be needed. The hearing was then adjourned to 13 October 2015.

Belgian Court Proceedings

135. On the morning of 13 October 2015, Mr Levey asked the Tribunal to admit into the trial bundle a copy of a court document from Brussels, with an "informal" translation, which indicated that the Respondent had issued court proceedings in Brussels against the Firm and KPMG, in which it appeared reference was made to the evidence given by Mr Crossley and Mr Dougall in these proceedings in June 2015. Mr Blanpain had no objection to those documents being admitted, and the Tribunal gave permission for these documents to be inserted into the bundle such that the Respondent could be asked questions about them.

Respondent's Statement dated 8 October 2015

136. After the Applicant's case was closed, Mr Blanpain for the Respondent made an application to admit the Respondent's third supplementary witness statement, dated 8 October 2015. This statement dealt with what was referred to in the proceedings as the "Expenses 213 claim".

137. Mr Levey for the Applicant told the Tribunal that the Applicant had no formal objection to the introduction of this statement, which purported to deal with matters in the Rule 8 Statement which the Respondent had not addressed in his Answer or the previous three witness statements. Mr Levey reminded the Tribunal that when he opened the case, on 8 and 9 June 2015, he had drawn attention to the fact that the Respondent had not dealt with the Expenses 213 claim in his Answer or statements. This latest statement was woefully late, having been provided some four months after the case was opened. Mr Levey submitted that the Tribunal should draw adverse inferences from the fact that the statement was so late.

138. In response to a question from the Chair, Mr Blanpain told the Tribunal that the statement was late due to an oversight by both the Respondent and Mr Blanpain.

139. The Tribunal gave permission for the Respondent's statement dated 8 October 2015 to be introduced into evidence, there being no formal objection from the Applicant to the introduction of this material.

Application against the Applicant for abusive process

140. The Tribunal had received a document on behalf of the Respondent headed "Application against the Applicant for abusive process" dated 11 October 2015. This document set out issues concerning the Applicant's investigation of the case against the Respondent and the submission that these proceedings were illegitimate and totally disproportionate.

141. The Chair asked Mr Blanpain if he intended to make an application for a determination of whether the proceedings were abusive/an abuse of process at this stage (i.e. the morning of 13 October 2015). Mr Blanpain submitted that the application should be placed into the hearing bundle so that the points raised could be addressed in submissions. Mr Blanpain submitted that the Applicant had indicated that these proceedings were about setting a precedent rather than protecting the public, but those submissions could wait until the end of the proceedings and form part of the overall submissions in the case.

142. Mr Levey submitted that the Applicant's position was that it was not open to the Respondent to seek to strike out the proceedings as an abuse of process in the middle of the substantive hearing. The Respondent could make closing submissions including points made in the application document, but it should not be treated as an application to strike out the proceedings. One application which could be made at this stage was an application that there was no case to answer. However, such applications should rarely be entertained and if such an application were made now, the Respondent would not ordinarily have the chance to make closing submissions. Mr Blanpain's document did not appear to include an argument that there was no case to answer on the facts of the case. Mr Levey submitted that an application for abuse of process at this stage was a timewasting tactic.

143. Mr Blanpain confirmed that he was content for his submissions on abuse of process to be considered at the end of the case.

144. The Tribunal considered how to proceed and directed that although the document was headed as an Application, it would be considered as part of the Respondent's closing submissions in the case.

Emails re "Finance Partner Admin"

145. During the cross examination of the Respondent, during the morning of 14 October 2015, Mr Levey made an application to introduce a clip of 41 pages of emails, mostly from 2008, which included the Respondent and "Finance Partner Admin" as parties to the email exchanges. The Respondent withdrew from the court room whilst the application was made.

146. Mr Levey told the Tribunal that he had asked the Firm to carry out a search overnight on 13 October 2015 to identify any emails between these email addresses. These documents had been requested arising from the evidence of Mr Crossley in June 2015 and particularly evidence given by the Respondent on 13 October. Mr Crossley had told the Tribunal that "Finance Partner Admin" was an email account. In his evidence on 13 October 2015, the Respondent had suggested that this account was created in about June 2009 and that he had had no dealings with that account until about July 2009. As a result, Mr Levey had asked the Firm to look for any emails before that date; this clip of emails showed that the Respondent had exchanged emails with "Finance Partner Admin" before June 2009.

147. Mr Levey submitted that, at this stage, the issue to be considered was whether the documents were admissible in evidence; the weight to be attached to them was a separate issue. On the face of these documents, the Respondent's evidence that he

had no dealings with "Finance Partner Admin" until about June/July 2009 was incorrect. These documents went to the credibility of the Respondent, as the documents appeared to show that the Respondent was aware that "Finance Partner Admin" was an email account. Also, the Respondent's case concerning the HD capital call payments appeared to be that he had asked Ms TD to deal with it; however, the email from Ms Doyle giving instructions about use of the partner's current accounts stated that the request was to be sent to "Finance Partner Admin", and that was not done.

148. Mr Levey submitted that until 13 October the Applicant did not know that the Respondent would give evidence that he did not know "Finance Partner Admin" was an email address and/or that he believed it was created during 2009. Mr Levey submitted that this clip of documents was clearly disclosable, when it came into the Applicant's possession, and was relevant.

149. Mr Levey submitted that he expected that Mr Blanpain would complain that the Firm had not given disclosure of some documents which the Respondent wanted but had produced these documents at short notice. Mr Levey submitted that the Applicant had given substantial disclosure and the Respondent had not applied to the High Court for production of other documents. Mr Levey submitted that it would be an injustice not to allow these documents to be put to the Respondent. The Respondent may have an explanation for these documents, but that was a matter for evidence and was not an issue about admissibility. Mr Levey submitted that, if admitted, the Respondent should have time to read the documents before being asked questions about them.

150. Mr Blanpain submitted that there was inequality of arms in these proceedings. The Applicant had consistently stated that the Firm was a third party, which could not be compelled to produce documents, but overnight the Firm had been able to produce a bundle of documents, when the matter of "Finance Partner Admin" had been raised by Mr Crossley in June. Mr Blanpain told the Tribunal that he had asked for witnesses including Ms Doyle and Ms TD to attend but the Applicant had not produced these witnesses. Also, the Applicant had paid about £25,000 to the Firm for documents. The Firm had refused disclosure and produced some documents late. Mr Blanpain told the Tribunal that he objected to the late addition of these documents when the Applicant had failed to produce items such as the client engagement letters on the relevant client matters. Mr Blanpain submitted that none of the documents in the clip showed that the Respondent had incepted any emails to "Finance Partner Admin".

151. The Chair indicated that the Tribunal would consider whether the documents should be admitted. The Respondent could be informed that there was a break in the hearing, but the contents of the documents could not be discussed with him at this stage. If the Tribunal agreed to admit the documents, the Respondent would be given time to read them before his evidence resumed. The Tribunal then rose, at about 11.20am to consider the application. The hearing resumed at about 11.55am.

152. The Chair announced the decision of the Tribunal in relation to the application made by Mr Levey, on the seventh day of the hearing, to admit into evidence a clip of emails, which included emails to and from the Respondent.

153. The Tribunal had not been told in the submissions of the parties that these documents fell within any of the specific categories of documents requested by the Respondent as part of the disclosure request. In any event, the parties had reached agreement about which documents requested by the Respondent would be disclosed and the Respondent had not pursued the production of any documents by making appropriate applications to the High Court. The Tribunal did not have the power to order a third party, such as the Firm, to produce documents; it could only make orders for disclosure concerning documents in the possession or control of the Applicant. The clip of documents did not appear to contain any items within a category requested by the Respondent; neither party had submitted that it did.

154. At a CMH on 6 May 2015 the Tribunal had not made any order for disclosure, but had indicated that the Applicant should endeavour to produce further documents which came into its possession. This clip of documents had come into the Applicant's possession in October 2015 and the documents then became disclosable.

155. Mr Levey had submitted that the Respondent's credibility as a witness was an important issue in this case, and he wished to put these documents to the Respondent in order to challenge the Respondent's evidence. Mr Blanpain had submitted that the Respondent was not able to fight on an equal footing with the Applicant. In particular, Mr Blanpain had drawn attention to the fact that the Applicant could call on the resources of the Firm to assist the Applicant if there was a need to support the Applicant's case.

156. The Tribunal concluded that, having taken into account the submissions of the parties, there was no disadvantage to the Respondent in allowing this clip of documents to be put to the Respondent. The Respondent would have the opportunity to consider the documents and to give his explanation in response to Mr Levey's questions. As the Respondent's credibility was an issue it was appropriate to allow the Respondent to explain what those documents meant to him at the time. The documents would be allowed into evidence. As he was in the course of giving evidence, Mr Blanpain was not permitted to give the Respondent advice about the documents but the Respondent should have some time to read and consider them. The Tribunal then rose at about 12 noon for the Respondent to be given the documents to read.

Application to introduce the fourth witness statement of Peter Crossley

157. Towards the end of the hearing day on 14 October 2015, Mr Levey made an application to introduce the fourth witness statement of Mr Crossley. This dealt with Mr Crossley's knowledge of the repayment of the Zermatt ski holiday costs and had been prepared arising from some evidence given by the Respondent. The issue of what Mr Crossley knew about repayment of those costs and when he knew had not been put to Mr Crossley when he gave evidence in June. Mr Levey told the Tribunal that Mr Crossley was in London and could attend to give evidence on the morning of 15 October; Mr Levey asked for him to be interposed to deal with this short issue. Mr Levey told the Tribunal that he would have no objection to Mr Blanpain discussing this statement with the Respondent.

158. Mr Blanpain told the Tribunal that he objected to this statement being put into evidence, as he had understood the Applicant's case had been closed. The Tribunal directed that Mr Blanpain could take instructions from the Respondent on this point, although the Respondent's evidence was not complete, and could then make submissions.

159. Having taken instructions, Mr Blanpain submitted that the Respondent objected to the introduction of the statement. The Applicant had closed its case. Mr Blanpain submitted that the clip of documents introduced in the morning fell within category 45 of the disclosure categories requested by the Respondent and now the Applicant was seeking to introduce a further statement at short notice. Mr Blanpain submitted that there had been unfairness throughout the case. There was no need for this statement to be admitted. If it were introduced, Mr Blanpain expected he would need to cross examine Mr Crossley for one to one and a half hours. Mr Blanpain confirmed that one of his concerns was that it appeared the Applicant and the Firm were working closely together and were selective in the information provided.

160. After considering the submissions of the parties, the Chair announced the Tribunal's decision.

161. The Tribunal noted that this was an application to introduce a further statement by Mr Crossley, to deal with matters which had arisen in the course in the cross examination of the Respondent. There was a conflict between the evidence of Mr Crossley and that of the Respondent on a particular point and Mr Levey had been given instructions to recall Mr Crossley, if permitted to do so by the Tribunal.

162. The Tribunal determined that in fairness to both parties, the statement should be admitted. Mr Blanpain would be able to cross examine Mr Crossley on the issues covered in that statement, but not more widely. The Tribunal had weighed up whether there was any prejudice to the Respondent, having noted that the Applicant's case had been closed and the Respondent's submission that the Firm and the Applicant worked together against the Respondent when it suited them to do so. It appeared to the Tribunal that these issues arose from a dispute between the Respondent and Mr Crossley rather than being linked directly to the proceedings. However, the need for the statement arose from oral evidence given by the Respondent and not from evidence in his witness statements and so could not have been predicted to be an issue.

163. The Tribunal gave permission to the Respondent and Mr Blanpain to discuss Mr Crossley's statement overnight and directed that Mr Crossley would be interposed. This would give the Respondent the opportunity to address any points made by Mr Crossley in his evidence.

Application re scope of evidence of Mr Crossley

164. On the morning of 15 October, before Mr Crossley was recalled, Mr Levey raised with the Tribunal an issue concerning the scope of the evidence to be given by Mr Crossley on this occasion. The fourth witness statement was limited in scope. However, in the course of the Respondent's evidence he had suggested that there was a conspiracy involving Mr Crossley and others on the Firm's board to get rid of the

Respondent, and to appoint KPMG in order to obtain material to do that. Mr Levey noted that Mr Blanpain may make submissions that there was such a conspiracy. If the Respondent's position on this had been known in advance, the Firm may have considered whether it wanted to assert legal professional and/or litigation privilege in respect of the report by Mr Crossley to the Firm's board in February 2010. In any event, the "conspiracy theory" had not been put to Mr Crossley when he had given evidence in June; rather, the Respondent had sought to raise this new issue after the Applicant had closed its case. It may be that the Applicant would have wanted to call Mr Hearn to give evidence if it had been clear what the Respondent would say about the note of the meeting of 12 March 2010 (i.e. that it was inaccurate). Mr Levey submitted that Mr Crossley should be given the chance to rebut the suggestion of a conspiracy. A serious allegation had been made against Mr Crossley and he should have the chance to address what was said about him in open court.

165. In response, Mr Blanpain submitted that the "conspiracy theory" had been flagged in the course of some of the CMHs in these proceedings. Further, Mr Levey had asked for the documents about the Belgian proceedings to be placed into the hearing bundle and these documents gave full details of what was alleged; Mr Blanpain expressed surprise that the Applicant had learned so recently of the Belgian proceedings and the allegations made in that case. The Chair enquired whether there was reference to a conspiracy in the Belgian proceedings. Mr Blanpain referred the Tribunal to page 5 of 8 of the English translation of the summons, which included:

> "Whereas, as a result of the machinations and collusion of the parties summoned, my plaintiff lost his law practice and wrongfully had his reputation amongst his clients tarnished…"

The Chair noted that this passage did not contain any specific examples of when or how the alleged conspiracy was created. Mr Blanpain further referred to the second page of the English translation which included:

> "At the meeting of the board of directors of the party summoned of 24 February 2010, a memorandum contemplating the possibility of launching a disciplinary procedure was discussed".

The Chair commented that that passage did not suggest collusion or conspiracy. Mr Blanpain then referred to paragraphs 87 to 90 of the Respondent's witness statement. It was noted that this section dealt with the KPMG Report. Subsequently, Mr Blanpain also referred to paragraph 90 of the Respondent's witness statement, which stated,

> "The KPMG Report has (sic) been drafted following instructions by [the Firm] to KPMG in the course of preparations by [the Firm] to sever partnership ties with me at the beginning of 2010…"

and to a reference in submissions made at the CMH on 17 December 2014 to the Respondent being "framed" by the Firm.

166. Mr Blanpain confirmed to the Tribunal that it was part of the Respondent's case that Mr Crossley, Mr Hearn, Mr West and Mr Hull conspired together, before calling in KPMG, having already decided that the Respondent had to leave and had then instructed KPMG to find evidence against the Respondent. Mr Blanpain submitted that he had already put these points to Mr Crossley in June, whereas Mr Levey submitted these points had not been put. Mr Blanpain told the Tribunal that during Mr Crossley's examination in chief, on the morning of 10 June 2015, he had been asked by Mr Levey if there had been a conspiracy between the Firm and KPMG to do a "hatchet job" on the Respondent, to which Mr Crossley had replied that the Firm would have a clean bill of health. Mr Blanpain referred the Tribunal to part of the Respondent's letter to the Applicant's investigating officer, Mr Esney, dated 9 December 2011, which used a similar phrase to that set out above, about severing partnership ties. Mr Blanpain submitted that the "mission to kill" submission was not a new idea.

167. The Tribunal considered the submissions of the parties, and briefly reviewed its own notes of the evidence of Mr Crossley. The Chair announced the Tribunal's decision on whether Mr Crossley's evidence on this occasion could go beyond the issues set out in his fourth witness statement.

168. The Tribunal noted that Mr Levey, in examination in chief, had suggested to Mr Crossley that it may be put to him (Mr Crossley) that the situation had been a "set up" or a "hatchet job", and Mr Crossley had denied that. Mr Crossley had given evidence about a review by the Firm of its overseas offices and that there was no conspiracy to get rid of the Respondent. It therefore appeared to the Tribunal that this issue had been visited in the course of the evidence in June. However, it was in the interests of justice that the question of whether there was a conspiracy in 2010 should be put, squarely, to Mr Crossley and he could be cross examined on this point. The Chair indicated to the parties that the Tribunal would not allow a complete revisitation of Mr Crossley's evidence, and it may impose a guillotine on the lines of questioning. The key point to put to Mr Crossley was whether at a meeting or through other communication there had been a conspiracy to remove the Respondent by appointing KPMG to do a "hatchet job". Mr Crossley would also be asked about the matters in his fourth witness statement.

Directions for the resumed hearing on 27 to 29 October 2015

169. The Respondent's evidence was concluded at about 4pm on Thursday 15 October 2015. The Tribunal considered the management of the further hearing dates which had been set aside, from 27 to 29 October 2015. Due to the lateness of the hour, and the desirability of the parties having time to reflect before making submissions, the Tribunal indicated that it would invite the parties to make written submissions on the allegations. The date by which this could be done was discussed. The Tribunal indicated that the Tribunal would meet on 27 October to review the evidence and the written submissions. The parties should not attend until the afternoon, at which point each could make oral submissions, limited to one hour for each party. It was envisaged that such submissions would concentrate on addressing points raised by the other party's written submissions or which may have been omitted.

170. The Tribunal told the parties that it was a matter for each party to decide what to cover in the written submissions, and in what form, but it would be helpful for the Tribunal if the submissions could address the following issues:

- The standard of proof to be used in this case and the test for dishonesty which should be applied;
- How the Tribunal should deal with the pre-31 March 2009 matter (Santo Domingo);
- The credibility of the witnesses and in particular any inconsistencies between the witnesses or over time;
- Any key documents to which the Tribunal should refer;
- The weight to be attached to the written statements accepted by the Tribunal, where it was noted that the evidence of Mr Lima and Ms Doyle was challenged by the Respondent but the evidence of Mr Tallon and Mme Roulez was not challenged by the Applicant.
- The six particular factual matters raised by the Applicant, namely;
  (i) Santo Domingo (2007/8)
  (ii) Greece trip August 2009
  (iii) Zermatt (Christmas/New Year 2009/10)
  (iv) The "Expenses 213 " matter
  (v) The HD cash call and
  (vi) Company formation costs.

The parties should, of course, also cover any other points they considered important.

171. The Tribunal directed as follows:

(i) Each party shall, by 12 noon on Friday 23 October 2015 file and serve on the other party their written closing submissions dealing with relevant matters including those identified by the Tribunal as above;

(ii) The Tribunal would convene on the morning of Tuesday 27 October 2015 to begin consideration of the facts and the written submissions;

(iii) The parties should attend from 2.30pm on Tuesday 27 October 2015 to make oral submissions, limited to one hour for each party.

Respondent's allegation against KPMG

172. In the course of the Respondent's closing submissions, on the afternoon of 27 October 2015, Mr Blanpain submitted that the KPMG interim report, which bore the date 11 March 2010 and which had been produced to the Tribunal during the hearing in June 2015 had been back-dated and was therefore a false document. The Chair queried on what evidence that submission was based.

173. Mr Blanpain submitted that the client engagement letter between the Firm and KPMG dated 1 March 2010 referred to the provision of a "brief bullet point report" at the conclusion of Phase 1 of the project. However, the interim report produced to the Tribunal was a 26-page document. Also, correspondence introduced during the hearing in June showed that reports by KPMG had to be quality checked; Mr Blanpain submitted that it was not possible for this report to have been written and checked between the end of Mr Dougall's visit to the Brussels office on 4 or 5 March 2010 and 11 March 2010. Also, Mr Dougall had commented on the Expenses 213 matters in the interim report, but this issue was part of Phase 2 of the project and so had not been investigated by 11 March 2010. Mr Blanpain submitted that he had asked Mr Dougall in evidence why he had not discussed the Expenses 213 matter with the Respondent, and Mr Dougall had replied that that matter came into Phase 2 (by which time the Respondent had left the Firm). Also, the interim report at paragraph 4.84 referred to a discussion with Ms NS. Ms TD had left the Firm by the time Phase 2 took place and Mr Blanpain submitted that this indicated that the discussion was part of Phase 2 as otherwise Mr Dougall would have discussed matters with Ms TD. Mr Blanpain submitted that Mr Dougall's evidence on the afternoon of 9 June 2015 was that he had discussed the Expenses 213 matters with Ms NS because Ms TD had left the Firm by that point, i.e. when he returned to Brussels on or about 24 March 2010.

174. The Chair indicated that it would be of assistance if the Applicant could make enquiries of the Firm to find out when, how and in what form the interim report had been sent to the Firm. Mr Levey submitted that he objected to the allegation against KPMG, of falsifying a document, being entertained by the Tribunal; it had not been put to Mr Dougall that he had falsified this document and it was not in the Respondent's written submissions.

175. Mr Blanpain submitted that the point was covered at paragraphs 54 and 58/59 of his written submissions which read, respectively:

> "Mr Dougall was challenged respecting the alleged second meeting and asked why he did not enquire with [the Respondent] respecting the receipts for expense note 213"

and

> "The interim report dated June (sic) 11 2010 mentions at para 4.94 under the heading expense claim 213 the following:
>
>> "We understand from [Ms NS] that [the Respondent] has no receipts to explain these entries so would again simply review the entries on the General Account and allocate an amount to clients"
>
> It follows from this inconsistency that Mr Dougall has antedated the KPMG interim report which means that he cannot be a credible witness"

176. Mr Blanpain submitted that Mr Dougall had referred in the interim report to timesheets, but these documents were marked (as annexes to the KPMG Report in June 2010) as being printed on 25 March 2010 i.e. after the date of the interim report.

It was from these documents that Mr Dougall had concluded that the Respondent had undertaken 12.4 hours of work whilst in Greece in August 2009. Mr Blanpain submitted that Mr Dougall had given evidence that he had not looked at the timesheets which had been produced on disclosure, or at the LBGs, so the source of his information must be these items, printed on 25 March 2010.

177. The Chair noted that it had not been put to Mr Dougall that he had back-dated the interim report, and that this point may need to be put to him so he could answer it.

178. Mr Levey submitted that the interim report was not a fundamental document; the Applicant did not rely on it and, indeed, it had only been introduced into the proceedings at the request of the Tribunal. There was, in practice, little dispute about the number of hours the Respondent had worked during August 2009. Mr Levey submitted that there was no need for Mr Dougall to be recalled. It had not been put to Mr Dougall in June that he had falsified the interim report and the allegation had been made only after the evidence had closed. There had been no application by the Respondent to recall Mr Dougall and in any event this issue did not go to credibility.

179. Mr Blanpain submitted that, in addition to the two matters set out above, there were other points which went to Mr Dougall's credibility as a witness. Mr Blanpain submitted that there was evidence that Mr Dougall had used the notes of the meeting which took place on 12 March 2010 in the document which appeared to be dated 11 March 2010. Mr Blanpain submitted that what were set out in the interim report as the Respondent's explanations to Mr Dougall about certain matters had not been discussed between the Respondent and Mr Dougall; those sections were derived from Mr Hearn's notes of the 12 March 2010 meeting.

180. Mr Levey submitted that even if the interim report had been backdated – which was not accepted by the Applicant – it did not go to whether the case had been made out on the evidence. This issue was not relevant to whether there had been any abuse of process. Even if Mr Dougall had been lying about the date of the interim report when he gave evidence, it would not affect the evidence in support of the allegations. Mr Levey expressed surprise that the Tribunal appeared willing even to entertain the suggestion that Mr Dougall had falsified a document.

The Tribunal's Initial Indication

181. After rising briefly to consider the position, the Chair told the parties (at about 5.20pm) how the Tribunal wished to proceed.

182. The Chair noted that the Tribunal had read the written submissions of the parties, but the import of today's submission had not been set out in a way which made it clear that the credibility and integrity of a professional person, who was a witness for the Applicant, was being questioned. This was a very serious allegation for the Respondent to make at this stage in the proceedings. The Chair informed the Respondent that if the Tribunal determined that the allegation that Mr Dougall had lied was not made out, it could rebound on the Respondent when the Tribunal considered his conduct of these proceedings. The Tribunal was not directing the Respondent to withdraw the allegation, but it was a serious allegation that a partner in

an international accountancy firm had doctored a report which had been introduced into the proceedings.

183. Mr Blanpain had referred to two examples which, he said, indicated that the interim report had been backdated. Mr Levey had submitted that this point did not go to any fundamental issues in the case. Before making any decision on how to proceed, the Tribunal wanted to understand exactly what it was that Mr Blanpain relied on in support of the allegation. Mr Levey would then have the opportunity to respond. The Chair reminded the parties that if the submission by Mr Blanpain was without merit, this may have an impact on the credibility of the Respondent or the Tribunal's view of how he had conducted the case, and whatever the Tribunal's view on the allegation it may affect the Respondent's submission that there had been an abuse of process in these proceedings.

Further Submissions

184. Mr Blanpain then made submissions on the matters which he relied on as indicating that the interim report had been backdated, and could not have been written on or before 11 March 2010:

a) Mr Dougall had accepted in his evidence that he did not discuss the Expenses 213 matter with the Respondent. Mr Blanpain submitted that, in order to show there had been no second meeting with the Respondent in Brussels during the week commencing 1 March 2010, he had asked Mr Dougall why he had not discussed Expenses 213 with the Respondent. Mr Blanpain told the Tribunal that Mr Dougall's evidence, as recorded in the hearing, was that he had discussed the Expenses 213 matter with Ms NS as that was part of Phase 2 of the investigation. Further, Mr Dougall had told the Tribunal that he was certain it was part of Phase 2 as Ms TD had left the Firm by that time (about 24 March 2010). Mr Blanpain told the Tribunal that that evidence had been given at 4.34pm on 9 June 2015. The interim report had then been produced to the hearing on 11 June 2015. Paragraph 4.94 of the interim report referred to a discussion with Ms NS about Expenses 213. Mr Blanpain submitted that this could not have happened before 11 March 2010, as Expenses 213 formed part of Phase 2. The Chair queried whether it was possible that Mr Dougall had discussed this issue with Ms NS early in March 2010. Mr Blanpain told the Tribunal that this was possible, but was not what Mr Dougall had said in evidence in June 2015. Mr Blanpain accepted that Mr Dougall may not have had in mind as at 9 or 11 June 2015 that the timing of his discussions with Ms NS was in issue and that it was not put to him that he could not have included this matter in a report created on 11 March 2010.

b) Mr Dougall had given evidence concerning the Respondent's time-recording records (for August 2009) during 9 June 2015. Mr Dougall had been referred to the LBGs, which showed 30 hours of time recorded and he had told the Tribunal that he had not seen those documents when preparing his report. Mr Dougall had given evidence that his findings about the work done by the Respondent was based on the time records included with the KPMG report, which documents had been printed on 25 March 2010, i.e. during Phase 2. Mr Blanpain submitted that those documents, which it was clear Mr Dougall

had relied on, were the only items which Mr Dougall had seen at the time of compiling the interim report; he could not have seen items printed on 25 March 2010 on or before 11 March 2010. Time recording issues had been part of Phase 2, not Phase 1.

c) The client engagement letter prepared by KPMG for the Firm on 1 March 2010 set out the scope of the work to be done and included the statement, "You have indicated that we should provide a verbal report to you within five days of starting Phase 1 and, at the conclusion of Phase 1, we should provide you with a brief bullet point report, setting out our key findings and recommendations". Mr Blanpain submitted that the interim report was not a brief one, in bullet point form, but was detailed. The scope of work would have been amended if a detailed report were to be produced at the end of Phase 1.

d) Paragraph 4.104 of the interim report set out a summary of the financial position i.e. what KPMG calculated was owed by the Respondent to the Firm, being a total of over €123,000 of which over €35,000 had been billed to clients. Mr Blanpain submitted that such a calculation was not within the scope of Phase 1 of the investigation. The final KPMG Report, dated 4 June 2010 noted at paragraph 2.3, "We subsequently detailed in a variation to our letter of engagement, dated 23 March 2010, the specific areas we would attempt to address within Phase 2 of our work. The objectives of Phase 2 were to quantify the amount owed by [the Respondent], to quantify the amount owed to clients to rectify the excess billing of disbursements identified and to address any other concerns arising from certain specific steps set out in the variation to our letter of engagement".

e) Mr Blanpain referred to an email from Mr Dougall to the Firm on 1 June 2010 which referred to needing a quality review before the report would be released. Mr Blanpain submitted that if a quality review were required before release of a report by KPMG, it was unlikely that the interim report would have been produced in the period prior to 11 March 2010, and the document must have been back-dated.

185. Mr Blanpain submitted that the interim report had been produced to the Tribunal part way through Mr Dougall's evidence. If he (Mr Blanpain) had had it in good time before the evidence, he may have dealt with Mr Dougall's evidence differently. Mr Blanpain acknowledged that he had had the interim report since June 2015. Mr Blanpain told the Tribunal that he wanted Mr Dougall to be recalled. Mr Blanpain told the Tribunal that points (a) and (b) above were the most fundamental submissions on back-dating, but the others were supportive of the argument.

186. Mr Levey noted that this was a serious allegation against Mr Dougall. It was also an allegation against Mr Crossley, as Mr Crossley had accepted in his evidence that there had been an interim report before the 12 March 2010 meeting, albeit he was not clear if he had read the report at that time. This allegation had not been properly flagged or raised when evidence was being given. Had this issue been raised in June 2015, it may have been appropriate to recall Mr Dougall. It may have been that the Firm and/or KPMG would have been able to produce documents to close off this issue, had

the allegation been made clear. Mr Levey told the Tribunal that he would address what he described as Mr Blanpain's spurious points.

187. When he was giving evidence, Mr Dougall was not aware that it might be alleged he had back-dated the interim report. Had this issue been raised then, it was possible he may have taken greater care in answering questions about when various steps had been taken, or the point could have been clarified in re-examination.

188. Mr Levey submitted that in any event, the allegation against Mr Dougall did not take the Respondent anywhere, as Mr Dougall's credibility was not a key issue. It would only be an issue if there were two different versions of events but there was nothing in this case which turned on whether the Tribunal believed Mr Dougall or the Respondent; the Tribunal did not need to make a finding about who was more credible. The interim report was irrelevant. It had not been requested by the Respondent as part of the extensive requests for disclosure; rather, it had been requested by the Chair. The parties had agreed which documents would be produced, and the interim report was not one of the documents which the Respondent had pursued. The Applicant did not accept the Respondent's proposition that Mr Dougall had not been telling the truth, but in any event none of the Tribunal's findings would be affected by this.

189. Mr Levey submitted that it was not proper for Mr Blanpain to have made such a serious allegation based on the points raised by Mr Blanpain (set out at paragraph 184 above). There was no motive for Mr Dougall to back-date the interim report. It was clear that on 12 March 2010 the Respondent had left the Firm; the Applicant did not suggest that his resignation should be taken as a sign of guilt.

190. With regard to point (a) at paragraph 184, Mr Levey submitted that it was absurd to rely on a statement that Mr Dougall discussed matters with Ms NS as showing the report was back-dated. The interim report did not say when that discussion had taken place. Mr Dougall had agreed that he had not discussed Expenses 213 with the Respondent. It could not be said that the discussion with Ms NS was after 23 March 2010. Ms NS's reported statement, that there were no supporting documents, had not been challenged (until recently). An allegation of dishonesty against Mr Dougall could not be founded on such a flimsy point.

191. Mr Levey submitted that the issue of time-recording was not a valid point. It was not an issue which had been central and it had not been raised previously by the Respondent. Mr Dougall had confirmed that he had not looked at certain documents but had seen others. The likely explanation was that he had seen the time-sheets to which he referred on screen in early March and then obtained print-outs on 25 March 2010. It was understandable that Mr Dougall had been disconcerted by being challenged about not looking at the LBGs. In any event, the furthest this point took the Respondent was that Mr Dougall had not seen the documents printed on 25 March 2010 as at 11 March 2010, albeit he may have seen that information in another form.

192. Mr Levey submitted that the fact that the interim report was longer than some brief bullet points was a hopeless point. The fact there was some quantification of the Firm's claim against the Respondent in the interim report did not show the report was

back-dated and the issue about the quality review was spurious. There was no proper evidential basis for the allegation that the interim report had been back-dated.

193. Mr Levey told the Tribunal that he did not propose to recall Mr Dougall. The allegation made against him should be withdrawn by the Respondent as it was an improper allegation, for which there was no basis. Further, the allegation had been made at a very late stage. Mr Levey told the Tribunal that it would be necessary to obtain a witness summons in order to recall Mr Dougall.

194. Mr Levey told the Tribunal that he had during the day received a copy email from Mr West to Mr Crossley dated 11 March 2010 and timed at 13.34. The email had not been printed out, but was printed before the hearing resumed on 28 October. Mr Levey told the Tribunal that the email read:

> "Peter
> The report has arrived – [Mr Dougall] has added a useful summary on the back.
> I have provisionally suggested 8am tomorrow for you to speak with [Mr Dougall]…
> If we are intending to give the letter out in the meeting tomorrow morning, KPMG may require some "hold harmless" documentation; I suggested that should be agreed between you and him.
> My suggestion is that we do not disclose the full document, rather quote specific extracts…
> Please ring me on my mobile to discuss logistics and distribution to you and other Board members".

195. Mr Levey submitted that this was consistent with Mr Crossley's evidence about when the interim report was provided.

196. Mr Blanpain submitted that there was no "summary on the back" of the interim report, as referred to in the email which had been read.

197. The Tribunal indicated that as it was late (after 6.30pm) it would not determine at this point how it would treat the allegation against Mr Dougall.

Submissions on 28 October 2015

198. At the commencement of the hearing on 28 October 2015, Mr Levey told the Tribunal that he now had available a print out of the email he had read to the Tribunal on the afternoon of 27 October. Also, he had received an email sent by Mr Dougall to Mr West of the Firm, dated 11 March 2010 and timed at 13.13 to which the interim report had been attached as a "zip" file. Mr Levey told the Tribunal that the situation was unsatisfactory, as there was no evidence concerning this email and he, as an advocate, could not give evidence about it. All that he could say was that he had received the email and printed it and the attachment to the email. A hard copy had been provided to Mr Blanpain and arrangements would be made for Mr Blanpain to receive a soft copy. The Tribunal noted that the email, which did not contain any text had the interim report as its attachment, and this was in the same form as the document produced to the Tribunal in June 2015. Mr Levey submitted that the

Respondent should withdraw the allegation of dishonesty which had been made against Mr Dougall.

199. Mr Blanpain submitted that the email now produced did not close off the issue. There was nothing to explain what was meant by a "useful summary on the back", as mentioned in Mr West's email to Mr Crossley of 11 March 2010. Mr Blanpain told the Tribunal that the Respondent's position was that the interim report was not in fact available to Mr Crossley or Mr West before the meeting on 12 March 2010. In response to a question from the Chair, Mr Blanpain told the Tribunal that it was the Respondent's case that Mr Crossley and his colleague involved in the meeting on 12 March 2010 had apparently relied on a document which was not produced until later. In response to a question from the Tribunal about whether the Respondent was suggesting that the email with the interim report had been tampered with, Mr Blanpain submitted that it was possible for documents on emails to be exchanged. Mr Levey sought clarification about whether there was any suggestion by Mr Blanpain that he had been involved in tampering with the email; Mr Blanpain confirmed there was no such allegation against Mr Levey.

200. Mr Levey told the Tribunal that even if the allegation against Mr Dougall were not withdrawn, he had no intention to recall him to give further evidence; the Applicant was content to rely on the evidence already given. If Mr Blanpain wanted to suggest that the Tribunal should draw any adverse inferences from the fact that Mr Dougall would not return, he could make such submissions. Of course, it was open to Mr Blanpain to apply for a witness summons, but of course he would not be able to cross examine his own witness. Mr Levey submitted that it was astonishing to make an allegation of dishonesty against Mr Dougall and then to allege that a firm of solicitors doctored an email and/or its attachment before it was produced to the Tribunal today. Mr Levey submitted that if the Respondent were to persist in this wild allegation, that in itself could be sufficient to justify further proceedings for a s43 Order. Mr Levey submitted that Mr Dougall had no motive at all to change his report or its date. Mr Levey submitted that it was not inherently wrong to run an aggressive defence. However, in this case, Mr Levey submitted, the Respondent had chosen to adopt a strategy associated with the political strategist Lynton Crosby, which had been summarised as:

> "Let us suppose you are losing an argument. The facts are overwhelmingly against you, and, the more people focus on the reality, the worse it is for you and your case. Your best bet in these circumstances is to perform a manoeuvre that a great campaigner describes as 'throwing a dead cat on the table, mate.'

This would have the effect that everyone would talk about the "dead cat" rather than the key arguments. Mr Levey went on to submit that this was a case in which the court was "littered with dead cats", due the various submissions and allegations raised by Mr Blanpain. With regard to the allegation made against Mr Dougall, the Tribunal would have to be satisfied that there was a prima facie case he had been dishonest; there was no prima facie case on the arguments advanced by Mr Blanpain. It was not sufficient for Mr Blanpain to suggest that the email sending the interim report to the Firm on 11 March 2010 had been tampered with, without some evidence. It was not necessary to recall Mr Dougall to meet an unfounded allegation. Mr Levey would object to any application to adjourn the hearing in order to recall Mr Dougall; any

such application would be obfuscation at the highest level. In response to a question from the Chair about whether it was unusual for a complainant firm to be paid for giving evidence, Mr Levey told the Tribunal that, of course, he could not give evidence on this point. However, he understood that the payments to the Firm were for the time spent and costs of copying documents.

201. Mr Blanpain submitted that the email from Mr West to Mr Crossley, referred to above, was disconcerting as it suggested that only extracts from the document should be quoted; this clearly showed the conspiracy to remove the Respondent from the Firm at the meeting on 12 March 2010.

202. The Tribunal confirmed to the parties that it did not have power itself to call or recall any witnesses, or order the production of documents held by third parties. However, a party could apply to the High Court for a witness summons and/or the production of documents. The Tribunal directed the Clerk to provide a copy of the Tribunal's Rules to Mr Blanpain at a convenient moment and asked Mr Blanpain to inform the Tribunal if he was going to apply for a witness summons for Mr Dougall to attend again. The Chair reminded Mr Blanpain that he would not be able to cross examine his own witness, which Mr Dougall would be if he attended at the behest of the Respondent. Mr Blanpain confirmed that he understood the position. He was then given the opportunity to complete his general submissions in closing the case. In the course of this, further points concerning Mr Dougall were made; these are included in the section above.

203. The Tribunal indicated to the parties, at about 11.50am, that it would consider how to proceed and for how long to release the parties, but in any event there would be a lunch adjournment from 1 to 2pm. At about 1pm, the Tribunal decided to release the parties until 10am on 29 October.

The Tribunal's decision on the allegation against KPMG

204. The Tribunal noted that a very serious allegation had been made against Mr Dougall/KPMG, namely that the interim report, which bore the date 11 March 2010, had not been produced on or before that date but had instead been back-dated. In the course of the submissions about this matter, an allegation was made by Mr Blanpain that the Firm had tampered with an email attachment and that it was not the interim report seen by the Tribunal which had been attached but some other item. Again, this was a very serious allegation to make about a law firm.

205. The Tribunal noted that the purpose of the submission appeared to be to undermine the credibility of Mr Dougall as a witness, on the basis that if he lied about the date of the interim report his evidence generally should be treated with suspicion. This was part of the Respondent's more general position – dealt with below in relation to the findings of fact and law – that there had been a conspiracy against him with the intention of removing him from the Firm and that KPMG had been appointed to find evidence to justify his removal.

206. The Tribunal noted that the interim report had only been produced to the Tribunal because of a request by the Chair; it had not formed part of the documents on which the Applicant relied. Mr Dougall had confirmed that the interim report had been

prepared by him and that it was true; this evidence encompassed the date of the interim report which, on the face of the report, was 11 March 2010. The Tribunal noted that as the document had been produced during the course of the hearing in June Mr Blanpain may not have read and considered the document fully when he cross examined Mr Dougall.

207. What was very clear was that Mr Blanpain and the Respondent had had the document since mid-June 2015. The Respondent had taken no steps to flag up that he challenged the date of the interim report until service of the written submissions on 23 October 2015. Even that document did not highlight the allegation as being an allegation of dishonesty against Mr Dougall.

208. In the course of the submissions, Mr Blanpain told the Tribunal that he wanted Mr Dougall to be recalled. However, Mr Blanpain had neither asked the Applicant to do this prior to the hearing resuming in October 2015, nor had he obtained a witness summons to compel Mr Dougall to attend. Mr Blanpain had not made an application to adjourn the hearing so that he could obtain a witness summons. Mr Dougall was a professional man, who had been released by the Tribunal after giving evidence in June 2015. The Tribunal had no power to order him to return. The Applicant did not wish to recall him and the Respondent had not taken any steps to call him. The Respondent did not need the Tribunal's permission to apply for a witness summons.

209. In these circumstances, there was no need to delay the hearing to allow the Respondent the opportunity to apply for a witness summons. Of course, as the Tribunal noted, Mr Blanpain would not be permitted to cross examine a witness he summoned. It was a little unsatisfactory that Mr Dougall would not have the opportunity directly and openly to answer the allegation, but this situation arose because the Respondent and his representative had not taken any steps between June and October to properly address the issue.

210. The Tribunal considered whether it could or should draw any inferences concerning Mr Dougall's evidence – or, indeed, that of Mr Crossley – arising from the allegation that interim report had been backdated and then "switched" with some other item on the email exchange.

211. The Tribunal found that the allegation that there had been some tampering with the emails, such that the attachment to the email sent to Mr Levey had been "switched", was entirely fanciful. There was no evidence at all to suggest that someone within the Firm caused the creation of a false email. It was an inherently unlikely event, for which there was no motive. Even if the Tribunal had accepted that there had been a "conspiracy", which the Firm wished to conceal, this issue was so peripheral to the evidence in the case that the chances a solicitor or someone working in the Firm would risk their career in order to switch an attachment to an email were vanishingly small. It was improper for the Respondent, through his advocate, to have made such a suggestion without a firm evidential basis. Here, there was no evidence, purely supposition. Accordingly, this suggestion had no bearing on the Tribunal's view of the evidence of Mr Crossley. However, it did cause the Tribunal to consider that the Respondent's defence of the matter had strayed from being robust to being improper.

212. The allegation that Mr Dougall had caused to be produced to the Tribunal, in June 2015, a document which was untrue – in that it had (allegedly) been created after the date it bore – was also inherently unlikely. Mr Dougall had even less motive than Mr Crossley to risk his career by creating a false document. Even if the Tribunal had considered that there were some merit in the Respondent's allegation of a conspiracy against him, which included KPMG, the date of the interim report was so peripheral that it was incredible that this would have been altered.

213. The Tribunal considered the matters relied on by the Respondent as showing the interim report had been backdated. Mr Blanpain had accepted that only the first two points listed above at paragraph 184 went to the issue of backdating, whilst submitting that the others related to discrepancies which supported the allegation.

214. Firstly, it had been suggested that the Expenses 213 matter, included in the interim report, had not in fact been covered in Phase 1 but only later, after the Respondent and Ms TD had left the Firm. The Respondent relied on the fact there was no reference to this point in the engagement letter dated 1 March 2010, that Mr Dougall had discussed the matter with Ms NS and that he had not discussed the matter with the Respondent at the (alleged) second meeting in Brussels. Mr Dougall had given evidence that he had spoken to both Ms TD and Ms NS in the course of his first visit to Brussels. The Tribunal noted that Mr Dougall had not indicated in the interim report that he had discussed the Expenses 213 matter with the Respondent, and had confirmed this in his oral evidence. Other issues had been discussed with the Respondent, according to the interim report; the Respondent consistently denied that there had been a "second meeting" at which any issues found during the investigation could have been discussed. There was no evidence that the discussion of Expenses 213 with Ms NS could not have occurred during the first visit. The most likely position was that, in the course of the first visit, Mr Dougall had uncovered some particular points or had them drawn to his attention by Ms NS or others. In any event, there was nothing of any substance relating to Expenses 213 which showed the interim report had been back-dated.

215. With regard to the timesheets referred to by Mr Dougall, the Tribunal noted that the number of hours worked by the Respondent in August 2009 whilst in Greece (12.4 hours) tallied with the hours recorded on timesheets exhibited to the final KPMG Report. Those timesheets were printed on 25 March 2010 i.e. after the date of the interim report. There was no dispute about the fact that Mr Dougall had not looked at other time records (which indicated more time had been spent working) when writing either report. The Tribunal noted that the interim report stated, "We have reviewed the timesheet records of [the Respondent]…" Whilst it was self-evidently true that documents printed on 25 March 2010 did not exist in that form on 11 March 2010, there was nothing to suggest that Mr Dougall had not reviewed the time records, as he had stated. He may have seen an earlier print-out, or reviewed the records on screen. There was nothing in Mr Blanpain's submission on this point which led the Tribunal to the view that there was any need to re-open the evidence or draw adverse inferences against Mr Dougall.

216. The Tribunal found no merit in Mr Blanpain's other submissions about this issue. The fact that the first engagement letter referred to a "brief" report and "bullet points" did not mean that the interim report was a later document. Further, simply because

some issues were to be covered in Phase 2 of the investigation did not mean that some information on those points had not come to light in Phase 1. The client care letter of 1 March 2010 referred to there being an increasing level of indebtedness due to the Firm from the Respondent, so the fact that there was some quantification of what the Respondent was said to owe was unsurprising. The first client care letter also referred to the Respondent's use of the office account at Brussels for, apparently, personal expenses; the Expenses 213 matter could fall within that category. It was mere speculation on the part of the Respondent to suggest that KPMG could not produce an interim report within a week or so, whether or not that report had to be subject to a quality review.

217. Given that it was inherently unlikely that Mr Dougall/KPMG would risk their professional reputations in relation to the investigation into the Respondent – which was a tiny part of that firm's workload – the evidence to support any allegation of dishonesty would have to be compelling. There was no evidence presented by the Respondent which supported the allegation that Mr Dougall/KPMG or the Firm had caused the interim report to be back-dated. The Tribunal was satisfied, so that it was sure, that the document was what it appeared to be on its face.

218. The Tribunal determined that this allegation, raised at a late stage and without proper evidence, was without merit or any proper basis. Further, even if there had been some merit in making the allegation during 27 October 2015, it should certainly have been withdrawn on production of the emails dated 11 March 2010 which clearly showed that the interim report had been in existence and forwarded to the Firm on 11 March 2010.

Preliminary Matter (5) – Representation

219. The Applicant was represented throughout the substantive hearing by Mr Edward Levey, a barrister, instructed by Ms Suzanne Jackson, a solicitor employed by the Applicant. At the various CMHs and preliminary hearings which had taken place, the Applicant had been represented by either Ms Nesterchuk, a barrister, or Mr Peter Steel, a solicitor of Bevan Brittan LLP.

220. The Respondent was represented throughout the proceedings, at all the hearings, by Mr Bruno Blanpain, an advocate of the Brussels Bar (Flemish-speaking branch).

221. The Tribunal noted that the Respondent had chosen to be represented by an advocate who appeared to be unfamiliar both with court procedures in England and Wales and was unfamiliar with the particular procedures of the Tribunal. The Respondent was, of course, free to choose who should represent him and neither the Tribunal nor the Applicant had questioned the right of Mr Blanpain to appear as an advocate. Mr Blanpain's lack of familiarity with the Tribunal's practice and procedures was clear to the Tribunal during the hearing. It noted in particular that Mr Blanpain had been unaware that he was not permitted to "lead" his own witness. Accordingly, in order to ensure that the hearing was as fair as possible, the Tribunal (through its Chair) had sought to assist the Respondent and Mr Blanpain by probing and challenging the Applicant's case. The record of issues arising in the course of the hearing (paragraphs 32 to 218 above) indicates that at least some of those issues arose as they did as the Respondent's written evidence and Answer to the allegations did

not adequately set out his position. The Tribunal noted that some of these problems may have arisen due to a lack of familiarity with how litigation is conducted in England and Wales. It was for that reason the Tribunal sometimes found itself reminding Mr Blanpain of the need to make applications, if he wished to do so, in relation to points he raised; although many preliminary points had been raised, few had led to applications which had to be determined by the Tribunal. The Tribunal took great care to ensure that it gave the benefit of any doubt to the Respondent and Mr Blanpain.

222. The Tribunal noted that both the Respondent and Mr Blanpain had an excellent grasp of English, both written and spoken. Allowances for any possible misunderstandings had only to be made when idiomatic language had been used: for example, the expression "jack of all trades" had to be explained at one point. The Tribunal did not consider that the Respondent had been put at any disadvantage in the hearing arising from he or his advocate not having English as their first language; neither had asked for any allowances to be made and the Tribunal did not consider that any were necessary.

Preliminary Matter (6) – Burden and standard of proof

223. In the course of opening the case, Mr Levey submitted that the Tribunal should apply the civil standard of proof to the facts in issue. It was noted that the Applicant could make s43 Orders on the civil standard, using its internal procedures, but the Tribunal applied the criminal standard in its deliberations, including on appeals from SRA decisions.

224. Mr Levey referred to the Tribunal case of Saddiq (11050/12), heard on 12 September 2013, in which it appeared that the Tribunal had applied the civil standard in determining a s43 matter. In that case it was noted at paragraph 60.58 that, "The Tribunal was satisfied on the balance of probabilities as applicable to the application before it that the Applicant had proved allegations…" Mr Levey submitted that this was the appropriate standard, even where there was an allegation of dishonesty, as these were regulatory and not disciplinary or criminal cases. Mr Levey submitted that it would be wrong to apply the higher standard. Mr Levey accepted that he was not aware of any authority (e.g. from a High Court judgment) on the question of the standard of proof in regulatory proceedings involving the legal profession.

225. Mr Levey submitted that if the Tribunal were to find that the Respondent was dishonest on balance, but was not sure he was dishonest, such that there was no s43 Order it would be perverse and damaging; further, it would undermine the purpose of s43. Even if dishonesty were set aside, it would be damaging if the Tribunal considered that on balance the Respondent was guilty of the conduct alleged but was not sure and therefore did not make a s43 Order. Mr Levey submitted that the higher standard was usually applied in the Tribunal as it generally dealt with disciplinary cases. Mr Levey submitted that in the civil courts the balance of probabilities applied, even when dishonesty was alleged.

226. Mr Levey referred to the Privy Council case of Campbell v Hamlet (No 73 of 2001), where, at paragraph 20 it was stated,

> "Perhaps more directly in point, however, is the decision of the Divisional Court in *In re a Solicitor* [1993] QB 69, concerning the standard of proof to be applied by the Disciplinary Tribunal of the Law Society. Lord Lane CJ, giving the judgment of the Court, referred to the Privy Council's opinion in *Bhandari* and continued at p 81:
>
> > "It seems to us, if we may respectfully say so, that it is not altogether helpful if the burden of proof is left somewhere undefined between the criminal and civil standard. We conclude that at least in cases such as the present, where what is alleged is tantamount to a criminal offence, the tribunal should apply the criminal standard of proof, that is to say proof to the point where they feel sure that the charges are proved or, to put it another way, proof beyond reasonable doubt. This would seem to accord with decisions in several of the Provinces of Canada"".

227. At paragraph 21 the Judgment went on to refer to a passage in which Lord Lane CJ had stated,

> "It would be anomalous if the two branches of the profession were to apply different standards in their *disciplinary proceedings*" (emphasis added)

and then noted that this had led the Law Society Disciplinary Committee to applying the criminal standard to all cases rather than just those in which what was alleged was tantamount to a criminal offence.

228. Mr Levey submitted that as these were not disciplinary proceedings the Tribunal should make its decisions on the civil standard of proof.

229. Mr Levey submitted that, on the facts of this case, the standard of proof may not be vital in any event as the evidence of dishonesty was clear and the allegations could be proved beyond reasonable doubt. Mr Levey invited the Tribunal to specify in its Judgment the standard of proof it had applied and, if the allegations were not proved beyond reasonable doubt, whether they would have been proved on the balance of probabilities.

230. Mr Levey submitted that although in the civil courts the balance of probabilities test was applied, it was clear that where the allegations were serious, more evidence would be required to prove them on balance. Mr Levey referred the Tribunal to paragraph 25 of the Campbell judgment which quoted Lord Steyn in the case of McCann: "The heightened civil standard and the criminal standard are virtually indistinguishable". Mr Levey submitted that it was important that the Tribunal applied the correct standard of proof.

231. Mr Levey submitted that he wished to make it clear that there was no burden on the Respondent to "disprove" the Applicant's case. Mr Levey referred to an extract from Phipson on Evidence, 18th edition. There were two concepts to be considered: the persuasive and the evidential burden. The persuasive burden related to the requirement for the Applicant to prove the case on any issue of fact, whether on the balance of probabilities or to the criminal standard. The evidential burden was

sometimes referred to as "the duty of passing the judge" i.e. determining if there was enough evidence to go before a jury. The Applicant had to discharge both burdens.

232. It was noted that certification by the Tribunal indicated that there was a prima facie case to answer. Mr Levey submitted that if a prima facie case was indeed established by certification, it was for the Respondent to displace the case. For example, if on the face of the documents and evidence, no client would expect to pay for the Respondent's villa in Greece it was for the Respondent to show that the prima facie case was not correct. If the Respondent were to say that the clients knew that they were paying for his villa, it would be for the Respondent to show that. With regard to the disbursements part of the case, it was correct that the relevant engagement letters were not available. However, the Tribunal could proceed on the basis that those letters referred to travel and accommodation; this would be making an assumption in the Respondent's favour, which was likely to be correct.

233. Mr Blanpain's submissions in response were set out in his written closing submissions dated 23 October 2015, and in the application for abusive process dated 11 October 2015.

234. The latter document did not expressly deal with the issue, save as part of an overall submission that the proceedings were unfair and/or disproportionate. It was submitted that despite the Tribunal's indication at the CMH on 6 May 2015 that the highest standard of proof would be applied the Applicant had argued that the civil standard should be used; this, it was submitted, was unfair.

235. In the written closing submissions for the Respondent it was submitted that, for the Respondent, the potential impact on him of these regulatory proceedings in relation to his professional career and reputation was the same as if the proceedings were disciplinary in nature; in effect, there was no real distinction in terms of the impact on the Respondent. It was further submitted that if the Tribunal were to apply the civil rather than criminal standard in this case, the Respondent would be treated differently to the treatment which would be given to an equivalent professional (whether a solicitor or Registered European Lawyer); this could be discriminatory against the Respondent as a lawyer of another EU country. It was submitted in particular that to apply the civil standard in this case would be in violation of EU Council Directive 2000/42/EC of 29 June 2000, which required equal treatment. Further, there could be an impact on the rights of establishment of lawyers under the EU Lawyers Establishment Directive. Mr Blanpain further submitted that the fact the Applicant argued for the lower standard of proof indicated that the Applicant's case was weak. In addition, it was submitted that the lower standard was not acceptable due to what were described as the "significant disclosure deficiencies" in the case.

The Tribunal's Decision

236. The Tribunal considered carefully the submissions of the parties.

237. The Tribunal noted the case of Siddiq, to which it had been referred by the Applicant. So far as the Tribunal could establish, this was the only case relied on by the Applicant as an instance in which the Tribunal had adopted the civil standard of proof in a s43 application. The Tribunal was not bound by a decision of another division of

the Tribunal. Further, it appeared that the division dealing with the Siddiq case had not heard full submissions on the standard of proof; it was simply recorded that the advocate for the Applicant told the Tribunal that the civil standard applied. The Tribunal was, accordingly, not persuaded by this decision of another division of the Tribunal, particularly as there was no fully reasoned decision on the point.

238. The Tribunal accepted that, in principle, the application for a s43 Order was regulatory rather than disciplinary in nature. However, it accepted that on the facts in issue in this case, the potential outcome and impact on the Respondent could be just as grave for the Respondent as disciplinary proceedings would be. The Tribunal had no jurisdiction to interfere with the Respondent's position as a Dikigoros, or his membership of the Flemish-speaking branch of the Brussels Bar; however, if it were to remove his ability to work for an English regulated firm without the permission of the Applicant, this would have a significant impact on his current career with another English firm in Brussels. Accordingly, the Tribunal saw no reason to depart from its usual practice of applying the higher standard in all of the cases which came before it (save for the anomalous decision in Siddiq).

239. The Tribunal could see merit in the argument that there were potential issues of European law and/or discrimination if a different standard were applied in the Tribunal to the Respondent than would be applied to a solicitor. The Tribunal did not need to make a specific finding that there would be a breach of EU law or actual discrimination, as it was able to make its decision on the matters set out above. For reasons which will be expanded on below, the Tribunal was not satisfied that there had been any deficiencies in disclosure, so the Respondent's argument on this point did not need to be determined.

240. The Tribunal decided to apply the higher standard to its decisions. However, at Mr Levey's request, it would where relevant indicate if a matter which was not proved to the higher standard might have been proved to the civil standard.

Preliminary Matter (7) – Test for dishonesty

241. Mr Levey submitted that dishonesty was alleged and the Tribunal should consider the way in which that allegation should be determined. He handed up a copy of the case of Barlow Clowes v Eurotrust (Privy Council Appeal No. 38 of 2004) ("Barlow Clowes") and the Judgment of the Divisional Court in Kirschner v General Dental Council [2015] EWHC 1377 (Admin) ("Kirschner"). Mr Levey submitted that the Barlow Clowes case was one in which the Privy Council had commented on the Twinsectra case and that the subjective element required under Twinsectra should not be necessary. Mr Levey told the Tribunal that the Barlow Clowes case was adopted in English civil cases. It was submitted that, by reference to paragraphs 14 and 15 of Barlow Clowes, it was not necessary to investigate the state of mind of a Respondent accused of dishonesty. In response to a query by the Tribunal as to whether Barlow Clowes had been followed in any disciplinary cases, Mr Levey told the Tribunal that the case of Bultitude indicated that in disciplinary proceedings Twinsectra should be followed. More recently, in the Kirschner case, Mostyn J had argued that it was anomalous to have a subjective test in disciplinary proceedings, but had been obliged to accept the authorities which made it clear that Twinsectra applied. Mr Levey

therefore accepted that in disciplinary cases, the test set out in Twinsectra was to be followed.

242. Mr Levey submitted that these proceedings were regulatory, not disciplinary in nature. Mr Levey submitted that the Tribunal should not extend the anomaly of having a subjective element to regulatory as well as disciplinary proceedings, and asked the Tribunal to make a decision on which test was to be applied.

243. Mr Levey submitted that this was a case in which a s43 Order was plainly appropriate, but a decision on the allegation of dishonesty was important as it would enable the Applicant to make decisions in future about whether the Respondent could work in a regulated body and, if so, under what conditions. Dishonesty was not a necessary part of the allegations against the Respondent, but a decision, on the basis of an objective-only test, would be desirable. The test, Mr Levey submitted, was whether the Respondent had been dishonest by the ordinary standards of reasonable and honest people. The Tribunal could, if appropriate, make a separate finding of whether the Respondent was aware that his conduct was dishonest by those standards. Such findings would help those deciding in future on what work could be done by the Respondent and under what conditions. Mr Levey asked the Tribunal to determine that subjective dishonesty did not need to be proved in regulatory proceedings.

244. Mr Levey confirmed that the issues of the standard of proof and the test for dishonesty to be applied were distinct. However, the rationale for his arguments on both issues was that these were regulatory and not disciplinary proceedings. Accordingly, Mr Levy submitted, there was no need to apply the higher standard and no need for a subjective element in the test for dishonesty.

245. Mr Blanpain for the Respondent made submissions on this issue in the application for abusive process dated 11 October 2015 and more fully in the written closing submissions.

246. In the former, Mr Blanpain referred to the Applicant's submission that a purely objective test should be applied to dishonesty as part of the procedural unfairness of the case.

247. In the closing submissions document, Mr Blanpain submitted that the Applicant wanted an objective test to be applied as it wished to regulate managers/lawyers of regulated bodies, wherever in the world they may be, and did not want to be hampered by the need to apply a subjective test. The submission envisaged that the subjective part of the test would vary, depending on the standards, ethical rules and values of other countries (if different to those of England and Wales). Mr Blanpain further submitted that there could be a violation of the principles of equal treatment, as set out within the EU Directive 2000/43, if a different test were applied to the Respondent than would be applied to solicitors.

The Tribunal's Decision

248. The Tribunal considered carefully the submissions of the parties.

249. Whilst recent case law indicated some judicial discomfort with the Twinsectra test, the observations in the Kirschner case were simply observations and did not overturn the long-established case law under which the Tribunal applied the Twinsectra test. The Tribunal noted the argument that, as these were regulatory and not disciplinary proceedings, a purely objective test could properly be applied. However, there was no case law to suggest that this Tribunal should apply the objective test only against a Respondent in a s43 case. Unless and until the High Court made it clear that a different test should apply to non-solicitors, the Tribunal would continue to apply the Twinsectra test. However, if it were to find objective but not subjective dishonesty, that would be stated in the Judgment.

250. The Tribunal noted that there may well be some merit in the submission that applying a different test to a non-English lawyer might be discriminatory and/or in violation of the relevant EU Directives. However, the Tribunal did not make a finding on this as it was not necessary to do so.

Factual Background

251. The Respondent was a Greek Dikigoros and was admitted to the Athens Bar Association, Greece, in 1984. The Respondent's home Bar was the Athens Bar and his host Bar was the Flemish-speaking section of the Brussels Bar, Belgium.

252. The Respondent joined Hammond Suddards ("the Firm") in 1993 as an Associate. The Firm had been established in England and Wales and was subject to regulation by the Law Society and, from 2007, by the Applicant. The Firm had undergone changes since the events in issue and was now known as Squire Patton Boggs LLP, but it is referred to throughout as the Firm. The Respondent became a salaried partner in May 1995 and an equity partner in May 1997. The Respondent became Managing Partner of the Firm's Brussels office in May 1998. Until December 2006 there were three equity partners in the Firm's Brussels office, including the Respondent. The other two equity partners left the Firm and the Respondent was joined by two salaried partners in the office. (The Respondent suggested in evidence that he was not the only equity partner in Brussels at the relevant times; the Tribunal did not make any determination on this point). The Respondent's entire career with the Firm was at its Brussels office; he was not a solicitor and at no time had he practised in England and Wales.

253. The Respondent ceased to be an equity partner of the Firm in March 2010. The circumstances of his departure were subject to a dispute between the Respondent and the Firm, which had been resolved in civil proceedings. On ceasing to be an equity partner of the Firm, the Respondent entered into a Retention Agreement with the Firm with the apparent intention of ensuring an orderly transfer of matters.

254. The Respondent later joined the Brussels office of another Firm, Holman Fenwick Willan LLP, domiciled in England and Wales and regulated by the Applicant. The Tribunal determined at a hearing conducted in February and March 2014 that the Applicant could bring these proceedings and that the Tribunal had jurisdiction to deal with the Respondent; the full reasons are set out in a Judgment on a preliminary issue dated 7 April 2014. In short, the Respondent's status as a member and Managing Partner of an office of the Firm brought him within the categories of people who

could be regulated as a result of amendments to the Solicitors Act 1974, and the definitions set out in the Legal Services Act 2007, with effect from 31 March 2009.

255. The following summary of the facts relied on by the Applicant should not be read as agreed facts but as an outline of the Applicant's case, so that the reader can understand the issues in the case.

Investigation

256. In July 2010 Mr Crossley, who was then the Managing Partner of the Firm, provided information to the Applicant concerning alleged serious misconduct by the Respondent.

257. The Firm had requested a forensic investigation by KPMG LLP ("KPMG"); that was said to have been commissioned in relation to concerns arising from increasing balances on the current accounts of the Respondent at the Brussels office. The concerns were said to have arisen following a review by the Firm of the financial and management controls of its overseas offices. The report prepared by Mr Dougall of KPMG, dated 4 June 2010 ("the KPMG Report"), formed the basis of the Firm's report to the Applicant. The KPMG Report covered events in the period 1 January 2007 to 28 February 2010.

258. The Forensic Investigation Department of the Applicant prepared a report dated 22 November 2011 ("the FI Report") which contained material from the KPMG Report. The FI Report was disclosed to the Respondent on 25 November 2011.

259. The Respondent replied to the matters set out in the FI Report in a letter of 9 December 2011, accompanied by documents set out in 23 annexes to the letter.

260. It was part of the Applicant's case that as Managing Partner of the Brussels office, and as the sole equity partner at that office from December 2006, the Respondent had a significant degree of autonomy over the way the office was run and its finances.

261. It was noted that not all of the matters covered in the KPMG Report were relied on or formed the basis of allegations in these proceedings.

The Firm's partnership current accounts

262. The Firm's equity partners were at all material times allocated current accounts which were opened and supervised by the Firm's central accounts department in Leeds with assistance, when appropriate, from staff in branch offices. The current accounts represented undrawn profits retained in the Firm by partners. It was part of the Applicant's case that a partner's current account would generally show a positive balance (otherwise expressed as the Firm owing money to the partner rather than the other way round) but that at the relevant times the Respondent's current account was overdrawn, i.e. he had taken more in monthly drawings than was ultimately allocated to him as his profit share.

263. The Firm's branch offices were permitted to open general accounts in order, for example, to pay off credit card balances. It was said to be the expectation of the Firm that such accounts should be paid off in a short timescale, and that the accounts should generally have a nil balance. It was further said that any legitimate or proper account for a subsidiary office of the Firm should have been notified to the accounts team based in Leeds.

264. The Respondent maintained two accounts, or ledgers, at the Brussels office which were said to be unauthorised, either in their establishment or their operation:

- Account 77070000 – a general current account ("the General Account") which had a debit balance of €54,842.75 as at 28 February 2010. It was noted that some of the figures on the ledger differed from those in the KPMG Report, and it was suggested that this was due to foreign exchange conversion rates associated with each transaction;

- Account 77070001 – the tax current account ("the Tax Account") which had a debit balance of €62,744.94 as at 28 February 2010. The opening debit balance at 1 May 2009 was €19,158.30.

The Respondent's use of the General and Tax Accounts

265. It was alleged that the Respondent used monies belonging to the Firm for his own benefit, without authorisation. The allegations in these proceedings related to the General Account, not the Tax Account, although the latter had been covered in the KPMG Report.

General Account – re Hammonds Direct partnership capital call

266. In August 2000, Hammonds Direct ("HD"), an associated practice, de-merged from the Firm. Some partners of the Firm, including the Respondent, remained partners of HD. HD went into liquidation in January 2009. As a result of this, those partners of the Firm who were also partners in HD were each required to contribute individually the sum of £75,000 to make good the shortfall in the business. The partners of the Firm who were not also partners in HD were not liable for the cash call; the partners in HD could not, therefore, require the Firm to meet the payment.

267. The partners liable for the cash call could use their partnership current accounts to make this payment; it was part of the Applicant's case that this could only happen if there was a sufficient balance in the account i.e. if the partner had not taken the entirety of their profit share in drawings. This was not accepted by the Respondent.

268. On 19 May 2009, Ms Doyle, the Firm's partnership accountant emailed the HD partners, including the Respondent, stating:

> "Dear Partner,
>
> I understand that the next [HD] capital call is due on 1 June. Should you wish for us to transfer this amount from your partner's current account could you

please have your transfer request form to Finance Partner Admin by Wednesday 27 May in order to give us ample time to process your request.

Many thanks"

269. As at that date, the Respondent's partnership current account was overdrawn. It was alleged that the capital call payment should therefore have been made from his own resources and not from his partnership current account.

270. Payments from the General Account in the total sum of €35,990.70 in relation to two of the HD partnership capital calls were made as follows:

- €22,662.20, posted on 22 May 2009, in relation to a capital call of £20,000; and
- €13,328.70, posted on 6 October 2009, in relation to a capital call of £12,243.89.

The first of those payments was made to a HD account and the second to the Respondent's personal bank account.

271. The General Account was a ledger of the Brussels office and was distinct from the Respondent's partnership current account. The payments referred to above were made by transfers from the Firm's Brussels office bank account.

272. These payments were discussed at a meeting between the Respondent and Mr Crossley on 11 February 2010. There were differing accounts of what was said at that meeting, but the outstanding sum was paid by the Respondent into the Firm's Brussels bank account with ING on 3 March 2010. On 11 February 2010, the Respondent sent an email to Mr Crossley which read:

"Dear Peter,

I am writing further to our discussions of yesterday and earlier today to say I am deeply sorry about the [HD] payments. I certainly did not intend to embarrass you and/or place your leadership in doubt.
As I mentioned to you yesterday and today on several occasions, this is of course my liability entirely and I will take steps immediately to rectify the situation with interest. I will unlock a term account of mine.

Please rest assured of my undiminished support to you and the Firm's management.

Again, I am sorry for the regrettable incident."

273. The Respondent sent a further email to Mr Crossley on 4 March 2010, which read:

"Dear Peter,

I hope all is well with you and your family following recent events.

I have now made the [HD] payment as promised.

> Again, please accept my deepest apologies for having embarrassed you in this respect. I am very sorry. This has been a devastating experience for me.
> I attach a document from, I believe [SC], circulated to [HD] partners in February 2009. It sets out tax relief possibilities for UK partners arising from the [HD] losses and capital calls…
>
> [Ms Doyle] has been very helpful here and liaised with PWC to see if I, as a non-UK resident partner, might qualify for any of this, but since I have not received any reply to date I assume that I do not. As you know, I file a composite non-UK resident tax return in the UK with almost no tax deductibles.
>
> This serves merely to highlight the importance to me to maximise tax efficient planning for my affairs which as I mentioned to you means moving as much as possible of my income for tax purposes to Belgium. The mandatory requirement for my director salary is suitable to achieve this.
> I hope I can count on your support here."

274. In his response letter dated 9 December 2011, to the Applicant, the Respondent stated in relation to the issue of the HD capital call and the email from Ms Doyle:

> "… It is my very strong recollection that said email did not provide a qualification according to which to would only apply in circumstances where partners' current accounts with [the Firm] were sufficiently funded to avoid them becoming overdrawn as a result of the payment of the capital call.
>
> I am not a native English speaker, however I believe that the usual meaning of the term "current account" is that the account may experience movements such that its balances become positive or negative and that at the end of established periods of time it should be set to at least zero. I therefore forwarded Mrs Doyle's email to the Firm's accounts department and asked them to make such payments from my current account properly registering the transaction. It was indeed always my intention, in compliance with the Firm's approach to current accounts … to make the relevant payments to my current account before the end of the financial year on 30 April 2010."

General Account – re company set up costs

275. When the Firm became a Limited Liability Partnership ("LLP") on 1 May 2008, there was a requirement under Belgian law for there to be a local resident director in Brussels and that the resident director be paid a local salary, at the going rate, which would be subject to tax in Belgium. There was a further requirement (under the rules of the local Bar) that all lawyers be independent and could provide legal advice independently from their main or only employers at all times.

276. The Firm took the view that the Respondent was not entitled to any additional monies on top of his equity share of the profits for acting as the local director in Belgium.

277. The Respondent set up a personal company, called Hellenic European Advisory Services SPRL ("Hellenic"), incorporated on 13 January 2010, to invoice the Firm's office in Brussels on a monthly basis for his drawings. The reason for dealing with drawings in this way was that it conferred a tax advantage on the Respondent. Ms Doyle dealt with what were understood to be the tax issues in an email to Mr Crossley dated 5 February 2010.

278. Other members of staff at the Brussels office also set up personal companies for the receipt of salaries, again for tax reasons.

279. The Respondent debited the costs of the formation of Hellenic in the sum of €12,400 to the General Account on 15 December 2009. No other individual in the Brussels office sought reimbursement/payment of the costs of setting up their own companies.

280. The Applicant's position was that the costs of setting up the company should have been paid by the Respondent out of his own resources. There was no obligation to set up a separate company to comply with Belgian law; this was done for reasons relating to personal tax planning.

281. In his response to the FI Report, dated 9 December 2011, the Respondent indicated that Hellenic was set up to comply with Belgian law and that it was his understanding that the costs of setting up the company would be set off against the director's compensation due to him since 1 May 2009.

Billing of personal expenses – costs charged through the General Account

Trip to Greece

282. The sum of €7,000 was posted as a debit entry to the General Account on 18 August 2009 with the narrative "Grecorama KA holiday trip to Greece". The supporting invoice, addressed to the Firm's Brussels office, from Grecorama (a tourism business) referred to "accommodation in Greece" in the sum of €7,000. The sum of €7,000 appeared on the Respondent's MasterCard account statement, with the payment being made from the office account on 30 July 2009; the transaction was processed on 31 July 2009.

283. A credit entry was made for €7,000 in the General Account on 9 September 2009, with the narrative "Konstantinos Adamantopoulos exp 492". The Grecorama invoice bore handwritten notes made by the Respondent providing instructions for allocating the €7,000 between a number of client matters. The KPMG Report recorded that the allocation on the face of the Grecorama invoice was:

- 30% to IFC matter 235-16 (€2,100)
- 25% to TFC matter 235-6 (€1,750)
- 25% to OTE HTO, matter 1-9 (€1,750)
- 5% to G OTE matter 1-5 (€350)
- 15% to M (€1,050)

284. It was reported that the actual allocations were not the same as indicated above as a result of verbal instructions from the Respondent, and were:

- 30% to IFC matter 235-16 (€2,100)
- 25% to TFC matter 235-6 (€1,750)
- 25% to TFC matter 235-6 (€1,750)
- 5% to G OTE matter 1-5 (€350)
- 15% to M (€1,050), subsequently reallocated to IFC matter 235-13.

285. On the LBG printouts, all of the above allocations were referred to as "Travel – Konstantinos Adamantopoulos trv expenses Greece 08/2009".

286. The KPMG Report stated that the full amount of €7,000 had been invoiced to clients and paid, in relation to the following invoices:

- €2,100 included on an invoice to IFC dated 16 November 2009;
- €1,750 included on an invoice to TFC dated 24 September 2009;
- €1,750 included on an invoice to TFC dated 24 December 2009;
- €350 included on an invoice to G dated 26 November 2009; and
- €1,050 included on an invoice to IFC dated 31 December 2009.

TFC and IFC were both subsidiaries of CRC, and those companies together paid €6,650 of the €7,000.

287. The KPMG Report reported that clients were not provided with any detailed analysis of the individual expenses incurred but there were general descriptions of expenses on each of the relevant invoices. For example, the invoice to TFC dated 24 December 2009 included disbursements totalling €9,897.63 (including the €1,750 travel expenses for Greece in August 2009) which were described as:

> "International travel, telephones, facsimiles, photocopying and other incidental expenses for the period September-December 2009".

288. The Applicant alleged that clients did not receive a proper breakdown of the expenses and, when contacted after the event, the clients indicated that they did not authorise any such expenses.

289. The KPMG Report noted that:

> "[The Respondent] admitted that this was a family holiday for him, his wife and his two children but stated that he worked extensively throughout the holiday on a number of client matters and it was therefore appropriate to allocate the cost of the holiday to clients.
>
> [The Respondent] also stated that the amount of €7,000 was only part of the total costs of the holiday of €14,000…"

290. The KPMG Report reported that the interrogation of the Respondent's timesheet records for the period of the holiday (3 to 23 August 2009) indicated that the whole period was noted as "holiday", with an additional 12.4 hours of client work, of which 8.5 hours related to IFC. There was no record of time recorded by the Respondent in this period for work done for the other clients who were invoiced for these disbursements (TFC and G) on the documents referred to in the KPMG Report.

291. In his representations on the FI Report, made on 9 December 2011, the Respondent stated, amongst other matters, that August 2009 was not a holiday period for him and that he had travelled to meet clients in Greece during the period. He further stated that he had not told Mr Dougall that this had been a family holiday and that the debit entry made on the General Account on 18 August 2009 was made whilst he was away from the office; it was possible that a member of the accounts staff assumed that the expense related to a holiday. The Respondent also stated that he did not enter his own time recording onto the Firm's system and was therefore not aware that 1050 units in August 2009 were recorded as "holiday". The Respondent further stated that he did not enter his non-billable administration, client development or academic work onto the system. The Respondent's position was that during August 2009 he worked extensively for several clients but it was not always appropriate to enter time against a client matter number when the work was in the "inception" phase, during which the client would expect the fee earner to work on a non-billable basis. Further, the Respondent indicated that time recording was not always to be relied on for billing purposes, as there may be ad hoc fee arrangements with clients. The Respondent went on to note that as an independent Dikigoros, he was not subject to the mandatory daily billing or time recording requirements of the Firm, as that would suggest that he was an employee of the Firm and not independent. The Respondent provided a summary of the work he said was done for clients M, C SA (the major shareholder of G SA), CRC and its subsidiaries IFC and TFC, as well as OTE during the relevant period and the way in which expenses were divided between them and indicated that it was appropriate to invoice those companies due to the travel he undertook on their behalf during August 2009. The Respondent stated that the clients were aware in advance of this travel and the meetings which had been arranged with the clients and that his letters accompanying the bills would always invite clients to discuss any matters arising from the invoices with him.

Trip to Zermatt

292. In December 2009 the Respondent and his family went on a skiing holiday to Zermatt. In the course of the KPMG investigation, the Respondent accepted that this was a holiday and that he did not work extensively during this holiday.

293. A debit entry for €2,593.65 was posted to the General Account on 28 October 2009 with the narrative "American Express – Hotel Albana – Zermatt". It was noted that there was a difference between the "posting" date and the "currency date", such that this entry appeared on the print out presented to the Tribunal to be 3 November 2009. The Respondent's American Express account statement showed the amount of CHF 3,828 – equivalent to €2,593.65 – appeared on 27 October 2009. A credit entry for €2,640.85 was posted to the General Account on 3 February 2010 with the narrative "American Express – Credit Hotel Albana Zermatt".

294. On the Respondent's corporate American Express statement dated 28 January 2010 there was an amount of €16,428.38 (CHF 23,813.50) with the narrative "Hotel Albana Zermatt". A handwritten note next to that entry referred to four client matters.

295. On 2 February 2010 the Respondent sent an email to Ms TD, the office manager of the Brussels office which read:

> "Dear Tanya,
> As discussed, please enter the recent Amex charge of 16,000 on to the [IFC] matters relating to FA expiry review, HH, general enquires and toxic labelling as billable disbursement."

296. On 3 February 2010 Ms TD allocated the amount of €16,000 to two of the IFC matters referred to in the email and to CRC, all of those companies being part of the same group. €4,107.12 was allocated to each of matters INT 235-16, INT 235-15 and INT 235-16 (sic) and €4,107.10 was allocated to INT 235-01, and appeared on the billing guides for those matters.

297. A draft invoice to IFC on matter 235-16 was prepared and dated 26 February 2010. Within the total disbursements of €8,659.58 on that invoice were two amounts of €4,107.12, totalling €8,214.24. The disbursements on the invoice were described as:

> "International travel, telephones, facsimiles, photocopying and other incidental expenses for the period as 02.11.2009 until 22.02.2010".

298. That draft invoice was not sent. The remaining amounts of €4,107.10 and €4,107.12 remained on the ledger for the relevant files as unbilled items.

299. The Respondent's timesheets for the period 24 December 2009 to 2 January 2010 showed that the entire period was noted as holidays, plus 3.5 hours of client work, none of which related to the clients to which the disbursements were allocated.

300. The Respondent repaid the full amount of €16,428.38 on 3 March 2010 and the allocations to client accounts were reversed. This was noted to be after the Respondent's first discussion with Mr Crossley and whilst the KPMG investigator was working at the Brussels office.

Trip to Santo Domingo

301. In or about December 2007 the Respondent and his family travelled to Santo Domingo (in the Dominican Republic) and stayed at the Casa de Campo resort in La Romana. The Respondent informed KPMG that he had worked extensively, particularly for CRC, during that trip. CRC was based in or had offices in Santo Domingo.

302. Two debit entries were posted to the General Account on 14 December 2007:

    - €13,889.80 with the narrative "Experience Travel SA – trip to Santo Domingo 25.12.07"; and
    - €26,456.56 with the narrative "American Express – Casa de Campo".

303. An invoice from Expedia Travel dated 14 December 2007 showed return flights for the Respondent and his family from Brussels to Santo Domingo, in the sum of €13,889.80.

304. The Respondent's American Express bill dated 27 December 2007 referred to "Casa de Campo Reservat", with an arrival date of 26 December 2007 and a departure date of 5 January 2008 for the amount of €26,456.56.

305. A credit entry on the General Account in the sum of €12,537.31 had been posted with the reference "Konstantinos Adamantopoulos (Belgium) exp rep 1101". The expense report number 1101, dated 21 February 2008, referred to €12,291.31 with the narratives "Trip to La Romana" and "Trv exp at La Romana". The sum of €12,537.31 was allocated to client matters for IFC and CRC and was subsequently invoiced. The documents supporting the invoices bore a general description for disbursements, such as that to IFC dated 21 February 2008, stating:

> "International travel, telephones, facsimiles, photocopying and other incidentals, general expenses for the period from 3.10.2007 to 16.01.2008".

306. The timesheet record dated 21 February 2008 supporting the invoice noted one hour of time charged to CRC during the period of the holiday.

307. The Respondent told KPMG that the management of CRC invited him and his family members to join him for the trip and booked a facility for them at Casa de Campo. The Respondent further told KPMG that all of the work he did for the clients was "inception" work and so could not be billed, but it had been his understanding that CRC and its subsidiaries would cover some of the expenses of the Respondent's family at their hotel. The Respondent further indicated in his response to the FI Report that the invoices set out the type of disbursements and specifically mentioned, for example, international travel. The Respondent further stated that he made sure in his covering letter to clients with the bills that he would summarise the activity billed and invite them to contact him if there was any issue arising from the invoice.

Expenses charged through the General Account

"Unsupported expense claim 213"

308. The KPMG Report indicated that an expense claim, numbered 213, totalled €13,186.47; it was supported by documentation for a mobile telephone bill and a dinner.. A total of €11,938.32 was not supported by any documentation noted by KPMG e.g. receipts or invoices. Ms NS of the Brussels office had told the KPMG investigator that there were no receipts to explain these entries.

309. The entries on the General Account which were included in the expenses claim included:

- €780.36 in relation to "[AA] trip to Athens", where AA was the Respondent's child;
- €50.90 in relation to "DHL charge, private mail to RBS";
- €285.20 in relation to "trip to Rome 06.06.09 re Al.." – this was understood to relate to the wedding of a lawyer in the Brussels office;
- €1,144.42 in relation to "[As and Ar] trip to Greece" – this was understood to relate to the Respondent's wife and his other child;
- €59.11 in relation to "DHL, private charge".

310. The Applicant's position was that these expenses appeared to be of a personal nature.

311. The credit to the General Account of expense claim 213 in the total sum of €13,186.47 had the effect of clearing a number of debit entries which had built up in the General Account over time.

312. €11,938.32 of the €13,186.47 was billed in two amounts to CRC and TFC. The allocations on the billing guide had the narrative "KA trv exp May & June 09". An initial allocation to CRC dated 26 June 2009 in the sum of €5,969.16 was cancelled by way of a credit note and was included on an invoice to TFC dated 6 August 2009. The other €5,969.16 was included on an invoice to IFC dated 30 July 2009. The Applicant's position was that only general descriptions of the expenses were provided to clients, and that the clients did not authorise these expenses.

Expense claims – costs not charged through General Account but allocated to clients
Trip to Greece

313. The Applicant's position was that additional personal expenses in relation to the trip to Greece in August 2009 had been paid for by the Firm and included on invoices to clients, albeit not charged through the General Account.

314. The Respondent had a number of interactions with the travel agent at Grecorama with regard to the invoices to be presented for the trip. An email to the Respondent's PA, Mme Roulez, from Grecorama initially attached an invoice for the whole family trip in the sum of €14,920.04. Subsequently, there was an email from Grecorama to Mme Roulez on 23 July 2009 with the instruction "7,000 eur – 1 fact – ADAMANTOPOLOUS K MR (775) + 1 fact HAMMONDS (774)". Attached to this was an invoice to the Respondent for €7,000, dated 23 July 2009 and a further invoice to the Firm in the same sum. A further invoice was sent to the Firm, from Grecorama, dated 10 July 2009, in the sum of €1,083.35. This was in relation to a flight from Brussels to Kavala.

315. A number of amounts on the Respondent's American Express card statement dated 27 August 2009 appeared to relate to the trip to Greece.

316. The total sum of €8,188.07 for expenditure relating to the trip to Greece was allocated to clients and €7,129.61 of this was then invoiced to a number of different clients, as detailed in the KPMG Report. Only a general description of the expenses was included on the invoices.

317. No significant client work was recorded on the Respondent's timesheets in this period, and the expenses were not allocated to the client matters on which time was recorded during this period. It was noted that more time was recorded on the LBGs than on the timesheets.

Trip to Santo Domingo

318. The Applicant's position was that additional personal expenses in relation to the trip to Santo Domingo (set out above) had been paid for by the Firm and included on invoices to clients, but not charged through the General Account.

319. The sum of €6,724.39 relating to the family trip to Santo Domingo and described as "Trip and trv exp – La Romana – Dec 07" on expense report 1205 was invoiced to IFC on 30 July 2009. There was no detailed description on the invoice and no significant work for this client was recorded during the relevant period.

General

320. IFC was part of the CRC group of companies, to whom the largest proportion of the disbursements in issue were billed (94% of the total of €56,601.04). When the relevant companies were contacted regarding the Firm's charges, the clients agreed that those payments should be reimbursed by the Firm. The clients indicated that they were not aware of the nature of the disbursements which had been billed to them and did not accept that they had authorised those expenses. The Firm subsequently repaid, with interest, all clients who were, in the Firm's view, improperly billed for the Respondent's expenses.

321. The Respondent, in his representations, referred to an email from one client, M, dated 25 October 2010 in which M stated that they had been contacted by the Firm concerning an overcharge in 2008 of €2,551.57 which needed to be returned to them; M indicated that they did not feel this was necessary, but accepted the credit.

322. Proceedings were issued by the Firm against the Respondent to recover the amounts identified by KPMG, together with the outstanding balance on the Respondent's partner's current account. The claim was in excess of £300,000. The matter was settled by consent in an agreement made on 3 April 2013 ("the Settlement Agreement"), in which the Respondent agreed to pay a sum of money in settlement of the Firm's claim against him. The Settlement Agreement also dealt with other issues, including the provision to the Respondent of documents.

Witnesses

323. The Tribunal heard oral evidence from Mr Crossley and Mr Dougall for the Applicant and from the Respondent on his own behalf. The following (very brief) notes of the evidence do not attempt to set out all of the oral evidence heard by the Tribunal but merely outlines the areas with which the evidence dealt. The most relevant points are set out in the section on findings of fact. The Tribunal also read and considered the witness statements of Ms Doyle, Mr Lima, Mr Tallon and Mme Roulez; the relevance and weight of the evidence of these individuals will be commented on in the section on findings of fact.

324. Mr Dougall gave evidence in relation to the KPMG Report which he had produced, dated 4 June 2010, and subsequently about the interim report dated 11 March 2010. Mr Dougall denied any suggestions that his Reports were biased or partial.

325. Mr Crossley gave evidence concerning the Respondent's role in the Firm, the investigation which was commissioned by the Firm and the discussions Mr Crossley had with the Respondent in February and March 2010, including the circumstances in which the Respondent left the Firm. Mr Crossley denied any "conspiracy" to oust the Respondent.

326. The Respondent gave evidence about his role in the Firm, the various transactions in issue in the case and the circumstances in which he left the Firm. The Respondent expressed his view that the Firm had sought to expel him, whilst retaining his clients and maintained the position that he had done nothing wrong.

Findings of Fact and Law

327. The Applicant was required to prove the allegations beyond reasonable doubt. The standard of proof to be applied had been considered by the Tribunal, after submissions from the parties. For the reasons set out at paragraphs 236 to 240 the Tribunal determined that the higher standard would be used, but where relevant it would indicate if its findings would be different if the lower standard were used.

328. The Tribunal had due regard to the Respondent's right 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. This Judgment records only those details about the Respondent's personal circumstances which are essential to understand the allegations and findings. Further, as noted above with regard to the Respondent's representation in these proceedings, the Tribunal was at pains to ensure that the Respondent's arguments were fully presented and considered even where the Tribunal later determined that there was no merit in such arguments. The Tribunal was careful to test fully the Applicant's case. Wherever there was any doubt on an issue, the benefit of that doubt was given to the Respondent.

329. As is apparent from the preliminary matters set out above, the history of this case was long and the progress of the case was convoluted. This Judgment does not attempt to repeat, verbatim, exactly what was said by each witness and/or advocate; the Findings will concentrate on what the Tribunal determined were the key issues. Simply because a fact or argument may not be mentioned does not mean that it was overlooked by the Tribunal; rather, the Tribunal concentrated on the key facts and arguments, not the very many "dead cats" in this case – see paragraph 200 above.

330. The Tribunal noted that the Respondent did not dispute many of the facts in the case, although he disputed how those facts should be interpreted and he gave explanations for how the various transactions had occurred.

331. The Tribunal announced its key findings to the parties during the hearing on 29 October 2015, in much less detail than is contained in this written decision. The Tribunal made it clear in announcing those findings that if there were to be any discrepancy between the oral decision and the written Judgment, the matters set out in the Judgment would be the correct and conclusive version of the findings.

Findings of Fact – Background
The Respondent

332. The Tribunal found – indeed, there was no dispute – that the Respondent was at all relevant times a Greek Dikigoros, practising in Brussels for the Firm. The Firm was an entity regulated by the Applicant. For reasons determined in spring 2014, the Tribunal was satisfied that it had jurisdiction to deal with allegations against the Respondent, brought under s43 of the Solicitors Act 1974 (as amended).

333. The Tribunal further found that the Respondent was a lawyer of significant expertise and standing in the field of EU law. He was well-regarded by his clients and colleagues, had attracted clients to the Firm and had been a very big biller within the Firm. The Tribunal noted that the Respondent denied, in his evidence, that he had been a "star" within the Firm. However, the evidence of Mr Crossley, together with the Respondent's own statements about his expertise and the Respondent's 2009 appraisal report showed that he was a major figure in the Firm, who brought in and generated significant income for the Firm. The Tribunal heard, for example, that work for the CRC group (with which group he was the major contact) generated up to €2 million in fees each year. The Tribunal was satisfied that the Respondent could properly be described as the trusted adviser to the CRC group.

334. The Tribunal was also satisfied that there had been no client complaints or disciplinary concerns raised concerning the Respondent. Mr Blanpain had chosen to tell the Tribunal about an investigation into the Respondent by the Firm in or about 2003, but the Tribunal had been told that this had not resulted in any action against the Respondent. The Tribunal was not told the nature of the investigation and, in any event, noted that any such investigation was entirely irrelevant to the matters in this case. In making its determinations on the issues, the Tribunal treated the Respondent as a lawyer of impeccable record and character.

335. The Tribunal was further satisfied on the evidence presented that the Respondent had been the Managing Partner of the Firm's Brussels office. Two other equity partners left the Firm in 2006 and so from 2007 onwards the Respondent had a greater degree of autonomy, with few checks in place to monitor his performance and management of the Brussels office. As a senior and well-regarded member of the Firm, the Tribunal was satisfied that the Respondent had been trusted to manage the office on behalf of the Firm; indeed, it would be unusual if within a partnership a long-established partner were not treated by his partners with trust and respect. The Tribunal noted in this regard that the Respondent had been a member of the Firm's Board for a number of years, and he had nominated Mr Crossley for the position of Managing Partner in or around 2006.

336. The Tribunal noted and accepted the Respondent's evidence that by 2009 the Respondent had a number of grievances or concerns about the Firm. In particular, the Respondent had raised issues with Mr Crossley and others that: he should receive a "management salary" as the local manager of the LLP in Belgium, in addition to his entitlement to drawings as an equity partner; and his tax treatment was unfair, compared to the treatment of partners within the UK. It was also clear from his evidence that the Respondent felt aggrieved that he had been liable to repay drawings arising in 2003/4 which had been based on overbilling in that year, when he had not been responsible for the overbilling and subsequent bill reversals. The Tribunal did not need to make any findings about whether or not the Respondent had any cause to feel aggrieved about these or any other issues; it was simply part of the background to the case.

337. One further significant issue about which the Respondent was unhappy by early 2010 was that his permitted drawings were being reduced. Within the documents introduced into the case and relied on by the Respondent was an email exchange on 4 February 2010 between the Respondent and a member of the Leeds' office accounts

team, Ms LH. From those emails it was clear that the Respondent had been taking drawings of around €19,000 per month. An email from Ms LH stated,

> "… You have been drawing over your permitted drawings for some time now and [Mr Crossley] has advised that in light of your overdrawn position this cannot continue and we must reduce your drawings to a level whereby you are not making the situation any worse…"

The email went on to indicate that the Respondent's permitted drawings were a little under €14,000 per month and that from February 2010 he would be permitted to draw a little under €10,000 per month.

The Brussels Office

338. The Tribunal also noted and found that towards the end of 2009 the Firm began a process of reviewing the operations of its overseas offices. A report to the Board of the Firm, dated December 2009 was written by Mr Crossley, Mr Downs, Mr West and a Mr Weekes. The overall tenor of the report was that there needed to be greater control over overseas offices and how they operated, with regard to their running costs and budgets. In the section dealing with Belgium i.e. the Brussels office, the report referred to two difficult years from 2006, following the departure of two equity partners. This had been followed by the growth of the office, with predictions for turnover for FY10 (i.e. the financial year from April 2009 to March 2010) being healthy. The report went on to note that:

> "The single most significant issue we are facing is the relatively high level of support costs and structures… Senior management has to face the fact that we have allowed Brussels to "paddle its own canoe" too much… We have to take the toughest stance possible now to address what we sensibly can…
> Brussels is one of… the parts of the Firm where we are planning for and achieving real growth…"

339. The Tribunal saw evidence in the course of the hearing that Ms TD was paid in excess of €166,000 per annum and Ms TD over €100,000; it was clear from the evidence of Mr Crossley that these sums were considered by the Firm to be in excess of the usual market rates for staff undertaking work of the sort done by Ms TD and Ms NS in Brussels. The Respondent's evidence was that he objected to the Firm's attempts to cut costs at the Brussels office, as Brussels was doing well, and it may undermine staff morale if wages were reduced. The Tribunal accepted the Respondent's evidence, which was corroborated in this regard by Mr Crossley, to the effect that the Respondent was unhappy with the Firm's attempts to prevent the Brussels office from continuing to "paddle its own canoe".

The Firm's Investigation

340. The Respondent's contention that the Firm's investigation into him was part of a conspiracy to remove him from the Firm will be examined below. What was clear from all of the evidence – and this was not contested by the Respondent – was that in or about January 2010 the Firm became aware of certain matters relating to the operation of the General Ledger Account and a Tax Account at the Brussels office.

Mr Crossley's evidence was to the effect that it was during the review of the Brussels office, following the report to the Board in December 2009 (referred to at paragraph 338 above) that the operation of these accounts was drawn to the attention of the Firm.

341. The Respondent took issue with the statement in Mr Crossley's first witness statement that the General Account Ledger and the Tax Account were unauthorised accounts as, he submitted, the Firm's head office must have been aware of these and/or they would have been seen by the Firm's auditors. The Tribunal did not need to make any findings in relation to the Tax Account, as no allegations in the Rule 8 Statement were based on the existence of operation of that ledger (although it was dealt with in the KPMG Report). The Tribunal found that the word "unauthorised" was not an accurate description of the Ledger; what was in issue in the case was whether the operation of the Ledger was unauthorised. The Tribunal did not consider that Mr Crossley's description of the accounts as "(unauthorised)" (brackets in the original) in any way tainted Mr Crossley's evidence or rendered it unreliable. More will be said below about the various ledgers which were considered as part of the case. In any event, concerns were noted in or about January 2010 about the Respondent's use of the General Ledger Account.

342. The Tribunal noted and found that, initially, Mr Crossley's main concern had been his discovery that the Respondent's HD capital call payments in May and October 2009 had been made from the Brussels office account. Again, more will be said about this below. This concern led to meetings with the Respondent in Brussels on 10 and 11 February 2010, as a result of which Mr Crossley made a report to the Firm's Board meeting on 24 February 2010. That written report had not been produced in the course of the proceedings; the Firm claimed legal professional privilege and/or litigation privilege and it was not for the Tribunal to go behind that. If the Respondent had considered the possible contents of the report to be probative or determinative of any issue, he could and should have made an application to the High Court to try to obtain it either by way of a witness/document summons or by an application to obtain a document under the terms of his Settlement Agreement with the Firm dated 3 April 2013. The Tribunal drew no adverse inferences against the Firm or Mr Crossley because that report had not been produced.

343. What was clear was that at the Board meeting of 24 February 2010 it was decided to appoint investigators to examine matters at the Brussels office, and KPMG was appointed.

344. There was considerable time spent during the cross examination of both Mr Crossley and Mr Dougall around the issue of whether KPMG was "independent". Indeed, as will be seen from paragraphs 172 to 218 above, it was even alleged that there had been a conspiracy between the Firm and KPMG to get rid of the Respondent. More is said about this aspect of the matter below. The Tribunal found that, rather than simply instruct their usual auditors (PWC), the Firm appointed an accountancy firm with which it had had limited professional dealings and with which it had no prior "ties". The Tribunal was satisfied that the Firm had identified Mr Dougall as a suitable professional to carry out the investigation it required. The Tribunal found that whilst Mr Dougall was appointed by the Firm, and therefore had obligations to the Firm to report properly, he was independent in the sense that he was expected to

bring to bear his professional expertise and standards. Wherever an expert is appointed by a party, and is paid by that party, it could be argued that the expert is not "independent" because of the duty to the paying party. However, that does not mean the person appointed is not independent; such a person may not be influenced or controlled by others, or cease to be an independent thinker. There was no reason to doubt that Mr Dougall's report was independent; it was not biased against the Respondent simply because the matters set out in it recorded inappropriate behaviour by the Respondent.

345. The Tribunal noted and found that the Firm engaged KPMG in line with a retainer letter dated 1 March 2010. Again, more will be said about an alleged conspiracy or impropriety below. The retainer letter outlined the scope of the work to be done. It recorded the context of the instruction and in particular that:

> "… in January 2010 an initial review was undertaken, during which it was identified that [the Respondent] appeared to have made various requests for payments to be made from an office account, which seemed to have been of a personal nature… In particular, we understand that payments have been identified as made from an office account described as being in relation to [the Respondent's] personal liabilities for a partnership capital call, a holiday and for the setting up of a company…"

It was identified that the investigation should consider the use of the General Ledger, the salaries of support staff in Brussels and whether the points noted above represented the full extent or the issues or whether there were other issues which required investigation.

346. There was no dispute that Mr Dougall arrived at the Brussels office on Monday 1 March 2010 to commence his on-site investigation. It was accepted by the Respondent that he had an initial meeting with Mr Dougall, possibly of about half an hour in duration, at the start of the visit. It was disputed by the Respondent that there had been any further discussion with Mr Dougall, save for a brief exchange whilst passing an office, during the remainder of Phase 1 of the investigation. It was not entirely clear when Mr Dougall had left the Brussels office, but the Tribunal was satisfied it was either on Thursday 4 or Friday 5 March 2010.

347. The issue about the interim report by Mr Dougall has been set out above at paragraphs 172 to 218 above. For the reasons set out, the Tribunal was satisfied that Mr Dougall wrote the interim report dated 11 March 2010 which was forwarded to the Firm on that date.

348. There was no doubt that there was then a meeting at the Firm's London office on Friday 12 March 2010 between the Respondent, Mr Crossley and Mr Hearn, albeit Mr Hearn was not present for the whole of the meeting. A note of the meeting, prepared by Mr Hearn (in relation to the part of the meeting at which he was present) was within the papers before the Tribunal. The Respondent disputed the accuracy of the note in several key respects; the accuracy or otherwise of the note will be examined below. What was not disputed was that following the meeting, the Respondent left the Firm with immediate effect albeit there was a Retention

Agreement until the end of April 2010, which Mr Crossley indicated was to ensure an orderly transfer of client matters.

349. Thereafter, the Firm engaged KPMG to carry out Phase 2 of the investigation. The retainer letter for this part of the work was dated 23 March 2010 and a further visit to the Brussels office was undertaken by Mr Dougall from about 24 March 2010. In due course, the KPMG Report, dated 4 June 2010, was produced.

350. Mr Crossley gave evidence, which the Tribunal accepted, that there was some consideration within the Firm as to whether it was necessary to report the Respondent's conduct to the Applicant. Mr Crossley's evidence, which could not be gainsaid by the Respondent (save for the general proposition that there had been a conspiracy to remove him and damage his reputation) was that the Firm's General Counsel had advised it was necessary to report matters to the Applicant. This had then been done.

Further matters between the Respondent and the Firm

351. The Tribunal noted that in his evidence the Respondent stated that the Firm had not paid him various monies due in relation to the Retention Agreement, whereas Mr Crossley stated he had been paid what was due. The Tribunal did not need to make any finding about this, as it was not relevant to the allegations against the Respondent. What it could and did find was that the Firm brought proceedings against the Respondent in the High Court (in Leeds) to recover the amounts which KPMG had identified were due to the Firm from the Respondent; this was a sum in excess of £300,000. The Respondent counterclaimed. The action was settled by a Consent Order dated 11 April 2013 (and sealed on 24 April 2013) under which the action was stayed on the terms set out in a Settlement Agreement dated 3 April 2013. Under the terms of the Settlement Agreement, the Respondent agreed to pay a sum to the Firm by instalments. Although the terms of the Agreement, and even its existence, were stated to be confidential, there had been no objection by either the Firm or the Respondent to its inclusion in the proceedings. The only term of the agreement which was potentially material to these proceedings was a provision that:

> "[The Firm] will provide [the Respondent] with any documentation reasonably requested by [the Respondent] and/or his advisors in order to enable [the Respondent] to deal with or respond to any proceeding brought against [the Respondent] by [the Applicant] provided always that the [Applicant] do not object to such documentation being so provided".

352. What was very clear to the Tribunal from the papers and from the demeanour of the Respondent during the hearing was that the relationship between the Respondent and Mr Crossley/the Firm was very poor indeed. However, the Tribunal accepted the evidence of Mr Crossley that until the events in question came to light in early 2010, Mr Crossley had regarded the Respondent as a friend within the partnership. Their careers had followed similar paths of progression and they had been members of the Firm's Board at the same time. Whilst the Respondent appeared to believe that Mr Crossley and others had been "out to get him", the Tribunal concluded in the light of all of the evidence and the way in which it was given that Mr Crossley had been

saddened and disappointed to find that his longstanding professional friend and colleague had acted inappropriately (according to the interim findings of Mr Dougall).

353. The Respondent's ongoing bad feeling towards the Firm, Mr Crossley and Mr Dougall was made abundantly clear by the fact he had issued proceedings in Belgium in June 2015 against the Firm and KPMG. The Tribunal was concerned to note that the English translation of the proceedings contained assertions with regard to the "false KPMG Report". It was even more concerned to note that passages in the English translation read:

> "During the hearings of 9 and 11 June 2015, the author of the KPMG report, Mr Dougall… was caught telling several lies and untruths while testifying under oath, and was contradicted by the procedural documents"

and

> "Whereas both KPMG and [the Firm] failed to tell the truth following the disciplinary proceedings in England…"

and

> "On the basis of that decision it was established and third parties were informed that [the Respondent] had been guilty of serious and grave misconduct and that, as a result, he now comes under a special regulatory regime".

These assertions were made when the Tribunal had not made any findings as to the truth or otherwise of any of the evidence given and had not ruled on the allegations. It was, at best, inaccurate to say that Mr Dougall had been "caught telling several lies and untruths".

354. Whilst this Tribunal's decisions and Judgments were not expected to be binding on the courts of Belgium, the Tribunal's Judgment was a public document and may be referred to in the Belgian proceedings, to the extent that this was relevant or permitted. The Tribunal wished to make it clear that the English translation with which it was provided did not reflect the Tribunal's findings on the evidence; all such findings are contained in this document, insofar as they are relevant to the allegations in the Rule 8 Statement.

The Applicant's Investigation

355. The Tribunal noted and accepted that the Firm had reported the Respondent to the Applicant on or about 26 July 2010. It was unclear why it had taken until about June 2011 for the Applicant to interview the Respondent and provide to him a copy of the KPMG Report. These proceedings were not issued at the Tribunal until August 2013. For the reasons set out at paragraphs 6 to 15 above, the proceedings were not heard until June and October 2015.

356. The Tribunal noted that the Applicant's FI Report, dated 22 November 2011, referred to the KPMG Report. To a significant degree, the FI Report adopted the KPMG Report. However, the Tribunal noted that the Rule 8 Statement did not cover all of the material in either the FI Report or the KPMG Report. The Tribunal was satisfied, therefore, that in deciding on the allegations to be brought to the Tribunal, the Applicant had not simply adopted the KPMG findings uncritically; there had been consideration of which issues were most relevant and/or were best supported by the documents or other evidence.

357. The Tribunal noted that it had been alleged by Mr Blanpain, as part of his submissions during the case, that the proceedings were tainted inter alia because the Applicant had simply adopted the KPMG Report and that that Report was inherently flawed. The Tribunal rejected that proposition. In particular, as set out below, the Tribunal did not find that the KPMG Report was inherently unreliable and/or had been produced improperly in any way. Even if it had been, the documents in the case – which were not substantially challenged by the Respondent – were sufficient to prove those parts of the allegations which the Tribunal found proved.

Conspiracy theory/bias/"second meeting"/date of interim report

358. The Tribunal noted that it was a significant part of the Respondent's defence that he had been somehow "set up" by the Firm, in conjunction with KPMG, that the KPMG Report was "built on sand". The question of the date of the interim report has been dealt with, comprehensively, at paragraphs 172 to 218 above.

359. The Tribunal was satisfied that there was no bias in the KPMG Report; it was a largely factual report, which set out Mr Dougall's findings as a result of the investigation and was supported by appropriate documents. Indeed, even if there had been bias or partiality in the preparation of the Report, it was difficult to see what difference, if any, that would have made. The Respondent did not deny that money had been transferred or allocated as suggested; what was in issue was why the Respondent had acted as he did and whether he had a proper reason to do so. The Tribunal did not simply accept what was within the KPMG report, particularly with regard to what was stated to have been the Respondent's explanations for what had happened. However, the Tribunal was satisfied that where Mr Dougall stated in the Report that a particular explanation or account had been given to him, an account in substantially that form had indeed been given by the Respondent.

360. The Respondent had made it a major point of contention that there had been no "second meeting" at the Brussels office between the Respondent and Mr Dougall, whereas Mr Dougall contended there had been a discussion with the Respondent which led to him stating certain matters in the KPMG Report. This discrepancy in the evidence was examined in some detail by the Tribunal.

361. The Tribunal was satisfied, so that it was sure, that the information contained in the interim and final KPMG Reports which was stated to have been obtained from the Respondent had indeed been obtained from the Respondent during the first week of March 2010; the Tribunal could not determine at what stage during the week there had been the exchange of information which had led Mr Dougall to state what he had been told by the Respondent. The Tribunal was satisfied that the interim report had

been prepared on or before 11 March 2010 and there was no source for the information stated in that report other than what had been uncovered by Mr Dougall or discussed with the Respondent during the period 1-5 March 2010. In particular, the information about the Respondent's explanations had not been derived from the discussions at the meeting on 12 March 2010 between Mr Crossley, the Respondent and Mr Hearn. The Tribunal further noted that the Respondent had not, to any significant degree, challenged the accuracy of what was stated in the KPMG Report as being his explanations, save that the Respondent disputed that he had agreed the trip to Greece in August 2009 had been a family holiday. It was, however, correct that at the hearing he had expanded on his explanations for the various transactions.

362. With regard to the allegation by the Respondent that there had been a conspiracy between the Firm and KPMG to produce a report which would be damaging to the Respondent, the Tribunal found no merit whatsoever in that proposition. It was inherently unlikely that professionals, including solicitors at the Firm and a senior accountant at KPMG, would risk their careers and reputations in order to create a false case against the Respondent. Where a proposition was so unlikely, it had to be supported by cogent and compelling evidence. Here, there was no evidence which was sufficient to cause the Tribunal to question the motivation of the Firm and/or KPMG. It was clearly the case that the Firm had uncovered serious matters about which it was concerned – in particular the HD capital call matter – and had investigated. It would have been improper not to investigate where there was any basis for concern about the conduct of a senior member of the Firm; the investigation was fully justified. The Firm had chosen to appoint an accountancy firm which was not linked to the Firm in any way, had given instructions as to the scope of the investigation and agreed the fees to be paid in an entirely proper way, at arms' length. There was no evidence at all to suggest that there had been any "side agreement" or discussion between the Firm and Mr Dougall under which Mr Dougall was instructed to find material to use against the Respondent. Had the material not been there, it would not have been found. One of the difficulties with this case was that the Respondent consistently refused or failed to see that the Firm had had good reason to investigate him. In the light of the HD capital call issue and the interim findings by KPMG (particularly with regard to the Zermatt ski holiday), it was entirely unsurprising that Mr Crossley had, on 12 March 2010, given the Respondent the choice of resigning or facing a formal disciplinary procedure.

363. One of the matters on which the Respondent had relied in support of the idea that there was a conspiracy within the Firm and/or between the Firm and KPMG was that the report Mr Crossley had prepared for the Firm's Board meeting in February 2010 had not been disclosed. As already noted at paragraph 342 above, privilege had been claimed for that document. Whilst in an ideal world the document would have been produced, as it may have laid this issue to rest once and for all, it had not been and the Respondent had not taken appropriate to steps to try to obtain its production from the Firm (which was a third party in this case) either by way of an application for a summons for production or under the Settlement Agreement quoted at paragraph 351. The fact the document had not been voluntarily produced, where privilege was claimed, went nowhere near supporting the Respondent's contention of a conspiracy.

364. In any event, even if the Firm and/or KPMG had been "out to get" the Respondent, the fact remained that the documents produced in the case established that there was good reason to be concerned about the Respondent's conduct.

Disclosure Issues

365. A theme throughout these proceedings was the complaint by the Respondent that the Applicant and/or the Firm had failed to disclose documents which the Respondent wished to see. Whilst it was acknowledged by the Tribunal that the Respondent was keen to defend the proceedings and avoid the possible adverse impact on his career, his aggressively run defence had included an unspecific and very wide-ranging request for documents from the Firm. Some 50 categories had been requested. The parties had been able to reach agreement about which of those categories the Firm would and could produce to the Applicant; some five lever arch files of documents had been produced. Although the Respondent had continued to complain, he had not sought production of documents by way of applying to the High Court. In these circumstances, the Tribunal had no reason to draw any adverse inferences from the fact the Firm had not produced the report from February 2010. In any event, it was unlikely that a document produced before the KPMG investigation was instigated would be in any way relevant to the allegations.

366. The Respondent had complained that the Firm had not disclosed the client engagement letters between the Firm and the CRC group on the relevant files and had not disclosed the covering letters with which the bills were sent to those clients. Mr Blanpain had drawn attention to the fact that in May 2010 the Firm had indicated to the Applicant that it would obtain and send to the Applicant various items, including these letters. That had not been done; the reason for this was not clear. Mr Crossley had given evidence that he was not directly involved in that process. In any event, during the course of disclosure a number of covering letters with relevant bills were produced by the Firm. It was not until the Respondent was giving evidence that it was alleged by him that some of those items were drafts and not true copies of the actual letters sent to clients. The Tribunal found it extraordinary that a party to proceedings before it would wait until giving evidence to allege that documents in the hearing bundle were not what they appeared to be on their face.

367. Further, the Respondent had failed give a proper explanation to the Tribunal about the relevance of the retainer letters and/or the covering letters. In his witness statement in May 2015, the Respondent went no further than to say,

> "With each invoice to clients I always took care to clearly mention in a letter that accompanied by the invoice that I was at the client's entire disposal for any enquiries, clarification or additional information relating to any aspect of the respectively attached invoice".

The Respondent had not suggested at that point that the covering letters had set out clearly, or at all, that the invoices contained disbursements relating to the Respondent's travel or accommodation costs in respect of trips with his family. Nor had he suggested that the covering letters or any documents with the invoices set out exactly what the expenditure was for or which travel/accommodation was being charged. In such circumstances, the documents themselves would not go towards

determining any facts in the case; their relevance was at best marginal. The Tribunal could accept that the Respondent had consistently told clients that they could ask him if they had any questions about his bills; that was not a contentious issue. With regard to the CELs, the Respondent had not suggested that he had told clients he would or might charge for part of the costs of family trips or holidays. The Applicant had, properly, accepted that the Respondent would have told clients that disbursements would include travel and accommodation costs. What the Respondent had never asserted was that he had told clients those expenses might be incurred in respect of family trips and holidays. Indeed, the Tribunal noted that in his oral evidence the Respondent accepted that he had never in his career seen a client engagement letter which informed clients that personal expenses or holiday costs might be charged to clients. The Tribunal was satisfied that there could have been nothing in any of the client engagement letters or on the relevant files which would have permitted the Respondent to charge to his clients any personal or holiday costs. Accordingly, this aspect of the disclosure dispute did not help the Respondent.

368. The Tribunal noted that the Respondent's request for disclosure had been wide-ranging, rather than targeted at specific matters. With regard to the "Chinese surveyor" matter, explained below, the Respondent could and should properly have requested from the Firm documents on the file(s) which, he said, involved the instruction of the "Chinese surveyor" in early 2010. Such a request would have been proportionate and proper, given that the Respondent asserted (albeit only from May 2015 onwards) that there had been a misunderstanding about the Zermatt expenses arising from the instruction of the "Chinese surveyor". Instead, he had asked for all of the client files without giving any proper indication of why he said the contents of any of those files were relevant.

369. The Tribunal noted that the Applicant, through the Firm, had produced five lever arch volumes of documents within the categories agreed with the Respondent, together with other documents which were included in the Respondent's two lever arch bundles of papers. Considerably more documentation had been disclosed in this case than was usual or, indeed, necessary for the proper disposal of the case. The Tribunal recognised that neither the Respondent nor his advocate were familiar with the procedures and approaches adopted by the Tribunal or, it appeared, the courts of England and Wales generally. Perhaps unfortunately for the Respondent, a number of the documents to which he had referred or had introduced into the case through disclosure failed to support his case. In any event, the substantial exercise of producing documents in response to the Respondent's requests had had the effect of considerably increasing the costs of the case; more is said about this in the section on costs below.

Disbursements

370. The Tribunal accepted and found that "disbursements" meant expenses which were necessarily and reasonably incurred in relation to carrying out work for a client. Such disbursements could include travel and accommodation costs.

The Firm's Accounts and Ledgers

371. In considering the allegations, the Tribunal noted that a number of ledgers or accounts within the Firm were relevant and made findings about the existence and operation of those ledgers.

372. The Respondent had a partnership current account with the Firm. The Respondent accepted that at all relevant times his current account was overdrawn, albeit he argued that this state of affairs had arisen because of events in 2003/4. There was no doubt that the Respondent owed money to the Firm rather than the other way round. The Tribunal noted that the current account printouts provided by Mr Crossley in the course of his evidence showed that in early 2008 the Respondent was overdrawn by under €900. As at the end of May 2009, the Respondent was overdrawn by over €64,000 and at the beginning of January 2010 the current account showed that he owed the Firm over €60,000. Immediately prior to the Respondent's departure from the Firm, the current account showed the Respondent was overdrawn by over €79,000.

373. The Respondent had argued that as at 2009, no partners were in credit on their current accounts with the partnership. This was clearly not so; the printout of Mr Crossley's current account showed he was consistently in credit.

374. The Tribunal was satisfied that the Respondent's partnership current account was overdrawn because he had consistently taken more in drawings than was ultimately allocated to him after the end of a financial year. During the course of a year, partners' drawings would be paid on the basis of what was expected to be the share of profit each would be entitled to (in accordance with the Firm's policies on drawings and remuneration) but actual profit shares and allocations were not determined until after the end of a financial year. The Tribunal noted that the state of the Respondent's current account was one of the issues which Mr Crossley and others had been concerned about during 2009. The Tribunal noted and found that the Firm had a policy of paying interest to those partners whose accounts were in credit, whereas interest was charged where a partner's current account was overdrawn. It was clear that there was no absolute prohibition on a partner being overdrawn but the Tribunal accepted that it was generally expected that partners would not take out of the Firm significantly more than the amount to which they were properly entitled.

375. The Tribunal also noted and found that as a result of the 2003/4 issues, all partners had been overdrawn for a period. The Firm decided to transfer the overdrawings to a deferred drawings ledger, with those overdrawings to be repaid within a specified period. The Tribunal accepted Mr Crossley's evidence on this and found that there was a distinction between the deferred drawings ledger and the general partner current accounts; even if money was owed by partners in respect of overdrawings in 2003/4, that did not mean that the current account was overdrawn. The Tribunal noted that Mr Blanpain had accepted that there was a deferred drawings account – see paragraph 88 above. The Tribunal found that a partner could well be in credit on the current account, even if some money was due to be repaid through the deferred drawings account. The Tribunal did not accept the Respondent's assertion that all partners had been "overdrawn" on their current accounts as at 2009.

376. The existence of a tax account for the Respondent at the Brussels office was noted in the KPMG Report but did not feature in the allegations in the case. The Tribunal simply noted that Mr Crossley's evidence was that partners' tax affairs were to be managed through the Leeds office and not locally.

377. The Brussels office had a General Account ledger; payments on that ledger were made from the Firm's Brussels office bank account i.e. with money belonging to the Firm and thus its partners. The Tribunal found that the existence of this ledger was permitted; indeed, it was unexceptional for there to be such a ledger to deal with miscellaneous expenses. The General Account would be credited when expenses incurred on it were paid from elsewhere or the cost was allocated to another ledger. For example, if taxi fares were incurred on client business they might be allocated to this ledger and then reallocated to the relevant client ledger. It was the General Ledger which showed payments for the Respondent's HD capital call, the company set up costs, the Expenses 213 matter and costs associated with the trips to Greece and Zermatt, amongst other matters.

Assessment of witnesses/weight to be attached to witness statements

378. The Tribunal had had the benefit of seeing and hearing from Mr Dougall, Mr Crossley and the Respondent and thus being able to assess their credibility, albeit the credibility of the Applicant's witnesses was not a key issue in any event as the case was based on documentation.

379. The Tribunal found Mr Dougall of KPMG to have been a credible witness. He was being questioned over five years after he had prepared a report into the Respondent's activities at the Firm, so it was unsurprising that he may not have been able to give a full account of what happened and when during the first week of March 2010. He was not called as an expert witness but as a witness of fact. Whilst it may have been helpful for Mr Dougall's full file concerning the investigation to have been available – as it would be where an expert witness was called – there was no surprise that he did not have it available given that a) the investigation was five years earlier and b) no-one had asked for it.

380. The Tribunal was satisfied that there was no reason at all to think that Mr Dougall had fabricated any evidence or been untruthful. He had been instructed to carry out an investigation and had done so, in a proper and professional way. He had recorded his initial findings in an interim report within a week of his first visit to the Brussels office. Mr Dougall had no axe to grind and there was no reason at all for him to put his professional career on the line for something in which he had no personal interest and from which he stood to gain absolutely nothing. Mr Dougall's evidence was credible and appropriately supported by the documents in the case; he was a witness of truth.

381. The Tribunal found that Mr Crossley was also a credible witness, who had tried to help the Tribunal. His own good name and that of the Firm had been called into question by Mr Blanpain/the Respondent and on occasion the Tribunal had found Mr Crossley's demeanour to be aggressively defensive; he had even on some occasions been somewhat provocative in his evidence, for example when having given evidence on a point he had exclaimed, "Game, set and match!". However, these

displays of some emotion were unsurprising given that, as the Tribunal accepted, Mr Crossley and the Respondent had had a good and professional relationship until the events in question and Mr Crossley had, understandably, felt let down by the Respondent. In any event, the Tribunal had no reason to think that Mr Crossley had told any untruths or had put a false gloss on his evidence in any way.

382. The Tribunal noted that Mr Crossley's evidence dealt with the explanations the Respondent had given for the HD capital call, Zermatt and other matters as at February and March 2010. For reasons which will be expanded on below, where there was any discrepancy between the account given by Mr Crossley and that given by the Respondent, the Tribunal preferred the account given by Mr Crossley.

383. Mr Lima's witness statement dated 7 February 2014 dealt with his comments on disbursements charged by the Respondent to companies within the CRC group, of which he was a senior manager. His evidence was challenged by the Respondent, who did not have the opportunity to cross examine him. The statement was clearly admissible in evidence, but there was a question as to the weight to be accorded to it.

384. The Tribunal noted that the statement appeared to have been written in answer to a series of questions posed by the Applicant, which questions were appended to the statement. The import of the evidence was that CRC had been unaware of the exact nature of the expenses charged and had not authorised them beforehand. Mr Lima specifically stated that the company had not invited the Respondent and his family to Santo Domingo and had not agreed to cover any of the costs of that trip. He did not specifically mention the Greece trip in 2009.

385. As the Respondent did not have the opportunity to challenge Mr Lima's evidence by cross examination, the Tribunal decided to give it little weight, save where it was supported by other evidence. That said, the Tribunal noted that the Respondent had not asserted in any of his witness statements that he had specifically discussed and agreed disbursements with Mr Lima or other senior figures in the CRC group. Although in his oral evidence to the Tribunal the Respondent had stated that he "probably" discussed a charge of over €4,000 in respect of the Santo Domingo trip costs (which appeared on a bill including over €14,000 in disbursements in a bill dated 21 February 2008 to CRC) with his client, this was the first time that the Respondent had made such a suggestion. The import of his evidence generally was that the clients could have asked him about the bills if they had any questions. There was, therefore, little real dispute between Mr Lima's evidence that there had been no discussion or authorisation of the disbursements which were in dispute and the Respondent's position which was that the disbursements *may* have been discussed; he did not say they had been discussed.

386. Ms Doyle had been expected to give evidence in June but the Tribunal had been told she had been unable to do so for health reasons. The Tribunal had no information about whether there was any physical impediment to Ms Doyle attending to give evidence in October, but noted that the Applicant had concluded its evidence – save for reserving the position in respect of the need to deal with issues arising from the evidence given and the lines of cross examination adopted when Mr Dougall and Mr Crossley gave evidence. The Tribunal had no reason to believe that Ms Doyle had

stayed away deliberately. Again, her evidence was clearly admissible although there was a question as to the weight to be applied to it.

387. Ms Doyle's witness statement was very brief and related only to the issue of the HD capital call. There was no issue about the fact that she had sent the email on 19 May 2009 set out at paragraph 268 above. The main issue was what that email meant; Ms Doyle's evidence was to the effect that the email meant that partners with a credit balance on their partnership current account could use that to meet the capital call, whereas the Respondent's position was, in effect, that the email offered partners a "loan" to pay the capital call. The Tribunal noted that Ms Doyle's statement went on to state that if the Respondent had asked to use his current account, she would not have authorised it because there were insufficient funds in his account. This evidence was consistent with that given by Mr Crossley. The Respondent had not suggested at any point that Ms Doyle had any grievance against him and/or was part of a conspiracy against him. In these circumstances, whilst Ms Doyle's evidence would be accorded less weight than that of Mr Crossley and Mr Dougall, it could properly be taken into account as part of the overall evidence. The Tribunal would, of course, take into account the Respondent's explanations and the fact that he had had no opportunity to put it to Ms Doyle that a "loan" would have been granted and/or that her email did not make it clear that only partners in credit could use their current accounts to pay the capital call.

388. The letter/statement of Mr Tallon of the Brussels Bar dated 20 March 2015 was not challenged by the Applicant, albeit it was not formally accepted by the Applicant. The Tribunal was satisfied that it was proper to take into account this evidence in full and to accord it the same weight as if Mr Tallon had given oral evidence.

389. Of particular relevance, the Tribunal noted and accepted the following passages:

389.1 Part of the response to the question "May a lawyer admitted to the Belgian (Dutch speaking) Bar claim payment from clients of expenses that could be considered personal expenses (e.g. travel expenses of spouse and children)?" read,

> "It is very rare that the lawyer and the client enter, in advance, into a formal agreement about the exact amount of fees and expenses that the client will have to pay… More commonly, the lawyer will – and in the absence of another agreement has the right to – unilaterally set the fees and expenses within the limits of [Code quoted]… In such event this provision and basic principles of Belgian contract law require a lawyer to inform the client about the way fees, expenses and court costs will be calculated (hourly rates, a percentage of the outcome of a case, at cost etc.)… but give him the ultimate power to decide on the actual amount of fees and expenses charged."

389.2 In a section headed "Calculation" it was stated:

> "As far as the calculation of expenses is concerned, in the template agreement between lawyers and their clients that the Flemish Bar Association recommends using… it is provided in a footnote that the way the expenses are calculated must be "clear, uniform and verifiable". From the jurisprudence in matters concerning expenses, it stems that a lawyer must be able to provide

sufficient detail of the expenses made in order to justify the amount claimed…"

389.3 In a section headed "Professional versus personal expenses" it was stated:

> "Asking a client to pay for specific travel expenses for the lawyer's spouse and family members is not expressly prohibited under the deontological rules of the legal profession. The question whether such expenses can be claimed from a client has, to my knowledge, not been answered in the jurisprudence about the deontological rules. In my opinion, our deontological rules do not prohibit letting the client pay for expenses that are not straightforward professional expenses or that are not directly related to a file, provided this is done in a transparent way and provided this payment is not a substitute for the payment of the lawyer's fees".

390. This evidence was uncontroversial. It was relied on by the Respondent but, in fact, it went some way to support the Applicant's case.

391. The statement of Mme Roulez, the Respondent's PA at the relevant time, dated 2 July 2014 was not challenged by the Applicant. It was a brief statement, the substance of which was:

> "I can confirm that [the Respondent], whilst at [the Firm], never recorded his time electronically and left this task to me or to other available secretaries at [the Firm's] Brussels office".

392. The Tribunal accepted this evidence. However, the Tribunal noted that the evidence was of limited relevance as there was no allegation concerning overcharging for time spent and the Respondent did not say that Mme Roulez (or other staff) had incorrectly recorded his time.

393. The Respondent had given evidence on his own account, both in chief and under cross examination. In response to fairly simple questions he had given long statements by way of reply rather than answering briefly and precisely. He had spoken at some length about matters which were irrelevant. For example, the Tribunal noted that he had given quite a lot of detail about the work he had undertaken for the CRC group of companies despite the concerns expressed through Mr Blanpain at the preliminary hearings in spring 2014 about the need under the rules of the Belgian Bar to maintain client confidentiality. The details given by the Respondent were noted by the Tribunal but are not recorded in this document, in order to ensure the Respondent's former clients are not prejudiced by having their legal matters aired in a public document.

394. The Respondent had been emotional, perhaps understandably, and this may have led him to appearing unfocussed. The Respondent was clearly intelligent and had no difficulty in dealing with the proceedings and questions put to him in English. He had a tendency to "jump in" to answer questions before they had been asked. The Tribunal concluded that the evidence on the documents in the case was determinative in the absence of a reasonable explanation by the Respondent for each of the matters in issue. Whereas the Tribunal gave the benefit of any doubt to the Respondent, it

could not help but conclude that his approach to the case had involved an element of "making it up as he went along" as the Respondent's explanations had varied over time. The "Chinese surveyor" explanation was a particularly clear example of this.

395. The Tribunal did not believe the Respondent had set out deliberately to mislead the Tribunal in his evidence. A fundamental problem appeared to be that the Respondent was unable to grasp that his behaviour had been in any way, or to any extent, improper or, indeed, that there had been good grounds for the Firm to investigate him. He had therefore tried to explain his conduct albeit his explanations to the Tribunal were not sufficient to raise doubts about most aspects of the Applicant's case. The Tribunal accepted the evidence of Mr Crossley and Mr Dougall as to what the Respondent had said to them in early 2010 rather than the Respondent's subsequent explanations.

Findings in relation to the specific matters in the Rule 8 Statement

396. In this section, the findings in relation to the various matters in the Rule 8 Statement will be set out in the order in which they appeared in that Statement.

HD Capital Call

397. The factual background to this matter is set out at paragraphs 266 to 274 above. As noted above, in and around 2009 the Respondent was required to pay a total of £75,000 in respect of his share of the shortfall which had arisen on the liquidation of HD. The Tribunal was satisfied that this was a personal liability of the Respondent and was not a liability of the Firm, or to which the Firm or its members were obliged to contribute. Some of the partners in HD were also partners in the Firm. The Respondent funded two of the capital calls from his own resources. However, the May and October 2009 capital calls, totalling about £32,000, were paid from the Firm's Brussels office bank account and were recorded on the General Ledger.

398. The documents in the case clearly showed that on 22 May 2009 €22,662 was paid from the General Ledger using the Firm's bank account. This was noted on the Ledger as being "… Payment to [the Respondent] for 3rd capital call". This caused the General Ledger to increase (i.e. the amount spent and recorded on this Ledger increased) to over €32,000. On 6 October 2009 €13,328.70 was paid from the General Ledger with the narrative "[the Respondent] final capital call payment". The balance on the General Ledger increased to over €40,000 as a result of this payment from the office bank account. The capital call sums were repaid by the Respondent in early March 2010. There could be no doubt at all that the Respondent had had the use of the Firm's money for his own benefit, in order to discharge his personal liability.

399. The Tribunal further found that as at late May 2009 the Respondent's partnership current account was overdrawn by more than €64,000 and as at October 2009 it was overdrawn by a similar amount.

400. The Tribunal further noted and found that the HD capital call payments were discussed by the Respondent and Mr Crossley on 10 and 11 February 2010. The Tribunal accepted Mr Crossley's account that the HD capital call payments had come to his attention and he arranged to meet the Respondent, together with Mr Downs of

the Firm, on the evening of 10 February 2010, to discuss what had happened and hear the Respondent's explanation. The discussion continued on 11 February 2010, with the involvement also of Mr Hull of the Firm.

401. Mr Crossley's evidence was that the Respondent had explained that he had interpreted Ms Doyle's email of 19 May 2009 as meaning that he could have some sort of loan from the Firm to meet this liability. This was the explanation which the Respondent offered to the Tribunal, so there was no discrepancy in the accounts given by Mr Crossley and the Respondent about how the Respondent had sought to explain the transaction. It was, of course, for the Tribunal to determine if that explanation was credible or reasonable.

402. On the afternoon of 11 February 2010 the Respondent sent an email to Mr Crossley, copied to Mr Downs, which read:

> "I am writing further to our discussions of yesterday and earlier today to say I am deeply sorry about the [HD] payments. I certainly did not intend to embarrass you and/or place your leadership in doubt.
> As I mentioned to you yesterday and on several occasions, this is of course my liability entirely and I will take steps immediately to rectify the situation with interest…"

On 4 March 2010 the Respondent sent an email to Mr Crossley which confirmed that he had made the HD payment. The Respondent again apologised for having embarrassed Mr Crossley and then went on to deal with certain matters concerning his tax affairs.

403. The Respondent's account to the Tribunal was that he had passed Ms Doyle's email of 19 May 2009 to Ms TD and/or Ms NS with an instruction to "deal with it" or, as he said in his witness statement of 11 May 2015,

> "I forwarded [Ms's Doyle's} email to… [Ms TD]… with copy… to her assistant, [Ms NS]… and asked them to make such payments from my current account, properly registering the transactions. I always assumed that [Ms TD] and [Ms NS] would liaise with [Ms Doyle] and the Leeds account department as appropriate and certainly never invited them not to liaise with [Ms Doyle]."

404. The payment was not made from the Respondent's current account with the Firm but from the Firm's general office account in Brussels. Accordingly, it was not registered within the Firm's systems as an additional liability of the Respondent to the Firm at that point. The true position only came to light some nine months after the first payment and three months after the second.

405. The Tribunal noted that the Respondent's evidence was that he had interpreted Ms Doyle's email as inviting him – and other partners of HD – to have a loan from the Firm to pay the HD capital call. This was an extraordinary proposition, given that: a) there was evidence from emails during 2009 that the Firm was asking the Respondent to reduce the amount owing on his current account; b) the HD capital call issue became "toxic" due to a potential dispute between HD and the Firm concerning HD's premises, of which the Respondent was aware from his time on the Board of the

Firm. It was correct that the email did not specifically say that only partners with positive balances could use their current account to pay the capital call, but this would be the normal and natural interpretation of the email. Further, the Respondent could have checked with Ms Doyle if his understanding was correct. The Respondent did not take any steps to ensure that Ms TD dealt with the matter appropriately, by checking with Ms Doyle or anyone else at Leeds that the current account was being used.

406. The Respondent gave evidence that he did not know that the Firm would not allow him to borrow from the Firm to pay the HD capital call, as the Firm allowed partners to be overdrawn on their current accounts. He further told the Tribunal that all payments through the Brussels office account had to have the approval of the accounts team at Leeds; in effect, his position was that it would not have been possible to pay the money from the office account if it had not been approved by the Leeds office. The Respondent told the Tribunal that he did not believe that Ms TD or Ms NS had broken any rules as the payment was authorised, although he acknowledged that it would be wrong to use the General Account to pay a personal liability.

407. The Tribunal noted that in relation to a number of the issues in this case, the Respondent relied on the proposition that a transaction could only be processed through the Brussels' office ledger and/or bank account if authorised by the Leeds accounts team or if it clearly fell within the limits of authority given to the Brussels office. The Tribunal found it extraordinary that the Respondent, as a trusted and senior member of the Firm, was asserting that the Leeds office checked all of the transactions through the Brussels office; such duplication of work would be unwieldy and unnecessary in the normal course of business. The partners of the Firm should have been able to trust the Respondent to manage the Brussels office without supervising too closely. That said, it was clear from Mr Crossley's evidence that during 2009 the Firm had realised that it needed tighter controls over its offices outside England and Wales. This need clearly extended to reducing staff costs – a process which the Respondent resisted - but it did not appear to be proposed that the central accounts team would check and authorise every payment or movement on a ledger of the many offices of the Firm. The Tribunal did not accept that the Leeds office had in fact authorised the two payments from the Firm's office bank account to pay the HD capital call; whilst the payments had been registered and made, it was not realistic to think that anyone in the Leeds accounts team had specifically considered whether or not to permit the particular payments.

408. The Tribunal found that the Respondent's use of the Firm's money to pay his personal liability was not authorised expressly by the Firm. Further, whilst the Firm had permitted the Respondent to run an overdraft on his current account, the Tribunal found that the suggestion that the Firm would have permitted any extension of that debt in order to pay the HD capital call was not credible. The Tribunal accepted the evidence of Mr Crossley, which was supported by the written evidence of Ms Doyle, that the Respondent would not have been allowed to use his overdrawn current account to pay the HD capital call.

409. The Tribunal noted with concern that the Respondent still did not accept, in the course of his evidence, that he had done anything wrong in causing or allowing the payments to be made on his behalf by the Firm. He still failed to accept that his reading of Ms Doyle's email as offering yet a further loan facility was wrong – and that he must have known it was wrong. Further, even if the payments had been made from the office account rather than his partnership current account, the Respondent had failed to notice or check from where the payments had been made. His whole approach to these payments was less than scrupulous. There could be no doubt that the Firm had been entitled to take a rather dim view of the Respondent's conduct, as he had misused the Firm's money for his own benefit.

410. Whilst this conduct related to the running of the Firm and the Respondent's role as a manager of that Firm, the Tribunal noted that it concerned the internal systems and controls of the Firm and the Respondent's relationship with his partners. There was no suggestion that any client had been directly affected, let alone harmed, by the Respondent's misconduct in relation to his partners' money. Therefore, whilst the Tribunal was satisfied to the highest standard that the Respondent had misconducted himself as alleged by the Applicant, it was not sure that it was appropriate to make a s43 Order on the basis of this matter.

Company Set up Costs

411. The factual background to this allegation is set out at paragraphs 275 to 281 above. The evidence was very clear that the Respondent had set up a company, Hellenic, which was to receive his remuneration in a way which would be tax efficient. There was nothing wrong, in principle, with setting up such a company and the Tribunal had heard evidence that other people working at the Brussels office had done the same thing. However, the evidence in the case was that no-one other than the Respondent had charged their company set up costs to the Firm. The Tribunal found – indeed, there was no dispute – that the Firm paid the company set up costs of €12,400 in December 2009; the company was incorporated in January 2010.

412. The Respondent's position was that he believed he was entitled to charge these costs to the Firm. The Tribunal found that, in the circumstances where the Respondent already owed the Firm significant sums, it was incredible that he held such a belief. He took no steps to check with Mr Crossley or anyone else whether his use of the Firm's money was authorised. The Tribunal was satisfied that the company set up costs were not properly payable by the Firm; the company was set up for the Respondent's personal benefit and not that of the Firm.

413. The Tribunal found, again, that the Respondent's use of the Firm's money for his personal benefit was less than scrupulous. It illustrated his sense of entitlement to be paid or to receive benefits from the Firm in excess of the amounts and benefits properly due to him. The Tribunal was again satisfied to the highest standard that the Respondent's conduct amounted to misconduct in his relationship with the Firm/his partners. However, the fact that no client was affected directly or harmed meant that the Tribunal was not satisfied to the required standard that it was appropriate to make a s43 order on the basis of this part of the allegations.

Trip to Greece, August 2009

414. The factual background to this allegation is set out at paragraphs 282 to 291 and 313 to 317 above. The Tribunal heard and read a great deal of evidence concerning the Respondent's trip to Greece in August 2009. The Respondent disputed that this trip, which was from 3 to 23 August 2009, was a holiday for himself and his family. The Respondent pointed out that whilst Greece may well be a holiday destination for many Europeans, it was not for him.

415. What was undoubtedly true – indeed, it was not disputed by the Respondent – was that the Respondent incurred costs of €14,000 for the rental of a holiday apartment or villa for that period in Mykonos. This was shown on an invoice from an agent, Grecorama, dated 16 July 2009. In addition, that invoice recorded the cost of flights for the Respondent and three others from Athens to Mykonos. On 23 July 2009 the €14,000 charge for the villa was split 50/50 between the Respondent and the Firm. €7,000 was duly paid by the Firm.

416. There was no doubt – and, indeed, it was not disputed by the Respondent – that the €7,000 had been allocated between client files and was subsequently billed to clients. Written instructions as to the allocation were set out on an invoice from Grecorama, with 30% to IFC, 25% to TFC, 25% to OTE, 5% to G and 15% to M. Of these clients, only IFC and TFC were part of the CRC group. The allocations were subsequently changed, such that 30% (€2,100) was allocated to IFC, two lots of 25% (2 x €1,750) were allocated to TFC, with 5% (€350) to G and 15% (€1,050) to M, which in turn was allocated to IFC. The effect of this was that 95% of the costs of the accommodation in Mykonos were allocated to the CRC group of companies.

417. There was also no doubt, on the documents presented, that the accommodation costs had been included within the following invoices to clients, all of which were duly paid by the clients:

417.1 Invoice dated 24 December 2009 to TFC, which was stated on its face to be the final invoice on that matter, which was in the total sum of €97,825.63 including disbursements of €9,897.63; the disbursements included €1,750 plus VAT described on the LBG for that bill as "Travel – [the Respondent] trv expenses Greece 08/2009" and elsewhere on the LBG/internal documents as "International travel, telephones… for the period September to December 2009".

417.2 Invoice dated 24 September 2009 to TFC which was in the total sum of €98,783.80, including disbursements of €4,074.50; the disbursements included €1,750 plus VAT described on the LBG for that bill as "Travel – [the Respondent] trv expenses Greece 08/2009" and €1,380.46 plus VAT described as "Travel – American Express [the Respondent] trv expenses Greece 08/2009".

417.3 Invoice dated 31 December 2009 to IFC in the total sum of €15,693.34, which included disbursements of €1,693.34. The LBG for that bill included the amount of €1,050 described as "Travel – [the Respondent] trv expenses Greece 08/2009".

417.4 Invoice dated 16 November 2009 to IFC in the total sum of €42,193.60, including disbursements of €4,134.60. The LBG for that bill included the sum of €2,100 which was described on the LBG as "Travel – [the Respondent] trv expenses Greece 08/2009".

418. The invoice to G which included the 5% i.e. €350 of the expenses was not produced to the Tribunal, but the Respondent had not suggested at any stage that this sum had not been billed to G. What was beyond any doubt was that the Respondent had charged a total of €6,650 of the costs of his family accommodation in Greece in August 2009 to the CRC group of companies. What was also beyond any doubt was that: there was no detailed description of the disbursements on the face of the relevant invoices and the LBGs contained the description relating to travel expenses in Greece in August 2009 set out above. The papers concerning the bill to TFC dated 24 December 2009 (set out at paragraph 417.1 above) referred to the disbursements being in the period September to December 2009, i.e. after the period of the villa rental.

419. The Respondent had raised issues during the case about the fact that the covering letters he had sent with the bills had not been produced as part of the disclosure exercise. The Tribunal noted that the Respondent had never asserted that in those covering letters he had set out clearly what the disbursements were, and in particular he had not asserted that he had drawn attention to the fact that part of the disbursements related to the costs of a villa or apartment in Mykonos. In those circumstances, the absence of those documents was not material to determine any point. The Tribunal readily accepted that the covering letters may well have contained a brief summary of the work done or the issue to which the invoice related and an invitation to clients to contact the Respondent if they had any queries about the invoice. The Tribunal also accepted that disbursements could properly include travel and accommodation expenses. That was subject to the caveat that the expenses should be incurred as a part of carrying out work for clients, otherwise the expenses were not true disbursements as defined above at paragraph 370.

420. The position, therefore, was that the Respondent had charged €6,650 of his accommodation costs to the CRC group, and had allocated a further €350 to another client. The issue the Tribunal had to determine, therefore, was whether it was proper to do so.

421. As a general proposition, charging holiday costs to clients was improper. The letter from Mr Tallon made it clear that whilst there may not be an absolute prohibition on such charges, they would have to be clear and transparent and agreed by the client. In his evidence, Mr Crossley referred to the only occasion on which he had come across such costs being charged to a client; a solicitor had been asked by a client to carry out some urgent work, which the solicitor agreed to do but, as he had to cancel a booked holiday, he asked (and the client agreed) to pay the cancellation charges. The costs of holiday accommodation would not normally be disbursements in that they were not expenses incurred in order to carry out work for a client.

422. The Tribunal accepted that with at least two of the four bills in question, the Respondent had sent the LBGs to the clients. However, even a close examination of the LBGs would not show that the figures quoted related to a proportion of

accommodation costs. There was no doubt that the true nature of the expenses would have been hidden from clients; this was particularly so where the bills were quite large and a few thousand euros of disbursements would hardly be noticed. In particular, the invoice referred to at paragraph 417.1 above referred to travel in the period September to December 2009; there was no way in which a client would link the disbursements charged on this bill with the Respondent's rental of a villa/apartment for himself and his family in August 2009 in Mykonos.

423. The Respondent consistently denied that he had been on holiday in August 2009, as he said he had carried out work for clients whilst in Greece. He referred in his evidence to meetings he had attended, particularly in Athens, during August 2009.

424. There could have been no objection to the Respondent charging as expenses to his clients any reasonable expenses in travelling between Mykonos and Athens (or other places) for client meetings and the costs of accommodation whilst undertaking work for his clients. However, he had not done that and had instead allocated part of the costs of the accommodation for himself and his family to his clients.

425. The explanation given by the Respondent was that he had been undertaking work for clients whilst in Greece and so it was reasonable to charge to them part of his accommodation costs. The Tribunal noted that a lot of evidence was given concerning the amount and type of work undertaken by the Respondent in Greece.

The KPMG Report recorded, correctly, that the Respondent's time recording records showed that all 15 working days in the period 3 to 23 August 2009 were shown as holiday, with 85 units (i.e. 8.5 hours) charged to IFC, a total of 38 units to various other clients and zero units charged to TFC. The Tribunal noted the unchallenged evidence of Mme Roulez that the Respondent did not enter his own time-recording. The Tribunal also noted that the LBGs for the relevant matters showed more time recorded on those matters in August 2009 by the Respondent than appeared on his time-sheets. This discrepancy was not fully explained, but as the Respondent was not facing any charges of charging his clients excess costs, or "padding" his time recording, that point did not have to be explored.

426. The Tribunal accepted that the Respondent may well have undertaken more work in the period 3 to 23 August 2009 than appeared on the time records; indeed, the Applicant did not challenge the proposition that the Respondent had carried out work whilst on holiday. There was an active dispute during the hearing about whether or not the Respondent had charged clients for any of the time he said he had worked whilst in Greece in August 2009. In his witness statement made in May 2015, the Respondent had set out in some detail the work he said he had done for M and G; those clients were not charged part of the accommodation costs although €350 was allocated to M. The Respondent also set out in detail the work he said he had done for the CRC group and stated:

> "During the period 3 until 23 August 2009 I spent approximately 85 hours in reviewing files and relevant information… as well as 3-4 hours in meetings and approximately 30 hours in travel. I chose not to charge CRC/IFC/TFC with this time… Given that I had to be in Athens throughout this period to hold discussions with and make myself available to the Greek authorities, I

allocated related travel and accommodation expenses to the matters concerned in accordance with the effort put to each of them."

427. It appeared from this to be the Respondent's case that he had not charged clients for the work done in Greece – which would have formed part of the Firm's profit costs – but had instead chosen to allocate part of his personal accommodation costs in Mykonos. As noted above, there would have been no objection in principle to the Respondent charging for his specific expenses in travelling to Athens and staying there, provided (of course) it was clear to the client that this was what was being charged. In these circumstances, it would not have been clear to the clients that they were being charged for accommodation in relation to work for which they were not being charged.

428. During the hearing, it became clear that the Respondent's position was that he had charged for at least some of the work he had done whilst in Greece.

429. The LBG for the invoice referred to at paragraph 417.1 above referred to "international travel" etc. On examining the LBG in relation to the invoice referred to at paragraph 416.2, the Tribunal noted that 8.7 hours appeared in the period August 2009 (prior to 24 August). There was no mention on the LBG of "accommodation" although that might be implied in where there was a need to travel. In relation to the invoice referred to at paragraph 417.3, the bill referred to meetings in Brussels in March to May 2009, but not meetings in Greece in August 2009 and the schedule of disbursements referred to international travel etc. "in the period 9 March to 2 April 2009" i.e. not in August 2009 and the LBG did not refer to any time worked in the period August 2009. In relation to the invoice referred to at paragraph 417.4 above the LBG included a general disbursement narrative which, again, referred to "international travel" etc. and recorded 13.1 hours apparently worked by the Respondent in August 2009 on this matter.

430. The position therefore appeared to be that whilst the Respondent had initially said that he had not charged for work done whilst in Greece, some time had indeed been charged, in respect of the invoices at paragraphs 417.2 and 417.4. Of course, just because the Respondent had undertaken some chargeable work – despite his earlier suggestions to the contrary – did not mean it was proper to charge for the cost of accommodation used by him and his family in Greece.

431. The Tribunal had particular regard to the evidence of Mr Tallon, who had stated that asking a client to pay for specific travel expenses for a spouse and family members was not expressly prohibited, but the question had not been answered in the doctrine and jurisprudence. Mr Tallon's evidence was that the rules of the Belgian Bar "… do not prohibit letting the client pay for expenses that are not straightforward professional expenses or that are not directly related to a file, *provided this is done in a transparent way…*" (emphasis added).

432. In the present situation, it was clear on the evidence that the Respondent was the trusted legal adviser to the CRC group of companies. Although those clients may sometimes query bills, the bills in question did not draw to the attention of the clients that the disbursements included part of the costs of a villa in Mykonos. Whilst the Tribunal accepted that in relation to at least two of the four bills to CRC companies

the LBG had been provided – and it may have been sent in relation to the other invoices – the detail given on the LBG was not sufficient to make the expense transparent or in such a way as to give the client any information which might lead to the client querying the bill. The expenses charged were generally quite small in relation to the overall size of the bills and it was entirely foreseeable that unless the expenses were expressly drawn to the attention of the client, they would not be noticed. The Tribunal was satisfied that both as a manager of an English and Welsh recognised law firm and as a lawyer practising in Belgium, the Respondent should have drawn the attention of clients to the fact that they were being charged for the costs of a holiday villa. It should not have been left to the clients to raise a query.

433. The Tribunal also noted and found that the Respondent had substituted his accommodation expenses for part of his fees as a lawyer. According to Mr Tallon, quoted at paragraph 389.3 above, this was not proper according to the Brussels Bar rules.

434. The Tribunal was satisfied to the highest standard that if the Respondent had been a solicitor, he would have been guilty of conduct which lacked integrity and which was not in the best interests of his clients. As he was not a solicitor, it was not appropriate to couch the findings in precisely those terms as if there had been a breach of a specific rule of conduct or Principle. However, it was undoubtedly the case that failing to be transparent in billing clients for holiday costs lacked integrity and it could not be in the interests of clients for them to be billed in a way which enabled the true nature of the disbursements to be disguised. Whilst the sum of money involved may not have been large, the conduct was improper and undesirable in someone holding a senior position in a law firm regulated in England and Wales.

Zermatt

435. The factual background to this matter is set out at paragraphs 292 to 300 above. There was no dispute that around Christmas/New Year 2009/10 the Respondent and his family took a ski holiday to Zermatt in Switzerland. The Respondent did not suggest at any point that he had undertaken any significant work for clients. He accepted that the complete responsibility for paying for the holiday rested with him and not with the Firm or its clients.

436. There was no dispute about what had happened in relation to the hotel costs in relation to that holiday; the dispute concerned why and how those costs had been allocated to clients. The Respondent's explanation was that there had been an error or mistake in allocating the costs and then preparing at least one draft bill including the hotel costs.

437. On 3 November 2009 the General Ledger was debited with €2,593.65 with the narrative, "American Express – Hotel Albana – Zermatt". The sum of €2,640.85 was credited to the same ledger, with the narrative "American Express – credit Hotel Albana Zermatt" on 3 February 2010. Whilst the Tribunal could not be sure, it seemed likely that the slight difference in the figures was caused by fluctuations in the CHF/Euro exchange rate. The net effect of these two entries was that whilst the Firm initially paid part of the hotel charges, that was repaid three months later. In these circumstances, the Respondent had had the use of the Firm's money to the value of

over €2,500 for the period of three months; had it not been paid by the Firm, the Respondent should have paid that charge.

438. More significantly, on the corporate American Express card issued by the Firm to the Respondent, on 2 January 2010 there appeared an entry which read, "Hotel Albana Real AG, Zermatt" in the sum of CHF 23,813.50 which, at the relevant date, was stated to be €16,428.38. The American Express bill on which that charge appeared was dated 28 January 2010 and it appeared that the date by which that bill was due to be paid was 28 February 2010. It was not clear from the papers on which date the bill was actually paid by the Firm. There was also no doubt that the Respondent had caused the Firm to be reimbursed in the sum of €16,428.38 on or about 4 March 2010, i.e. after the commencement of the KPMG investigation. The Firm was probably "out of pocket" in relation to the Hotel Albana charges for a matter of a week or so. What was of greater significance in this matter was that the hotel costs had been allocated to clients; the Tribunal had to determine if there had been an attempt to bill the Respondent's ski holiday costs to clients.

439. The Tribunal noted that there was an email from the Respondent to Ms TD timed at 13.06 on 2 February 2010 which read,

> "As discussed, please enter the recent Amex charge of 16,000 on to the [IFC] matters relating to FA expiry review, [HH], general enquiries and toxic labelling as billable disbursements".

440. It was not disputed that after that email was sent, Ms TD allocated €4,107.10 to a IFC matter (general enquiries) and €4,107.12 to other IFC matters; two amounts were allocated to matter INT 235-16. Each of these allocations, on a voucher within the Firm's system, recorded as the narrative "Travel – American Express Hotel Albana".

441. Thereafter, the evidence clearly showed that on 26 February 2010 a draft bill was prepared to IFC in the total sum of €27,117.58 including disbursements totalling €8,659.58. The general schedule of disbursements included the narrative "international travel, telephones, facsimiles, photocopying and other incidental expenses for the period as of 2 November 2009 until 22 February 2010". From the LBG which related to this invoice, on matter INT235-16, it was clear that two amounts of €4,107.12 (a total of €8,214.24) were included within the total disbursements of €8,659.58. There could be no doubt that the draft invoice included about half of the Respondent's holiday accommodation costs.

442. On 1 March 2010, the draft invoice was cancelled by the Respondent; it was not sent to clients and was not paid by clients. An amended bill, which did not include any of the holiday costs was prepared and sent instead.

443. The Tribunal considered the Respondent's explanations for what had happened; certainly, on the face of matters there had been an attempt to allocate and bill his holiday costs to clients but his explanation(s) for this had to be taken into account.

444. The Respondent's explanation was, in short, that the hotel had incorrectly billed the charges to the corporate credit card rather than the Respondent's personal credit card. Whilst it was difficult to understand how the hotel could have had the corporate card

details unless these were provided by the Respondent, the Tribunal could not say with certainty that there had not been a pure error at that stage. What threw some doubt on this explanation was that the Respondent had not noticed that he had not personally been billed on his own card for the holiday costs; even for a lawyer of the Respondent's standing a sum of over €16,000 was not inconsiderable. It was what happened thereafter which was of most concern.

445. In his statement of 11 May 2015, the Respondent stated,

> "The corporate card American Express statement was received by our Brussels office manager at the time around the end of January or beginning of February 2010. I remember that she called me regarding this statement as well as with regard to other charges to my corporate American Express card relating to expenses regarding further work done in the CRC/IFC/TFC matter relating to [HH]'s interim review application. I should mention that I was away from my office for most part of February 2010 (I visited several clients in Tel Aviv, then spoke at a conference in Athens then I was on holidays and then I visited Athens and attended a client pitch with [X] as well as a major hearing on behalf of a client before the Greek Competition Authority).
>
> I asked the Brussels office manager to defer the definitive treatment of the expense items on the corporate American Express monthly statement until such time as I would have the opportunity to review the same in a proper manner but did mention that some of them may be relevant to the pending CRC/IFC/TFC matter. Indeed, among others, I was advising CRC/TFC/IFC on the potential acquisition of a [omitted] factory in China at the time and I was expecting an expense charge of a surveyor we had appointed to evaluate that target factory to come through. As I did not have any supporting documentation with me regarding any of the expense items on the American Express statement, it was agreed that these expense statements should PROVISIONALLY be entered under IFC/CRC/TFC matters pending a final review of the matter by myself upon my return to the office. My office manager advised that there were several CRC/IFC/TFC matters active at the time and asked me to confirm to her this provisional arrangement. She sent me an email with relevant client matter numbers as I was travelling and did not have any of those with me and I replied by copying these matters with email dated 2 February. From the email itself it is obvious that the allocation is provisional as some of the matters mentioned were not active at the time".

446. It became clear during the opening of the case that the email of 2 February 2010 (set out at paragraph 439 above) was a key issue. As a result, the Respondent produced his third witness statement, dated 11 June 2015, to deal with this issue. He stated that whilst travelling – and more specifically whilst in Tel Aviv,

> "I recall that it was during that period that I received a call from [Ms TD] regarding what later became known to me as the Zermatt incident. She explained that a hotel bill of €16k was on my corporate Amex. I explained that I was expecting an expense report from the surveyor IFC had appointed to evaluate a factory in China IFC was interested at the time to acquire and who was insisting to be paid via AmEx due to the then prevailing foreign currency restrictions… I therefore asked [Ms TD] to temporarily place this expense

with IFC/TFC/CRC matters until such time as I would be back in Brussels and review this matter carefully. She sent me an email with relevant matters and I remember that I shift copied it from Israel and sent it back to her without further review as I was travelling and had a busy schedule".

447. The explanation concerning the fees or expenses of the surveyor became known in the hearing as the "Chinese surveyor explanation". In short, the Respondent asserted that he was expecting that fees of a surveyor instructed to carry out work in valuing a Chinese factory would appear on the corporate AmEx card and that he believed that the €16,000 was in relation to that matter.

448. In the course of his oral evidence, the Respondent asserted that he had told Mr Crossley about the Chinese surveyor issue in the meeting of 12 March 2010; this issue had not been put to Mr Crossley, who was therefore recalled to deal with this issue and maintained that the Respondent had not mentioned this issue to him on 12 March 2010 or at any time before these proceedings.

449. Given that the meeting of 12 March 2010 was a matter of six weeks or so after the hotel charges were allocated to the CRC group, and less than three months after the holiday in question, it would be expected that the explanation given at that point was likely to be more accurate than that given some five years after the events in issue. The Tribunal noted that the Respondent disputed the accuracy of the note of the 12 March 2010 meeting which had been prepared by Mr Hearn but at no point had he set out his objections or the parts with which he disagreed. The Tribunal had heard Mr Crossley's evidence to the effect that he believed the note to be substantially accurate. It was not intended to be a verbatim note but rather a summary of the main issues discussed. The Tribunal also noted that the Respondent had complained that the meeting took place without an agenda. The Tribunal found no basis for criticising Mr Crossley arising from the meeting; it must have been clear to the Respondent that the meeting was one between partners to discuss the preliminary findings arising from the KPMG investigation. There was no doubt that the Respondent, as a very experienced lawyer, was well able to stand up for himself in a meeting of this nature.

450. The Tribunal noted that the note of the 12 March 2010 meeting recorded, in relation to the Zermatt issue, that the Respondent stated that this was "a catalogue of errors", that the hotel had mistakenly charged the corporate credit card, which was picked up by the Respondent who told Ms TD that it should be reversed but the card was mistakenly charged again. The note recorded that the Respondent stated he immediately told Ms TD that this was a mistake, as he had to pay personally. When asked why, therefore, he had told Ms TD to bill the hotel charges to clients, the Respondent was recorded as saying,

> "I "panicked" and asked [Ms TD] to hide these costs within the business until I could deal with them later."

The Respondent admitted that it was wrong to send the email of 2 February 2010 to Ms TD and that it looked bad, but he maintained he had not intended to charge the clients. It was clear from the note that Mr Crossley had considered that the "panic" indicated that the Respondent was aware there was serious wrongdoing and that this

was confirmed by the fact the invoice to a client was "pulled" when the KPMG team arrived at the Brussels office.

451. The Tribunal was satisfied to the highest standard that the Respondent had not referred to the Chinese surveyor explanation in the course of the meeting on 12 March 2010. The Tribunal was satisfied that Mr Crossley's evidence that it had not been discussed was correct and it had no reason to doubt that the note of the meeting was substantially accurate.

452. The Tribunal noted that the explanation given to the Applicant in a letter dated 9 December 2011 was substantially in the same form as set out at paragraph 445 above. That explanation related to expenses regarding the [HH] interim review application; it did not mention the potential acquisition of a factory in China or the fees of a surveyor. The Tribunal further noted that although the Respondent had raised a very wide-ranging request for disclosure, he had not made any targeted request for any fee notes or ledger entries relating to the charges of a surveyor instructed in relation to a factory acquisition. Such a targeted request, if the Respondent also made it clear why it was requested, would have been reasonable and proportionate and there may have been some grounds for criticism if the Firm had not produced the accounts records relating to such an expense. As it was, none of the ledgers relating to the CRC group which were produced to the Tribunal appeared to show a charge of around €16,000 for a surveyor.

453. To add to the confusion about this issue, Mr Blanpain's written closing submissions stated,

> "[The Respondent] thought on 2 February 2010 that the hotel charge for the Zermatt trip was related to the hotel charge for the surveyor appointed in relation to the potential acquisition of a … factory in China".

i.e. it appeared to be submitted that the €16,000 related to the surveyor's hotel expenses, not his fees. The Tribunal noted that the Respondent's statement of 11 June 2015 specifically referred to the Respondent being told by Ms TD that the entry on the Amex bill related to a hotel charge. There was no explanation as to why the hotel costs of a surveyor carrying out a valuation in China would have amounted to as much as €16,000. On its face, this seemed highly unlikely, without further corroboration or explanation.

454. The Tribunal was satisfied that the Respondent had not mentioned the Chinese surveyor explanation soon after the events in question and it was only during the hearing that he had asserted that he had mentioned it to Mr Crossley in March 2010. Had there been a genuine mix-up concerning what appeared on the American Express bill, the Respondent could and should have mentioned it on 12 March; the issue could have been cleared up promptly by checking the relevant file(s) to check if there had indeed been such an expense. As it was, the Tribunal found the explanation incredible.

455. Further, the Tribunal could find no indication on the face of the email of 2 February 2010 or otherwise that the Respondent had told Ms TD that the allocation was only provisional. The Respondent had never suggested that Ms TD was a "rogue" employee of the Firm. Unless she was acting in a totally improper manner and in defiance of the Respondent's instructions, she would not have prepared even a draft invoice on 26 February 2010 containing over €8,000 of the Respondent's hotel costs, without the Respondent's approval. It was clear on the face of the American Express bill that the hotel charges related to a hotel in Zermatt, not the fees or accommodation expenses of a surveyor carrying out work in China. It was inconceivable that when discussing the charges on the January 2010 American Express bill Ms TD would not have noticed that it related to the Respondent's recent ski holiday rather than the fees or expenses of a surveyor; on the Respondent's own account, she must have had the bill in front of her when speaking to the Respondent on the telephone. Ms TD must either have acted on the Respondent's instructions to "hide" the costs in the business or acted totally improperly in, of her own volition, suggesting the allocation of holiday costs and then preparing draft bills. If the Respondent's account, that he noted the charges had been improperly billed, was correct it was inconceivable that he would not have spoken to Ms TD to reprimand her for going so far beyond her authority; the Respondent had not suggested at any point that he had done so. If, as noted at paragraph 450 above, the Respondent had told Ms TD that the hotel charges were his responsibility, it was inconceivable that she would have allocated the costs to clients without the Respondent's instruction or authority.

456. The Tribunal was satisfied, so that it was sure, that the Respondent had deliberately attempted to charge his holiday costs to the Firm and thence to clients. He had been stopped from actually doing so by the arrival in the office of KPMG on Monday 1 March 2010. The Tribunal was satisfied to the highest standard that if the Respondent had been a solicitor, he would have been guilty of conduct which lacked integrity and which was not in the best interests of clients. As he was not a solicitor, no breaches of any particular parts of the Code of Conduct had been found. However, it was undoubtedly the case that attempting to bill clients for holiday costs lacked integrity, and it could not be in the best interests of clients for items of personal expenditure incurred by the Respondent to be unknowingly borne by the clients' in this way. This conduct was improper and undesirable, particularly in someone holding a senior position in a law firm regulated in England and Wales.

Santo Domingo

457. The factual background to this matter is set out at paragraphs 301 to 307 above. The allegations concerning the Respondent's trip to Santo Domingo related to the Christmas/New Year period 2007/8. The Tribunal noted that the factual matters relied on by the Applicant were contained in the KPMG Report dated 4 June 2010. That part of the investigation was stated to have been carried out in Phase 2 of the investigation, i.e. after the Respondent had left the Firm, although it was also referred to in the interim report of 11 March 2010 where it was reported that Mr Dougall had discussed the matter with the Respondent. The Respondent's reported explanation, that he had carried out extensive work for the CRC group (which was based in the Dominican Republic) was the same explanation that he maintained in the course of the Tribunal proceedings. The Respondent's explanation that the trip was not really a

holiday, but was part of client development and that the client had invited the Respondent and his family to visit was also recorded in the note of the 12 March 2010 meeting.

458. Although the Tribunal noted that the Respondent had had some opportunity to discuss and consider the Santo Domingo matter, and so was aware it was a concern as at March 2010, he had not received a copy of the KPMG Report until the Applicant's investigation began in 2011. The Respondent's explanation to the Applicant, in his letter of 9 December 2011, accorded with his earlier discussions with Mr Crossley and Mr Dougall; his understanding was that CRC would cover some of the expenses of his family whilst he was at the Casa de Campo resort as he was working on the "inception phase" of a matter. The Respondent stated that he had not deemed it appropriate to bill his clients for the time spent working. The Respondent did not assert that he had explicitly agreed with his client that it would pay part of the costs of the trip, but he understood that the client would pay some of the expenses.

459. It was clearly the case, on the papers in the case, that the total cost of the Respondent's trip was around €40,000. Of this, approximately €27,000 had been paid through the Firm's office account; the balance was also paid by that method but was then allocated between clients in the CRC group and was paid as part of the disbursements on various bills. KPMG had been unable to find that the Respondent had repaid to the Firm the (approximately) €27,000; although there had been various credits to the office ledger the office ledger balance remained in debit at all points until February 2010.

460. The Tribunal accepted that there was a clear prima facie case against the Respondent; on his own evidence, his clients had paid for part of the trip undertaken by himself and his family (albeit he denied that this was a holiday for him) and there was no indication or suggestion from the Respondent that he had repaid the balance of around €27,000 to the Firm. The Respondent had concentrated in his evidence on the way the clients were billed and did not address when and how he had repaid the Firm.

461. The Tribunal noted that during the case management phase of these proceedings, an issue had been raised about whether any matters which arose before 31 March 2009 could be relied on by the Applicant, as the Respondent only became subject to regulation on that date (by virtue of the implementation of the Legal Services Act 2007).

462. The Tribunal accepted that the case law showed that events which pre-dated a Respondent's period of regulation (e.g. before being employed in a law firm or becoming a solicitor) could be taken into account and dealt with by the Tribunal. The Tribunal had been referred in particular to the case of Jideofo v Law Society (No. 6 of 2006) Court of Appeal (Civil Division). In principle, therefore, events in 2007/8 could form part of the Applicant's case.

463. However, in the Memorandum of a CMH on 23 June 2014 it was recorded:

> "Ms Nesterchuk for the Applicant told the Tribunal that the Applicant relied on events before 31 March 2009 as relevant background facts. The Applicant acknowledged that the Respondent had not been a regulated person until

> 31 March 2009. The events before that date were relevant, particularly as they showed a similar course of conduct over a period of time… Ms Nesterchuk acknowledged that the Rule 8(5) Statement could be amended to make clear which events were relied on as background facts and which were relied on in support of the allegation."

At the conclusion of that hearing, the Tribunal had ordered the Applicant to file and serve an amended Rule 8(5) Statement by 4pm on 7 July 2014. On 3 July 2014 submissions were made in writing on behalf of the Applicant setting out the reasons the Applicant did not propose to amend the Rule 8(5) Statement and referring to the case law concerning reliance on pre-regulation conduct.

464. The Tribunal noted that as part of the Respondent's submissions, there was a submission that the Tribunal should not take the Santo Domingo trip into account, even as part of the background facts.

465. The Tribunal was concerned that the allegations relating to Santo Domingo were being heard over seven years after the events in question, in circumstances where the allegation had not been put to the Respondent in any form until about two years after the relevant events. The evidence of Mr Lima, concerning whether or not there had been any agreement or understanding about the costs of the trip, could not be tested and, again, had been obtained about six years after the relevant trip. Further, there had been an indication in mid-2014 that the Applicant relied on the Santo Domingo matter as part of the background, although that position had promptly been clarified.

466. Against this background, the Tribunal was concerned that making any findings of fact on the allegation could be unfair, in the light of the Respondent's Article 6(1) Rights under the European Convention on Human Rights. Further, the issue of the €27,000 paid by the Firm may well have been treated as an internal matter between the Respondent and the Firm even if any findings had been made on that issue. Accordingly, the Tribunal made no findings on this part of the case save to observe that the matters in issue would properly have caused the Firm concern as at 2010, when they were discovered.

Expenses 213

467. The factual background to this matter is set out at paragraphs 308 to 312 above. The documentary evidence in relation to this matter was clear. In the period prior to June 2009, the debit balance on the Firm's General Ledger increased as various items were posted to it. The KPMG Report identified that a number of the debits appeared to relate to personal expenditure, for the benefit of the Respondent and/or his family, such as: travel to Athens for one of the Respondent's children (€780.36 on 25 May 2009); travel to Rome for the wedding of a colleague (€285.20 debited on 20 May 2009) and travel to Greece for the Respondent's wife and other child (€1,144.42 debited on 15 June 2009); see also paragraph 309 above. As at 19 June 2009, the debit balance of the Firm's General Ledger (which represented money paid from the office account) stood at €34,600.32.

468. On 22 June 2009, the Ledger was credited in the sum of €13,186.47, the narrative for which on the Ledger was "[The Respondent], exp rep 213". Expenses report 213 listed four matters: a mobile phone bill of €807.15, a dinner on 17 June 2009 in the sum of €441 and two sums, each of €5,969.16, which were allocated to companies in the CRC group and which were both described as "[The Respondent] trv exp May and June 09". Mr Dougall had identified vouchers which supported the phone bill and dinner items. He recorded in his Report that Ms NS had indicated that there were no receipts to explain the two entries of €5,969.16 (i.e. a total of €11,938.32). The Tribunal noted that the effect of issuing the expenses report was to reduce the balance on the General Ledger below the amount which had been paid out in May 2009 in relation to the HD capital call (€22,662).

469. The first tranche of €5,969.16 was included in a bill dated 6 August 2009 to TFC. That bill totalled €138,415.54, including disbursements of €14,833.01. There was no description of the disbursements on the face of the bill. The amount of €5,969.16 (plus VAT) appeared as a disbursement on the LBG related to the invoice, with the narrative "Travel – [the Respondent] trv exp May and June 2009". The time records which appeared on that LBG noted a total of 16 hours of travelling in the billed period but it was not clear whether it was the Respondent or one of his team who had travelled, on what dates or where. The "billed disbursements summary" included small amounts of postage and taxi fares, amounts for courier, telephone/faxes and miscellaneous non-vatable disbursements with the total for "travel" in the sum of €13,527.99.

470. The second tranche of €5,969.16 was included in a bill dated 30 July 2009 to IFC. That bill was in the total sum of €63,031.16, including disbursements of €5,969.16. Again, there was no description of the disbursements on the face of the bill. The narrative to the "Unbilled disbursements detail" on the LBG read: "International travel, telephones, facsimiles, photocopying and other incidental expenses for the period as of 17 June 2009 to 27 July 2009". Elsewhere on the LBG the total sum for disbursements was described as "travel expense May and June 2009". The LBG did not list any travel time in that period; given that the Expenses 213 Report was dated 22 June 2009 and the LBG referred to travel expenses after 17 June 2009, the documents suggested, on their face, that the travel must have been undertaken between 17 and 22 June 2009.

471. The Tribunal noted and accepted that this issue was not discussed with the Respondent in the course of Mr Dougall's investigation or in the meeting on 12 March 2010. The first time the Respondent may have been aware that this issue was of concern was in the course of the Applicant's investigation, during 2011. However, unlike the Santo Domingo matter, the relevant events post-dated the time at which the Respondent became subject to regulation by the Applicant and the Tribunal was satisfied that a fair trial on these issues could be held.

472. As pointed out by Mr Levey during the opening of the case in June 2015, the Respondent had not addressed this issue in his Answer or his first three witness statements. The first time the Tribunal saw the Respondent's answer to the allegation that the Expenses 213 were improper was in his witness statement of 8 October 2015, filed and served just days before the reconvened hearing, despite the fact that the matter was clearly set out in the Rule 8(5) Statement. The explanation given by both

the Respondent and his advocate for failing to address the allegation was that it was an "oversight". Such an oversight was a matter of concern, particularly where the absence of any response to the allegation had been pointed out on the first day of the hearing.

473. The explanation now given by the Respondent was that part of the €11,938.32 related to travel costs on behalf of clients and part to the purchase of statistical data. As this explanation had not been given at an earlier stage, there had been no opportunity to check the files for any information relating to the purchase of statistical data; there had been no request by the Respondent for specific documents on this point. The generalised and wide-ranging requests for complete files had been disproportionate, whereas a request for specific items which related to the defence may well have been reasonable and proportionate. As the Respondent had not referred to any specific documents, the Firm and the Applicant had been given no opportunity to search for the records which would have established this point. As the Respondent had not discussed this issue with Mr Dougall and/or Mr Crossley in 2010 the opportunity to check had been lost.

474. In the light of the current explanation offered by the Respondent, the Tribunal could not be sure that the allegation that the expenses had been improperly charged to clients had been proved; it would have been proved on the balance of probabilities. However, what was beyond any doubt was that the Respondent had failed to be open and transparent with his clients, even if the explanation he now gave was correct. The disbursements had been described as "travel expenses" for May and June 2009 – the Respondent now said that was not correct. There was no mention on the bills or LBGs of the purchase of statistical data. It was improper to describe statistical data as travel so, even if the Respondent's explanation were to be believed, he had failed to act with integrity and in the interests of his clients when preparing bills to them.

475. **Allegation 1 - The allegation against the Respondent, Mr Konstantinos Adamantopoulos, made in a Rule 8 Statement dated 8 August 2013, was that he had occasioned or been a party to an act or default in relation to legal practices which involved conduct on his part of such a nature that it would be undesirable for him to be involved in a legal practice in one or more of the ways mentioned in Section 43(1)(A) of the Solicitors Act 1974 (as amended by the Legal Services Act 2007) ("the Solicitors Act") in that:**

1.1 He utilised for his own benefit monies belonging to the firm of solicitors Hammonds LLP (now Squire Sanders LLP) ("the Firm") without authorisation to do so;

1.2 He billed or attempted to bill personal expenses to his clients as disbursements, namely the costs of travel and accommodation for family holidays.

475.1 As set out at paragraphs 266 to 274 and 275 to 281, in relation to the HD capital call and the Respondent's company set up costs, the Tribunal found, so that it was sure, that the Respondent had used for his own benefit monies belonging to the Firm. The Tribunal was further satisfied that he had no actual authority to do so. The Respondent had not suggested that he had sought or obtained the permission of

Mr Crossley or anyone else in the Firm to use the office account to pay the HD capital call and/or the company set up costs. As noted above, the Tribunal did not accept that all transactions at the Brussels office had to be "authorised" by the head office; whilst those transactions may appear on the books of the Firm, it could not be the case that someone in the Leeds accounts team had to consider carefully each transaction proposed by each branch office. The Tribunal accepted the evidence of Mr Crossley, supported by the written evidence of Ms Doyle, that if the Respondent had asked for credit to pay the HD capital call and/or the company set up costs, the response would have been, "You must be joking".

475.2 The Tribunal considered whether the Respondent had had any implied authority to use the Firm's money to pay his HD capital call liability and/or the company set up costs. The Tribunal found that there was no prohibition on a partner becoming overdrawn on their current account – indeed, there was provision for a partner to pay interest when overdrawn, just as there was a provision for the Firm to pay interest when a partner was in credit. However, the Tribunal was satisfied that there was an expectation that a partner would not be overdrawn on the current account significantly and/or for long periods. The position with regard to the deferred drawings account was different; the Tribunal found that the management of the overdrawings within the Firm generally had been managed by a process agreed by a Board resolution. The Tribunal found that the Respondent was significantly overdrawn on his partnership current account at all relevant times during 2009, and had been overdrawn for a considerable period before that. So far as it was understood by the Tribunal, the Respondent relied on the fact that he had been allowed a significant overdraft with the Firm for a long period as the basis of his belief that he could borrow further.

475.3 The Tribunal noted a letter in the Respondent's bundle, about which Mr Blanpain had asked Mr Crossley some questions. That letter, from the Chair of the Firm's Remuneration Committee and dated 31 July 2009 to all of the equity partners of the Firm dealt with various matters concerning how remuneration had been determined concerning the financial years 2008/9 (FY09) and 2009/10 (FY10). This referred to a Special Resolution relating to repayment of overdrawings which had arisen in FY09 – which was distinct to the overdrawings arising from 2003/4. The letter stated at one point, "All equity partners will be overdrawn in respect of FY09". The Tribunal accepted, from the context of the letter and Mr Crossley's evidence, that this statement referred to deferred drawings and not the current account. This letter reinforced the Tribunal's finding that the Respondent was well aware that there was an agreed system for repaying overdrawings across the Firm and this was distinct from an individual partner's current account. Further, it made clear that the Respondent was aware that there was a situation in which, for various reasons, partners had taken more money from the Firm than was sustainable. Against this background the Respondent had no reason to think the Firm would be prepared to lend him more money; no firm could lend increasing sums to partners without a potential impact on its viability.

475.4 The Tribunal could not be sure whether the Respondent chose deliberately to use the Firm's money knowing that would not be permitted if he asked or whether he was cavalier and thoughtless as to whether or not it was appropriate. He could not have had a positive belief that using the Firm's office account for his own benefit was a proper course of action, but it may be that he did not consider the needs of his partners

and the Firm in choosing to use the Firm's money as he did. The Tribunal was sure that the Respondent had no implied or other authority to use this money for the HD capital call and/or to pay his company set up costs.

475.5 Although the Respondent's conduct in this regard was undesirable and improper as between the Respondent and his partners, the Tribunal was not sure that the way the Respondent conducted himself in his internal dealings with the Firm should form the basis of a s43 Order. There was no impact on clients and the impropriety could have been dealt with by an internal sanction within the Firm and repayment to the Firm of the sums wrongly used by the Respondent.

475.6 As set out at paragraphs 457 to 466 above, the Tribunal made no findings in relation to the Santo Domingo matter, save to observe that this incident would have added to the Firm's concerns and the reasons which would underpin the Respondent's departure from the Firm.

475.7 As set out at paragraphs 414 to 434 above, the Tribunal found that in relation to the trip to Greece in August 2009 the Respondent had improperly charged clients with the costs of holiday accommodation used by him and his family. The Tribunal was not sure of the extent to which the Respondent had in fact worked for the clients he had billed with those costs during August 2009 and noted that he may well have been entitled to bill to them the specific costs of travel to meetings and accommodation which were incurred in relation to client business. It was of great concern to the Tribunal that the Respondent's record-keeping and the way he chose to bill clients were so lacking in transparency. Even if the Respondent had sent LBGs to the clients with the bills, with a covering letter reminding clients they could contact him should they have any concerns about the bills – and that was as far as the Respondent's evidence went on the point – it would not have been clear to clients that they were being charged for holiday accommodation rather than expenses relating to their business. This was particularly so in relation to the matter (at paragraph 417.1 above) where there was reference to the disbursements being in the period from September 2009 onwards. The Tribunal had also noted that there appeared to be a breach of the expectations of the Brussels Bar that personal expenses would not be charged in lieu of the lawyer's fees. There was no doubt that the Respondent had billed accommodation used for a family holiday to clients, and they had paid those expenses.

475.8 As set out at paragraphs 435 to 456 above, the Tribunal found in relation to the Zermatt trip that the Respondent had deliberately attempted to charge his holiday costs to clients. The clients had not in fact paid the holiday costs as no bills on the relevant client matters had in fact been sent out, albeit one had been prepared in draft. The Tribunal found that it was more than mere coincidence that the bill had been "pulled" on 1 March 2010, the date the KPMG investigation began.

475.9 As set out at paragraphs 467 to 474 above, in relation to the Expenses 213 matter, the Tribunal found that the Respondent had improperly billed certain expenses to clients. On balance, it was satisfied that those expenses were personal expenses of the Respondent which had been improperly charged to clients. The Tribunal was concerned that the Respondent had failed to provide any explanation for these expenses, despite having received the Rule 8 Statement in August or September 2013;

this was a serious "oversight" for a lawyer of the Respondent's standing and reputation as such a lawyer would be expected to read and deal with paperwork fully and properly. The Tribunal gave the benefit of the doubt to the Respondent in relation to the explanation he now offered, namely that the expenses charged to TFC and IFC related to the purchase of statistical data and some (unidentified) travel expenses. Even on this case, of course, the Respondent had shown a lack of integrity and had failed to act in the best interests of his clients as the invoices and supporting documents did not describe the expenses properly.

475.10 The Tribunal was satisfied so that it was sure that in relation to the Greece trip, Zermatt and Expenses 213 the Respondent had acted improperly. He had billed expenses which were not properly chargeable to clients, for his own benefit and more particularly he had failed to be transparent in his descriptions of the expenses; indeed, he had concealed their true nature. The lack of integrity and consideration of the interests of clients made it clear that the Respondent's conduct was of such a nature that he must be made subject to a s43 Order.

476. **Allegation 2 - Although not a necessary ingredient of the application, it was alleged that the Respondent's conduct was deliberate and dishonest in the following particulars:**

2.1 The Respondent took a conscious decision to charge personal expenses which he was not entitled to charge to the firm or to clients;

2.2 The Respondent then allocated some of those personal expenses to client matters without authorisation or any reasonable belief that they were authorised;

2.3 Some of the personal expenses were then included as part of the disbursements charged on invoices sent to clients;

2.4 No reasonable, prudent or honest person would have acted as the Respondent did;

2.5 The Respondent knew that what he was doing was wrong, but proceeded regardless and such conduct amounted to dishonesty.

476.1 The Tribunal noted that the wording of the allegations at paragraphs 2.4 and 2.5 did not mirror exactly the wording of the Twinsectra test, which was the test the Tribunal applied.

476.2 As already noted, the Tribunal was satisfied that in relation to the HD capital call, the company set up costs, Greece, Zermatt and Expenses 213 the Respondent's conduct fell below the standards which would be expected of a solicitor or a senior lawyer in a Firm regulated in England and Wales. His conduct was not prudent and it was unreasonable; the Respondent lacked integrity as he was not open with his partners and his clients. The Tribunal was satisfied, as noted above, that the Respondent's conduct was deliberate. The Tribunal went on to consider whether this misconduct was also dishonest.

476.3 For the reasons already noted, the Tribunal was satisfied to the highest standard that in charging his personal expenses to the Firm, in relation to the HD capital call and the company set up costs, the Respondent's conduct was dishonest by the ordinary

standards of reasonable and honest people. No-one with ordinary standards of honesty would consider it honest to charge the Firm, in which the Respondent was a partner, with his personal expenses in circumstances where the Respondent already owed considerable sums to the Firm, and where he took no steps to ask anyone with the appropriate authority in the Firm if he could have a "loan" to pay these expenses.

476.4 However, the Tribunal could not be sure that the Respondent turned his mind to the question of whether or not his actions were proper. Had he done so, he must have concluded that his conduct was dishonest, but the Tribunal could not be sure that he had considered the question at all. Such a failure to consider whether or not his actions were proper showed a very high level of lack of integrity. On the particular facts of these transactions, the Tribunal was satisfied of there was a lack of integrity, but not that subjective dishonesty had been proved.

476.5 With regard to Expenses 213, the Tribunal had found (see paragraph 475.9) that expenses had been improperly charged as they had not been described accurately (on the Respondent's own account), but it was not sure that the expenses had been of a personal nature. Inaccurately describing disbursements on a bill, if done deliberately, would be objectively dishonest, as it would have the effect of misleading clients.

476.6 However, the Tribunal could not be sure that the inaccurate billing was undertaken dishonestly. Rather, the Respondent had shown a lack of integrity in failing to have in place proper billing systems and/or had failed to explain properly to clients exactly what was included in each bill; the Tribunal noted that the LBGs rarely provided proper details of expenses. Further, the Respondent had failed to act in the best interests of clients as he had not ensured that clients were aware of what was contained in the bills. Dishonestly was not proved in these circumstances, where the Respondent's billing practices were so haphazard and, apparently, ill-considered. Of course, had the Tribunal been satisfied that the matters within Expenses 213 were personal expenses which had been charged to clients, the Tribunal may have reached a different conclusion, but it had not been satisfied to the highest standard that the items billed were indeed personal expenses.

476.7 In relation to the trips to Greece and Zermatt, the Tribunal was satisfied to the highest standard that part of the accommodation costs for Greece and all of the hotel costs for Zermatt were allocated to clients. This was done without the authorisation or even knowledge of the relevant clients. The Tribunal noted that most of the relevant allocations were made to companies in the CRC group; as that group's trusted legal adviser, the Respondent could be confident that his bills would probably not be queried in any detail, particularly where the true nature of the disbursement was not apparent from the bill or even the LBG. This point was made even clearer when the Tribunal considered that the CRC group paid something in the region of €1-2 million in costs each year; a few thousand euros worth of disbursements would hardly be noticed. The Tribunal was also satisfied to the highest standard that in relation to Zermatt, the Respondent had no reasonable belief that the hotel costs were an authorised disbursement; his own case was that these were personal expenses for which he was responsible and which should not be passed to clients. The Tribunal could not be sure about the Respondent's belief in relation to the Greece trip; he may have believed that it was acceptable to charge some accommodation costs to clients if he did not also charge particular expenses in travelling to Athens/various meetings to

those clients. The Tribunal was satisfied of this on balance, but not to the highest standard. The expenses relating to the Greece trip were not only allocated to clients but were billed and paid. No bill relating to the Zermatt expenses was actually sent to clients.

476.8 With regard to the trip to Greece in 2009 the Tribunal found so that it was sure that billing clients for the costs of accommodation occupied by the Respondent and his family was dishonest by the ordinary standards of reasonable and honest people. There could be no objective justification for charging clients with those expenses instead of any expenses which had properly and necessarily been incurred in the course of carrying out work for the clients (e.g. accommodation in Athens if the Respondent attended meetings there on behalf of clients). Further, failing to be open and transparent about the nature of the charges to clients was objectively dishonest.

476.9 Whilst the Respondent had made a conscious decision to charge his holiday expenses in Greece to clients – and had in fact done so – when there was no justification for doing so, and in circumstances where the clients were unaware of these charges, the Tribunal could not be sure that the Respondent had turned his mind to the question of whether or not his conduct was proper. In these circumstances, the Tribunal could not be sure that the Respondent realised his conduct was dishonest. However, this failure to consider the propriety of billing clients for holiday accommodation costs showed a significant lack of integrity and a failure to act in the best interests of clients.

476.10 In relation to the Zermatt matter, the Tribunal had concluded that the Respondent had deliberately allocated his ski holiday hotel costs to clients, in circumstances where there was no justification at all for so doing. The "Chinese surveyor" explanation offered by the Respondent lacked any credibility. The Tribunal was satisfied that attempting to charge clients for these holiday costs was dishonest by the ordinary standards of reasonably and honest people.

476.11 The Tribunal had heard evidence, which it accepted, that the Respondent had been allowed to "paddle his own canoe" in Brussels for a long time, as noted in the Firm's review of overseas offices in late 2009. The issues of the Santo Domingo trip, the HD capital call, Expenses 213 and the Greece trip had not been noticed promptly by the Firm. This was not a criticism of the Firm; the managing partner of a major branch office should be trusted to manage that office and his own affairs properly. However, the culture in which the Respondent's actions were not closely supervised and where he had a considerable degree of autonomy led to a situation in which the Respondent may not have appreciated that his conduct was dishonest by the ordinary standards of reasonable and honest people. The Tribunal could not be sure that the Respondent had acted dishonestly with regard to the Zermatt ski holiday. However, his failure to consider the propriety of his actions showed a significant lack of integrity and a failure to act in the best interests of clients.

476.12 The Tribunal was satisfied to the highest standard that in relation to all of the transactions (i.e. HD capital call, company set up costs, Zermatt, Greece and the Expenses 213 matter), the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people. None of these transactions occurred in error, even on the Respondent's case. The fact that some of the transactions may have been processed by Ms TD did not absolve the Respondent of his responsibility for

ensuring that his dealings with his partners and his clients were proper and transparent; he did not do so. Whilst the Respondent's conduct clearly lacked integrity and showed a failure to act in the best interests of clients (and his business partners), the Tribunal was not satisfied to the highest standard that the Respondent had been aware that his actions would be considered to be dishonest.

Previous Disciplinary Matters

477. There were no previous disciplinary or regulatory matters recorded against the Respondent.

Mitigation

478. No separate mitigation was appropriate or necessary in a case of this nature. The Tribunal had heard the Respondent's explanations for what had happened and considered those in determining its findings and whether it was appropriate to make a s43 Order.

Sanction

479. For the reasons set out at paragraphs 475 and 476 above, the Tribunal was satisfied that it was necessary and proportionate to make a s43 Order against the Respondent. The Respondent's misconduct in relation to billing and attempting to bill his clients for his personal expenses was serious. His conduct in relation to the Firm's money had lacked any proper care but the Tribunal was not satisfied that a s43 Order was required in order to control the Respondent's conduct in relation to his business partners.

Costs

480. Mr Levey made an application that the Respondent should pay the Applicant's costs of these proceedings and referred to the Applicant's schedule of costs which was totalled over £133,000. Mr Levey submitted that this figure was likely to be on the low side as it did not include the costs involved in preparing the closing submissions. However, it did include all of the work involved in the preliminary hearings and CMHs. It was noted that the Respondent had also submitted a schedule of costs, in the total sum of over £145,000.

481. Mr Levey submitted that this had been a heavily contested and protracted case, at the end of which the Tribunal had decided that a s43 Order was appropriate. The Tribunal had outlined its judgment to the parties orally. Mr Levey submitted that it was inevitable that the Respondent should bear the costs of the proceedings, as a consequence of the making of the Order and the way the litigation had been conducted.

482. Mr Levey submitted that given the significant claim for costs, it would not be fair to the Respondent to try to summarily assess costs at this point. However, the Applicant would ask for a payment in the sum of £85,000 on account of the overall costs, with a detailed assessment of all of the costs by the Supreme Court Costs Office. Mr Levey submitted that the costs on assessment would certainly be over £85,000 and so this

was a reasonable sum to request. Mr Levey submitted that, of course, it may be possible to agree costs without the need for detailed assessment and that should be provided for in the Order.

483. After a short break whilst Mr Blanpain took instructions in relation to costs, it was submitted that the costs should be reduced substantially for a number of reasons.

484. Mr Blanpain submitted that the Applicant had not proved a number of the issues in the case, and this should be taken into account. Further, some novel issues had been raised concerning the standard of proof and how dishonesty should be assessed.

485. Mr Blanpain submitted that the Respondent was being asked to foot the bill for the production of documents by the Firm, which had been used in the case against him, when the settlement agreement between the Firm and the Respondent made clear that any documents should be provided free of charge. Mr Blanpain submitted that the Applicant had not been forthcoming with disclosure and had led to the need for a number of CMHs.

486. The Chair invited Mr Blanpain to expand on his submissions about which issues had not been proved and whether there had been substantial costs incurred in relation to the issues of the standard of proof and the test for dishonesty. Mr Blanpain submitted that there was no reason the Respondent should have to pay £85,000 in costs immediately; the Respondent would like time to pay by instalments. Mr Blanpain further submitted that the Respondent should not be required to pay costs until the written Judgment was available, so that full submissions on costs could then be made. Mr Blanpain submitted that he should have the opportunity to make submissions on costs when the written Judgment was available.

487. Mr Levey responded to Mr Blanpain's submissions. He confirmed that the costs of the Firm in providing documents had been set out on a schedule of costs at an earlier stage.

488. Mr Levey submitted that the Respondent was a man of means and there was no reason he should not be ordered to pay a significant amount on account of costs within 14 days. Mr Levey referred to the evidence the Respondent had given about his current earnings and ownership of properties and noted that the Respondent had incurred costs of around £145,000 for his own lawyer.

489. Mr Levey submitted that whilst the Applicant had not succeeded on everything the Tribunal had found that the Respondent had acted without integrity in respect of three different matters and had been at least objectively dishonest. These findings should affect the way the Tribunal exercised its discretion on costs. Further, the Tribunal would note that the Respondent had not made any admissions at all, had contested every point and had given incredible explanations e.g. with regard to the Zermatt expenses. Mr Levey submitted that it was not appropriate, in these circumstances, to reduce the costs by a percentage because the Applicant had not succeeded on every point. The bulk of the matters alleged had been proved.

490. Mr Levey submitted that in this case there had been significant costs in relation to the Respondent's application about whether the Tribunal had jurisdiction to deal with the case. The Respondent had failed on that point, so he should bear the costs of his application.

491. Mr Levey submitted that the question of the burden of proof and the test for dishonesty were not vital to the outcome of the case.

492. With regard to the Santo Domingo matter, Mr Levey submitted that it had been understood that it was common ground between the parties that Santo Domingo would form part of the factual background to the matters in issue and the costs in relation to that aspect of the case should not be taken out of the overall costs. Mr Levey submitted that the hearing would not have been substantially different without the Santo Domingo issues.

493. Mr Levey submitted that any issues concerning the quantum of costs, rather than the principles to be applied, could be taken during the negotiation or detailed assessment process. The Firm's costs of providing documents would be subject to detailed assessment; the Respondent had asked for documents and the Firm had indicated that there would be lots of work involved in providing the documents. The Applicant had had to meet the Firm's costs in order to meet the Respondent's requests for documents, as agreed between the parties. Mr Levey submitted that there was no reason to disallow those costs. Mr Levey submitted that the Respondent could ask for more time to pay the interim costs, if he wished.

494. Mr Levey submitted that it was very unlikely that there would be anything in the written Judgment of the Tribunal which would affect the principle that the Respondent should bear the costs of the proceedings.

The Tribunal's Decision

495. As already noted, this was a heavily contested case in which the Respondent had not made any admissions. The section in the Judgment on preliminary issues (paragraphs 6 to 218 in particular) indicates the extraordinary twists and turns taken in the case. (Those matters were set out at some length in this document in order to assist in the assessment of costs). It was unsurprising, therefore, that the costs schedules for both parties were so high. The schedule submitted by the Applicant was over £133,000 and that for the Respondent was over £145,000.

496. The Tribunal determined that in order to ensure that costs were properly assessed it would order a detailed assessment of the Applicant's costs by the Supreme Court Costs Office. Any proper arguments about the quantum of costs could be taken in the course of negotiating on costs and/or during the assessment process. The Tribunal hoped that the parties would be able to negotiate a suitable sum for costs in order to avoid the further costs and time involved in the proceedings, but the detailed assessment process would be used if matters could not be resolved by agreement.

497. The Tribunal wished to set out some of the key issues which the Costs Judge would need to consider.

498. First of all, there was no doubt that it was right that the Respondent should pay the reasonable costs of the whole proceedings. The Applicant had substantially achieved the outcome it had sought. The proceedings had been properly brought.

499. The Tribunal considered carefully whether, in the circumstances of this case, there should be some reduction in the proportion of the costs to be paid as the Applicant had not obtained all of the findings for which it had contended. The Tribunal determined that there should be no deduction on this basis. All of the allegations had been properly brought. Even though the Tribunal had not based its decision to make the Order on certain aspects of the findings, it had concluded that the Respondent's conduct was poor in relation to his use of money belonging to the Firm and the way in which he had billed (or attempted to bill) clients. There should be no deduction because the Applicant had not persuaded the Tribunal to apply the civil standard of proof and had not persuaded the Tribunal to apply a purely objective test for dishonesty. In any event, the costs attributable to such arguments were likely to be a very small proportion of the whole.

500. With regard to the costs of producing documents, at the Respondent's request, the Tribunal was satisfied that in principle such costs should be paid by the Respondent. It would be for the Costs Judge to assess what was reasonable, or for the parties to agree. The Respondent had chosen to seek documents through the Applicant and the Firm, and thus the costs of obtaining those documents were part of the costs of the proceedings. The Respondent, through his advocate, had confirmed that documents had not been sought under the terms of the Settlement Agreement with the Firm.

501. It was entirely appropriate that the Respondent should pay all of the costs involved in his unsuccessful application to displace the jurisdiction of the Tribunal. Further, the Respondent should be responsible for all of the reasonable costs of the interlocutory hearings as these had arisen due principally to his scatter-gun approach to seeking disclosure and his delays in filing and serving his Answer to the allegations.

502. The Tribunal was satisfied that the proportionate costs of the proceedings were likely to be of the order claimed by the Applicant. This was due primarily to the Respondent's conduct of the proceedings, including the hearing. The case had been listed to take five days, but the number of miscellaneous matters raised and unfocussed cross examination of the Applicant's witnesses had considerably extended the length of the hearing. The Respondent had fought everything, even points which should properly have been conceded and he had caused the costs to rise to such a high level. The so-called "dead cats" in the case had been an attempt to distract the Tribunal from the facts and evidence; the Respondent should not benefit from the approach to the litigation which he had adopted.

503. Of course, the actual amount of costs to be paid would be determined either by negotiation or by a Costs Judge. The Tribunal wished to indicate that it would expect the reasonable costs of the case to be something around the figure contended for by the Applicant; the rates claimed for solicitors and counsel, and the work done appeared (on a short consideration of the costs schedules) to be proportionate to the matters in the case in the light of the Respondent's aggressive defence.

504. Given that the Tribunal was satisfied that the costs set out in the schedule were broadly of the right order of magnitude, the Tribunal was content that the Respondent should be liable to pay about half of the likely overall costs as soon as practicable. The Respondent appeared, on his own evidence, to be a man of some means and there was no reason to keep the Applicant out of all of the costs to which it would ultimately be entitled for the duration of the negotiation and/or detailed assessment procedure. The Tribunal decided to allow the Respondent slightly more than 14 days to make the payment on account, as he may need to make arrangements to transfer the funds. The Tribunal determined that the Respondent should pay £65,000 on account of costs by 4pm on 16 November 2015.

Anonymity

505. After delivery of the Tribunal's outline findings on the allegations, Mr Blanpain made a submission that the Tribunal's written Judgment should be anonymised.

506. Mr Blanpain submitted that in spring 2014 the Tribunal had directed that the decision with regard to the Tribunal's jurisdiction should be anonymised; this was, at least in part, because the regulatory nature of the proceedings may not be understood in other jurisdictions.

507. Mr Levey submitted that the hearing had taken place in public, as had been made clear at the start of the hearing. Any application for anonymity should have been made at the start of the hearing. Further, in the light of the Tribunal's findings it was not appropriate to anonymise the Judgment.

The Tribunal's Decision

508. The Tribunal considered the application to anonymise the Judgment. It noted that anonymisation was an exceptional step and was in conflict with the general public interest in proceedings being both held in public and reported publicly. The circumstances would have to be highly unusual if not exceptional to justify anonymising a Judgment where findings had been made against any Respondent. The Tribunal could see nothing unusual, let alone exceptional, in this case. The earlier decision in respect of the preliminary finding on jurisdiction had been justified as at that stage nothing had been proved against the Respondent. Now, significant and serious findings had been made.

509. Further, in this case the nature of the Order was such that the public had to be able to know what had been found proved against the Respondent. A s43 Order prevented a Respondent from working for a regulated firm other than as permitted by the Applicant; any potential employer (or firm) had to be able to find out both that there was an Order in respect of the Respondent and the reasons for that Order. Accordingly, there was no reason to anonymise the Judgment but the Tribunal would adopt its usual practice of taking reasonable steps to anonymise the Respondent's clients and/or the nature of their businesses.

Statement of Full Order

510. The Tribunal Ordered that as from 29 October 2015 except in accordance with Law Society permission:-

(i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Konstantinos Adamantopoulos of Belgium

(ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Konstantinos Adamantopoulos

(iii) no recognised body shall employ or remunerate the said Konstantinos Adamantopoulos;

(iv) no manager or employee of a recognised body shall employ or remunerate the said Konstantinos Adamantopoulos in connection with the business of that body;

(v) no recognised body or manager or employee of such a body shall permit the said Konstantinos Adamantopoulos to be a manager of the body;

(vi) no recognised body or manager or employee of such a body shall permit the said Konstantinos Adamantopoulos to have an interest in the body;

And the Tribunal further Ordered that the costs of these proceedings be subject to a detailed assessment unless agreed between the parties.

And the Tribunal further Ordered that the Respondent shall by 4.00 p.m. on Monday 16 November 2015 pay to the Applicant £65,000 on account of the total costs.

Dated this 11th day of November 2015
On behalf of the Tribunal

J. P. Davies
Chairman